Spotlight On Legal Battles Over EEOC Subpoena Powers

By **Jonathan Meer and Angela Sekerka** (March 31, 2026)

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Congress has granted the U.S. Equal Employment Opportunity Commission broad subpoena powers that allow it to obtain employees' private information when investigating employment discrimination charges.

The EEOC's March 25, 2025, announcements that it would prioritize alleged religious discrimination on college campuses,[1] and diversity, equity and inclusion practices in corporate America gave rise to a new front line in the battle over the agency's subpoena powers, and renewed questions about how employers should evaluate the breadth of its right to employees' personal information.[2]

This article reviews key rulings and recent litigation surrounding the EEOC's subpoena powers and how this developing law should shape employer decisions about how to respond to EEOC requests.

The Three-Part Test to Measure Appropriateness of EEOC Subpoenas

Early decisions shaping the scope and reach of EEOC subpoenas have focused primarily on the three-part test used to analyze the validity of the subpoena at issue.

This inquiry is: (1) whether Congress granted the authority to investigate; (2) whether procedural requirements have been followed; and (3) whether the evidence sought is relevant and material to the investigation.[3]

One of the seminal cases concerning the disclosure of employee information pursuant to an EEOC subpoena is the 2012 decision of the U.S. District Court for the District of Arizona in EEOC v. McLane Co. Inc., which involved an employee terminated for failing an exam after she returned from maternity leave.[4]

The EEOC sought information about all employees who had taken the exam, including their name, gender, contact information, reason for taking the test, their score and any adverse action taken against them based on their score.

The defendant, a grocery supply chain services company, objected to the subpoena, resulting in the EEOC filing suit in federal district court in Arizona seeking to enforce it. The district court required the defendant to disclose some of the information sought by the EEOC, but not the so-called pedigree information — names, social security numbers, and contact information — for each test-taker or the reason each test-taker was terminated.

In so holding, the court cited the three-part test, determining that some the information sought by the EEOC was not relevant at that stage of the investigation, and reasoned that the scope of judicial review of an EEOC subpoena is narrow.

The U.S. Court of Appeals for the Ninth Circuit reversed the decision on Oct. 27, 2015, holding that the district court committed legal error in its analysis of enforcement of the subpoena; if the EEOC showed that the information sought was relevant to the charge it was investigating, the lower court should enforce it unless the defendant can show that the EEOC's request for pedigree information was unduly burdensome.[5]

The U.S. Supreme Court agreed to review a separate issue in the case on Sept. 29, 2016, to determine the proper standard of appellate review for a district court's decision on EEOC subpoenas. The Supreme Court held on April 3, 2017, that a federal district court's earlier decision on whether to enforce or quash an EEOC subpoena should be reviewed for abuse of discretion, not de novo.

Following the Supreme Court's decision, the Ninth Circuit on May 24, 2017, vacated the prior district court decision because it evaluated the subpoena without considering the pedigree information being requested by the EEOC. Later when before the Arizona District Court on April 25, 2018, it held that the EEOC's request for pedigree information was relevant and the court was disinclined to find the subpoena was overly burdensome.

EEOC Prioritizes Religious Discrimination at Universities, Triggering New Litigation Over Subpoena Powers

EEOC Focus on Antisemitism on University Campuses

California Faculty Association v. Board of Trustees of the California State University[6]

In 2025, EEOC Acting Chair Andrea Lucas announced the EEOC's intention to prioritize holding universities accountable for the creation of hostile work environments for Jewish professors and staff.[7] Consistent with this agency focus, the EEOC ramped up its investigation of California State Los Angeles for alleged systemic discrimination against Jewish faculty and staff, subpoenaing the contact information of 2,600 employees.

In addition to public outcry and protests, the release of this type of information resulted in the Cal State teachers' union filing a lawsuit against the university on Oct. 10, 2025, in Los Angeles County Superior Court. In California Faculty Association v. Board of Trustees of the California State University, the union sought to prohibit Cal State from disclosing employees' personal information to federal agencies without first providing such employees with notice and opportunity to challenge the disclosure.

The plaintiffs argued that the California Constitution contains an explicit right to privacy, which was violated when Cal State disclosed employees' personal information to the EEOC. They further argued that the disclosure violated the Information Practices Act, which requires public agencies to provide notice to affected individuals before disclosing their personal information in response to a subpoena.

As part of the Jan. 21 **settlement**, Cal State must provide notice to employees as soon as reasonably practicable before complying with any subpoena for personal information related to the university's investigation of antisemitism, unless notice is prohibited by law or regulation.

