



SUPREME COURT HOLDS DEFERENTIAL STANDARD IS APPROPRIATE FOR EEOC SUBPOENA REVIEWS

APRIL 2017

Under Title VII, the Equal Employment Opportunity Commission (EEOC) has the authority to issue subpoenas for documents relevant to its investigations. Prior to the Supreme Court's decision in *McLane Co. v. EEOC*, which issued April 3rd, all but one federal circuit applied a deferential standard to district court decisions on the enforcement of EEOC subpoenas.

In a 7-1 decision [issued on Monday](#), the U.S. Supreme Court ruled that appellate courts should use a deferential abuse-of-discretion standard to review a district court's decision on whether to enforce an EEOC subpoena. The decision vacated a Ninth Circuit ruling that had used a *de novo* standard.

The subpoena at issue in the *McLane* case required that the employer disclose personally identifiable information about its employees, including names, social security numbers and contact information—data that the EEOC characterized as “pedigree” information. The subpoena for this information had been submitted during an EEOC sex discrimination investigation. The Supreme Court did not address the underlying merits of the subpoena and remanded that issue to the Ninth Circuit to review whether the district court's finding that the subpoena was not enforceable was

appropriate under the abuse-of-discretion standard of review.

In its ruling, the Supreme Court evaluated whether the history of appellate practice and whether, “as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.” The Court found the answer to both of these factors supported the deferential standard of review. First, the Court reviewed the history of Title VII, which was amended by Congress in 1972 to give the EEOC subpoena power similar to that of the National Labor Relations Board. The Court noted that Title VII was amended against the universal backdrop of deferential appellate review of district court decisions regarding the enforceability of administrative agency subpoenas. The Court further noted that a deferential standard had been applied by every circuit over the last three decades since Title VII had been amended, leading the Supreme Court to hold that this “long history of appellate practice carries significant persuasive weight.”

The Supreme Court also examined the practical functions of evaluating the enforceability of an EEOC subpoena. Here, the Court found that the “decision to enforce an EEOC subpoena is a case-specific one that turns not on a ‘neat set of



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legal rules’, but instead on the application of broad standards to ‘multifarious, fleeting, special, narrow facts that utterly resist generalization.’ In the mine run of cases, the district court’s decision whether to enforce a subpoena will turn either on whether the evidence sought is relevant to the specific charge before it or whether the subpoena is unduly burdensome in light of the circumstances. Both tasks are well suited to a district judge’s expertise.” Therefore, the functional considerations

supported the Court’s conclusion that abuse-of-discretion review is appropriate rather than *de novo* review.

Going forward, the Supreme Court’s decision requires all of the federal circuits to apply an abuse-of discretion standard in all cases involving review of a district court’s decision regarding the enforcement of an EEOC subpoena, providing consistency across the circuits and for employers.