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Archives;Discrimination

Trial Court Rulings on EEOC Subpoenas Are Subject to Deferential Review

Last week, the United States Supreme Court ruled that appellate courts reviewing a lower court ruling on the enforceability of an Equal Employment Opportunity Commission (EEOC) subpoena must use an abuse of discretion standard. By requiring this deferential standard, the Supreme Court positions lower courts to be able to impose reasonable limits on the EEOCs investigatory powers.

The Supreme Courts ruling was issued in the case of *McLane Co., Inc. v. Equal Employment Opportunity Commission*. The *McLane* case arose out of McLanes termination of Damiana Ochoa for her failure to pass a mandatory physical abilities test upon her return from maternity leave. Ochoa subsequently filed a charge of sex discrimination with the EEOC. As part of its investigation, the EEOC asked McLane to produce information regarding the physical abilities test and employees who had been asked to take the test. In responding, McLane provided de-identified information about the requested employees gender, position, test score, and the reason each employee had been asked to take the test. McLane refused, however, to provide so-called pedigree information, e.g. the names, social security numbers, addresses, and telephone numbers of its employees. In response, the EEOC expanded the scope of its requests to McLane's nationwide operations and subpoenaed McLane for the pedigree information. After McLane again refused to provide the requested pedigree information, maintaining the request was overbroad and unduly burdensome, the EEOC filed suit in an Arizona-based federal district court seeking enforcement of its subpoena.

The Arizona federal district court denied enforcement of the EEOC subpoena. It held that the EEOCs primary motive in seeking pedigree information was related to Americans with Disabilities Act concerns and that, because Ochoa's charge was for sex discrimination under Title VII, the subpoena was overbroad. On appeal, the Ninth Circuit Court of Appeals reversed under a *de novo* standard of review that requires no deference to the legal conclusions of the lower court. The Ninth Circuits use of *de novo* review stands in contrast with the approach taken by numerous other federal appellate courts that have held that the abuse of discretion standard applies.

McLane appealed the Ninth Circuits ruling to the Supreme Court, which held last week that an abuse of discretion not *de novo* standard of review applies when an appellate court is reviewing a trial courts ruling on a challenge to an EEOC subpoena. In landing on the abuse of discretion standard, the court noted that: (1) there is a longstanding practice in federal appellate courts of engaging in a deferential review of administrative subpoenas; and (2) trial courts are better positioned than appellate courts to determine if an administrative subpoena seeks relevant information in light of the specific facts of a case. Accordingly, the court ruled that, unless there is evidence that a trial court arbitrarily exercised its discretion or made a clear legal error, the trial courts decision should stand.

While the Supreme Courts *McLane* ruling favors employers, the Supreme Court did reiterate that the EEOC enjoys broad subpoena power, stating that the established rule [is] that the term relevant be understood generously to permit the EEOC access to virtually any material that might cast light on the allegations against the employer. The courts decision also provides, however, that a trial court should be cognizant of the EEOCs broad subpoena power, but does not have to defer to the EEOCs view on relevancy.



The *McLane* ruling will make it more difficult for a district courts decision on an EEOC subpoena to be overturned on appeal. It also suggests that an employer challenging an EEOC subpoena will likely have a better chance of obtaining a favorable ruling from the district court, rather than on appeal. Because district courts still must recognize the extensive subpoena power of the EEOC, employers wishing to challenge an EEOC subpoena must continue to be prepared to present compelling reasons why the subpoena is invalid.