EEOC v. Trustees of the University of Pennsylvania

Similarly, on Nov. 18, 2025, the EEOC **filed an action** in the U.S. District Court for the Eastern District of Pennsylvania, seeking to enforce a subpoena for potential witnesses' names and contact information issued during its investigation into claims that the University of Pennsylvania allowed anti-Semitic harassment to persist and escalate, creating a hostile work environment for Jewish faculty and staff.[8]

In EEOC v. Trustees of the University of Pennsylvania, UPenn initially complied with a subpoena for the names of employees of Jewish faith or ancestry and records of complaints about antisemitism, though it withheld identifying information. The EEOC then requested information about all Jewish clubs, groups, organizations and recreational activities. UPenn responded with some of the requested materials but again withheld employees' identifying information. As such, the EEOC filed this litigation.[9]

On Jan. 5, the UPenn trustees were ordered to show cause as to why the EEOC subpoena should not be enforced. In response, UPenn argued that the subpoena was an invasion of employees' privacy by compelling their associations without identifying any compelling interest in violation of its First Amendment rights, especially when it had proposed a less intrusive alternative, informing the employees of the investigation and allowing them to voluntarily opt-in or engage with the EEOC.

On Jan. 26, the EEOC responded to these arguments by accusing UPenn of impeding its investigation into antisemitism and waging an "intensive and relentless public relations campaign" to avoid complying with the subpoena.[10] On March 31, the court **ruled** that the university must comply with the EEOC's subpoena.

Recent EEOC Activity Targeting DEI Practices Triggers Additional Litigation over Subpoena Powers

In addition to targeting alleged antisemitism on university campuses, the EEOC is focusing on private employers' DEI policies, and what it refers to as DEI-related discrimination.

EEOC v. Northwestern Mutual

On Nov. 20, 2025, the EEOC **filed** a subpoena in an enforcement action against Northwestern Mutual Life Insurance Co. in the U.S. District Court for the Eastern District of Wisconsin related to the company's DEI policies and practices.[11]

In EEOC v. Northwestern Mutual, the EEOC alleges that Northwestern Mutual's denial of a promotion sought by one of its employees amounted to discrimination based on his sex, race, color and national origin as an American white male. The subpoena also sought information regarding the company's human resources documents and the metrics used for financial rewards. This litigation is ongoing.

EEOC v. Nike

More recently, on Feb. 4, the EEOC filed a complaint in the U.S. District Court for the Eastern District of Missouri to enforce a subpoena related to claims alleging race discrimination.[12] EEOC v. Nike Inc. is another case involving what used to be known as reverse race discrimination. The EEOC's position is that discrimination based on race is unlawful regardless of the race of the affected individual, in this case, a white

male.

While Nike produced some of the requested information in response to the EEOC subpoena, the EEOC alleges that the responses were inadequate. It insisted that additional information was relevant and necessary, including information related to the company's tracking and use of worker race and ethnicity data, as well as information about 16 programs that allegedly provided race-restricted mentoring, leadership and career opportunities.

The request included information going back to 2018, even though the charge period began in 2020. Some of the information requested included executive compensation policies and decisions, mentorship programs and the basis for workforce reduction decisions.

Democracy Forward Foundation v. EEOC

On April 15, 2025, an organization representing the interests of law students who previously applied for positions at several law firms **filed an action** in the U.S. District Court for the District of Columbia objecting to the EEOC's efforts to obtain information surrounding the firms' DEI efforts.

The Democracy Forward Foundation v. EEOC complaint sought to enjoin the EEOC "from taking any action to obtain employee information from the law firms without following statutory processes, and order Defendants to destroy any data that they have collected to date pursuant to the unlawful investigation."[13]

The case was **settled and dismissed** on Feb 9, however it is noteworthy to point out the stipulation expressly noted the "EEOC has stated that, to the extent that any of the information requested in [its requests] was provided to the EEOC by any of the law firms in response to those letters, such information did not include names, email addresses, phone numbers, or other personally-identifying information of any law firm employee or applicant."

Pursuant to the terms of the settlement, the EEOC agreed that its demands for information from the law firms were not mandatory. It further confirmed that the agency did not receive or retain any personally identifying information from the law students at the center of the probe.

Maizel v. EEOC

Similarly, the Bernlohr Maizel v. EEOC case, pending in the U.S. District Court for the District of Columbia, seeks to compel production of the letters the EEOC sent to law firms over their DEI programs.[14] In this action, **filed** on Feb. 16, two law professors from the University of Florida and Michigan State University challenged the denial of Freedom of Information Act requests made to the EEOC seeking this information.

This pending lawsuit does not challenge the breadth of the EEOC subpoena powers but rather seeks disclosure of what it received.

