

Supreme Court Clarifies That Limited Appellate Review Applies To EEOC Subpoena Enforcement

Labor & Employment Law Update

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The Supreme Court's recent *McLane Company v. EEOC* decision addresses the constraints placed on appellate review of actions to enforce or quash broadly written Equal Opportunity Employment Commission (EEOC) subpoenas. The case arose from a supply chain company's requirement that employees in certain physically demanding positions pass a physical examination prior to returning to work from medical leave. The company terminated an employee who failed the exam three times while attempting to return to work after taking maternity leave.

The employee filed a discrimination charge with the EEOC, and the EEOC eventually issued a subpoena to the company seeking, among other things, the names, social security numbers, and last known contact information for all employees, nation-wide, who had been asked to take the physical exam at issue. The company refused to comply with the subpoena, and the EEOC filed actions against the company in the Arizona federal district court to enforce the subpoena.

Federal law gives the EEOC the authority to issue subpoenas that are "relevant" to a charge of discrimination and "reasonable." The meanings of relevant and reasonable are often unclear—and employers that have been the target of EEOC-issued subpoenas know all too well the EEOC's tendency to use subpoenas to transform what may be minor employee complaints into nationwide investigations.

When facing a wide-ranging EEOC subpoena, employers must carefully decide how much to push back on the EEOC by making objections to the subpoena and refusing to comply. As the *McLane* case demonstrates, an employer's refusal to comply with the EEOC's subpoena carries the risk that the EEOC will file an action in federal court to compel the employer's compliance.

In *McLane*, the Arizona district court ruled against the EEOC, in relevant part, and the EEOC appealed to the Ninth Circuit Court of Appeals. The ninth circuit conducted an entirely new review of the matter, and overruled the district court.

The case then went to the U.S. Supreme Court, which ruled that the ninth circuit should not have conducted an entirely new review of the matter. Instead, according to the Supreme Court, appellate courts reviewing orders on EEOC subpoenas should only decide whether the lower court abused its discretion in ruling upon the subpoena. Generally speaking, a court abuses its discretion only when it makes a serious error of judgment, such as applying the wrong legal standard or ignoring an essential element of a legal claim.

Because the abuse of discretion standard is difficult to meet, the *McLane* decision may cause the EEOC to re-evaluate its subpoena strategy, and issue subpoenas more narrowly tailored to facts actually relevant to the underlying charge of discrimination. Whether the EEOC changes its strategy or not, *McLane* also demonstrates that companies must make the strongest, most comprehensive objections possible at the earliest stage of the subpoena response because, in practical terms, the application of the abuse of discretion standard means the company may only have one true chance to challenge an EEOC subpoena in court.

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