

Knock-Knock, Who's There? The EEOC: When the EEOC's can Investigate an Employer's Premises Without Prior Consent

2 min read

May 3, 2016

When the EEOC investigates a charge of discrimination, it may employ one of several investigatory methods, including site inspections. In [EEOC v. Nucor Steel Gallatin, Inc.](#), a case of national first impression, a Kentucky district court considered whether to enforce a subpoena requiring the employer to provide on-site access to conduct witness interviews, examine the facility, and obtain additional information relating to the position the complainant applied for, or alternatively, to require the EEOC to obtain an administrative warrant.

The court held the EEOC need not obtain an administrative warrant. However, it must obtain pre-compliance judicial review providing substantive and procedural safeguards roughly equivalent to those afforded by administrative warrant procedures. The court then laid out the procedure for seeking and objecting to an inspection:

The EEOC notifies the employer of its intent to perform an inspection;

1. If the employer objects to the inspection, the employer must state its refusal to permit it
2. Upon notice of the employer's refusal, the EEOC must issue a subpoena detailing the nature of its request;
3. If the employer has objections to the subpoena, it must petition the EEOC's Director or General Counsel to modify or revoke the subpoena;
4. If the EEOC denies the appeal and the company still refuses to comply, then the EEOC's General Counsel or designee may institute proceedings in federal court to enforce the subpoena;
5. When the EEOC seeks enforcement, the district court must review the subpoena to determine the following: whether (a) the subpoena is within the EEOC's authority, (b) the EEOC has satisfied its own due process requirements, (c) compliance would be unduly burdensome, and (d) the information sought is relevant to the charges filed.

6. In considering the subpoena at issue, the court determined a full investigation required an access to the workplace itself; the EEOC need not take the employer's word that it provided the EEOC with everything it needed to make a determination on probable cause. An inspection would aid in determining the essential functions of the position in question. The court did limit the scope of the subpoena to the areas of the facility relevant to the filed charge.

The upshot is employers who receive inspection requests from the EEOC must carefully review such requests and be vigilant in contesting the scope of the notice or subsequent subpoena. Otherwise, an EEOC investigator might obtain unfettered access to the employer's facility, giving him or her access to parts of the facility irrelevant to the complainant's charges.

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Topics

Disability, Title VII, Hiring, Subpoena, Investigation, Title VII Of The Civil Rights Act Of 1964, Administrative Warrant