What All of This May Mean for Employers

The EEOC's recent enforcement focus has brought national attention to what historically have been routine requests for information. Not only is the scope of the EEOC's investigatory powers being challenged on privacy grounds, but also in opposition to the policy positions of the current administration.

Regardless of why these cases have been filed, the rulings in cases like UPenn, Northwestern Mutual and Nike will have significant impact on employers that face subpoenas and information requests down the road.

For example, the UPenn court's ruling requiring the university to comply with the EEOC's subpoena, despite the First Amendment concerns it has raised, will likely make it more difficult for universities and other employers to rely on First Amendment privacy concerns as a defense to compliance with EEOC subpoenas going forward.

Further, the Northwestern Mutual and Nike cases should be watched closely to see whether executive compensation policies, corporate metrics used for financial rewards and other HR documents are determined to be within the EEOC's subpoena power.

Until these issues are resolved, employers should remember that the EEOC's investigatory and subpoena powers are broad but not unlimited. Employers frustrated with broad requests may be able to challenge subpoenas based on the laws and the constitution of the states in which actions are brought.

Employers can raise objections to the scope of the requests, raise privacy concerns on employees' behalf, or even raise procedural arguments such as the EEOC not having the power to issue subpoenas once right-to-sue notices are issued or litigation has commenced.

The strength of these arguments will depend on the constitution and law of the state wherein the employer raises the objection.

Employers should also review existing DEI programs to ensure they will withstand scrutiny if the organization becomes a target of the EEOC's current enforcement focus around of unlawful race, sex, color and national origin discrimination.

Conclusion

In sum, employers can expect that the EEOC will continue to vigorously pursue its articulated priorities of rooting out antisemitism on university campuses and identifying and eliminating DEI-related discrimination. In connection therewith, employers can expect to receive broad requests for information from the EEOC concerning their DEI programs and policies, as well as information about their Jewish faculty and staff members, and should be prepared to respond accordingly, unless there are legitimate grounds for challenging them.

Update: This article has been updated to reflect the Eastern District of Pennsylvania's March 31 decision in EEOC v. Trustees of the University of Pennsylvania.

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[1] EEOC, March 5, 2025, "EEOC Acting Chair Promises to Hold Accountable Universities and Colleges for Antisemitism on Campus Workplaces," https://www.eeoc.gov/newsroom/acting-chair-promises-hold-accountable-universities-and-colleges-antisemitism-campus.

[2] EEOC, March 19, 2025, "EEOC and Justice Department Warn Against Unlawful DEI-Related Discrimination," http://www.eeoc.gov/newsroom/eeoc-and-justice-department-warn-against-unlawful-dei-related-discrimination.

[3] EEOC v. McLane, 2018 U.S. Dist. LEXIS 70127 (AZ April 25, 2018) at 3, quoting EEOC v. Children's Hosp. Med. Ctr., 719 F.2d 1426, 1430 (9th Cir. 1983).

[4] EEOC v. McLane, 2012 U.S. Dist. LEXIS 164920 (AZ Nov 19, 2012), later McLane Co. v. EEOC, 137 S. Ct. 1159, (U.S., Apr. 3, 2017), remanded in EEOC v. McLane, 857 F.3d 813 (9th Cir. May 24, 2017) and further to EEOC v. McLane, 2018 U.S. Dist. LEXIS 70127 (AZ April 25, 2018).

[5] EEOC v. McLane, 857 F.3d 813 (9th Cir. May 24, 2017).

[6] California Faculty Ass'n v. Trus. of the Cal. State. Univ., Case No. 25STCP03935 (Oct. 10, 2025).

[7] https://www.eeoc.gov/newsroom/eeoc-acting-chair-promises-hold-accountable-universities-and-colleges-antisemitism-campus.

[8] Yakoby v. Trs. of the Univ. of Pa., 2025 U.S. Dist. LEXIS 103709 (E.D. PA, June 2, 2025).

[9] EEOC v. Trs. of the Univ. of Pa., Case No. 2:25-cv-06502.

[10] Petitioner EEOC's Reply to Respondent's Answer in Opposition to Application for Order to Show Cause, 2:25-CV-06502-GJP, Jan. 26, 2026.

[11] EEOC v. Northwestern Mutual, 25-mc-00053 (ED WI 2025).

[12] EEOC v. NIKE Inc., 26-mc-00128 (ED MO 2026).

[13] Democracy Forward Foundation v. EEOC, 25-cv-01124 (D DC 2025).

[14] Bernlohr Maizel et al v. EEOC, 26-cv-00494 (D DC 2026).