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Hope For Employers Who Have Ever Felt Bullied By The EEOC

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A recent order from an Atlanta federal court should give hope to all employers who have ever felt bullied by the Equal Employment Opportunity Commission. In *EEOC v. HomeNurse, Inc.*, Case No. 1:13-cv-2927, a former employee filed a charge with the EEOC alleging that HomeNurse discriminates against disabled persons, persons who are 40 years old or older, persons with pre-existing genetic conditions and African Americans. Oddly, though, the former employee was none of these things. She was not disabled, was under 40, had no genetic condition and was white. As a result, she clearly lacked standing to raise her discrimination claims against HomeNurse, and she could not serve as a plaintiff representative for a class of such individuals.

In spite of these facts, the EEOC chose to aggressively pursue and collect information related to the former employee's claims. It appeared at HomeNurse's office unexpectedly – with a subpoena in hand – and demanded access to confidential personnel and patient files. It repeatedly rebuked HomeNurse's attempts to resolve the situation quickly and in a cost effective manner. And it served three more subpoenas on HomeNurse in the months that followed. In the last of its subpoenas, the EEOC apparently requested thousands of pages of documents that HomeNurse had already produced to it six months earlier.

When HomeNurse refused to comply with the last subpoena, the EEOC filed a motion to show cause, and HomeNurse responded to the motion. The court then entered a 37-page-long order denying the EEOC's motion and quashing its last subpoena. The order makes clear that the court found the EEOC's conduct to be reprehensible. The entry summarizing the order on the court's electronic docket provides a taste of it:

> The EEOCs highly inappropriate search and seizure operation, its failure to follow its own regulations, its foot-dragging, its errors in communication which caused unnecessary expense for HNI, its demand for access to documents already in its possession, and its dogged pursuit of an investigation where it had no aggrieved person, constitutes a misuse of its authority as an administrative agency. For whatever reason, the responsible EEOC investigators and attorneys have repeatedly refused this small employer's entreaties to resolve this case quickly and in a cost-effective manner. The by-product of all of this obstinance is a small employer with a large attorneys fee bill and an unnecessary squabble in federal court. Although the standards governing enforcement of an administrative subpoena are low, the EEOC has not met them here. The federal courts stand as a bulwark to protect this nation's citizens from powerful government agencies that seek to run roughshod over their rights. It would be an abuse of this Courts process to enforce the instant subpoena. Therefore, for the reasons stated above, the Court DENIES the EEOCs Application and QUASHES the Fourth Subpoena.

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Generally speaking, Employers are better off to attempt to work with the EEOC in an effort to narrow its requests for information than to outright reject them. “Compromise,” in other words. That said, the *HomeNurse* case shows that sometimes the EEOC goes too far. And, when it does, the courts will reign it in.