

EEOC Classwide Subpoena Based on Individual Allegations Too Broad, Federal Appeals Court Rules

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Denying the Equal Employment Opportunity Commission's (EEOC) request to enforce a subpoena that would have expanded the agency's investigation on a classwide basis, the U.S. Court of Appeals for the Eleventh Circuit has held the EEOC did not have the authority to expand the investigation beyond the individual allegations in the charge. *EEOC v. Eberspaecher N. Am. Inc.*, No. 21-13799, 2023 U.S. App. LEXIS 11466 (11th Cir. May 10, 2023).

Eberspaecher is a reminder that the EEOC's broad subpoena power has limits. It also draws a roadmap for employers seeking to challenge EEOC subpoenas.

The Eleventh Circuit has jurisdiction over Alabama, Florida, and Georgia.

Background

Eberspaecher North America, Inc. (ENA) manufactures car components in seven facilities throughout the United States. An employee working at the Northport, Alabama, facility filed a complaint with the EEOC field office in Birmingham alleging ENA terminated his employment for taking protected leave, in violation of the Americans With Disabilities Act (ADA). The EEOC determined that ENA violated the ADA with respect to charging party and other employees by assigning points under the attendance policy for disability-related absences.

Although the case originated with an EEOC charge filed by an individual, the EEOC filed a Commissioner's Charge because of its investigation. The Commissioner's Charge stated the employer violated the ADA by discriminating against employees on the basis of disability with respect to qualified leave. The notice of the Charge was sent to ENA's Northport facility. The Charge identified the employer with ENA's Northport address. The notice and Charge did not state that the allegations were nationwide in scope.

In its first request for information, the EEOC limited its request to the Northport facility. The EEOC subsequently subpoenaed nationwide data and supporting documentation identifying every employee terminated for attendance-related infractions at all seven ENA locations. When ENA refused to respond, the EEOC issued a subpoena and sought judicial enforcement of the subpoena in the U.S. District Court for the Northern District of Alabama. The district court ordered ENA to turn over the requested information for the Northport facility, but it held the nationwide information was irrelevant to the Charge under investigation, which implicated only the Northport location. The EEOC appealed.

Limits on EEOC Subpoena Power

Affirming the district court's order, the Eleventh Circuit rejected the EEOC's argument that the information sought was relevant because it intended to charge

the entire company, not just the Northport facility.

Central to the Eleventh Circuit's analysis was the fact that the EEOC listed only the address of the Northport facility on the Charge and sent notice of the Charge to the Northport facility only. The Eleventh Circuit acknowledged that a "nationwide" charge does not require specific language, but it cited cases showing that "the EEOC knows how to issue broad charges targeting numerous employment locations when it suspects nationwide employment misconduct and seeks to collect relevant evidence from several employment locations." Because the EEOC did not identify ENA's nationwide operations as the subject of the Charge, despite having done in other enforcement actions, the Eleventh Circuit held that only the Northport facility was the target of the Charge.

The Eleventh Circuit also rejected EEOC's argument that the extensive information it sought was relevant for comparative purposes mainly because the EEOC failed to raise that argument with the district court. However, even if the EEOC had not waived that argument, the Eleventh Circuit held, the information sought was too broad, because the EEOC sought documentation showing all attendance-related terminations of all employees at all facilities without limiting the request to disability-related absences.

The Eleventh Circuit determined, "Holding that such an incredibly broad subpoena for such information was 'relevant' to the charge against ENA's Northport facility would construe that terms so broadly as to render it a 'nullity.'"

Takeaway for Employers

This decision provides an important limitation on the EEOC's broad subpoena powers. Employers should carefully review the Charge for arguments that the EEOC is prohibited from seeking classwide information under the reasoning of *Eberspaecher*.

Jackson Lewis attorneys are available to provide a risk assessment and advise on how to proceed in the event of an EEOC subpoena or subpoena enforcement action.

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