

# Eleventh Circuit Strikes a Blow to the EEOC's Broad Subpoena Power

## Labor & Employment Law Update

on November 19, 2014

As most employers are aware, the EEOC has been on a multi-year campaign aimed at ferreting out alleged systemic discrimination by using an individual charge of discrimination as a springboard to investigating company-wide practices. The EEOC has been doing this by issuing broad requests for information, and then subpoenas, that seek company-wide information even though there is only an individual charge. Employers often balk at producing this information articulating a lack of relevance to the individual charge.

By and large, the federal courts have enforced the EEOC subpoenas and required employers to produce company-wide information citing the broad relevance standard articulated by the U.S. Supreme Court in the case of *EEOC v. Shell Oil Co.* (1984). That case found that "relevant" was to be broadly construed and the commission was entitled to "virtually any material that might cast light on the allegations against the employer."

However, the Eleventh Circuit recently reversed that trend by upholding a district court opinion that found that the EEOC's company-wide subpoena was not relevant to the individual charge and that it was unduly burdensome to produce the information in the case of *EEOC v. Royal Caribbean Cruises, Ltd.*

The Eleventh Circuit noted that the EEOC essentially relied on the *Shell Oil* case and language to argue relevancy (which has been a winning argument for it) but the court noted that the disputed portions of the subpoena were aimed at discovering members of a potential class of employees who suffered from a pattern of discrimination rather than fleshing out the individual charge. The court held that while statistical information could demonstrate that discrimination occurred, the EEOC was "required to make some showing that the requested information 'bears on the subject matter of the individual complainant.'"

The EEOC focused much of its briefs on an argument that it is entitled to expand the investigation to uncover other potential violations and victims of discrimination – again there has been a great deal of support for this type of argument – but the Eleventh Circuit held that it did "not construe the relevancy standard so broadly." Further the court found that the EEOC could issue a

commissioner's charge alleging a pattern and practice and attempt to obtain the information there but the Eleventh Circuit found that "the EEOC may not enforce a subpoena in the investigation of an individual charge merely as an expedient bypass of the mechanisms required to file a Commissioner's Charge."

This case did present some facts that could have made the court's opinion easier such as the information sought was primarily about foreign nationals rather than U.S. citizens and the employer admitted that they terminated due to the complainant's medical condition (pursuant to certain international standards for cruise ships that prohibit certain conditions) but nonetheless an employer faced with an overbroad EEOC investigation or a subpoena, especially if within the Eleventh Circuit, should look to this case for support in objecting to the requests and subpoena.

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