

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF ILLINOIS**

**U.S. EQUAL EMPLOYMENT  
 OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**RENT-A-CENTER EAST, INC.,**

Defendant.

No. 16-CV-2222

Judge Colin Stirling Bruce

Magistrate Judge Eric I. Long

**DEFENDANT’S UNOPPOSED MOTION TO ENFORCE SUBPOENA**

The U.S. Equal Employment Opportunity Commission (“EEOC”) filed this suit complaining that Defendant Rent-A-Center East, Inc. (“RAC”) fired Megan Kerr because she is transgender or was transitioning her gender. Kerr was an assistant manager at RAC’s Rantoul store from July 2010 until July 21, 2014, when RAC terminated her employment.

Following her termination, Kerr applied for unemployment benefits with the Illinois Department of Employment Security (“IDES”). On March 21, 2017 (with no objection by the EEOC) RAC served a subpoena upon the IDES seeking records of Kerr’s claim for unemployment benefits. *See* Exhibit 1. In *Equal Employment Opportunity Commission v. Illinois Department of Employment Security*, the Seventh Circuit held that the EEOC was entitled to subpoena unemployment benefit claim records from the IDES in order to investigate its case despite the state privilege present in the Illinois Unemployment Insurance Act, which states that unemployment compensation proceedings are confidential. 995 F.2d 106, 109 (7th Cir. 1993). Federal courts in Illinois have relied upon the *EEOC* opinion as authority to order the production of IDES records under Rule 501 of the Federal Rules of Evidence, holding that a litigant’s interest in access to relevant information outweighs the statutory privilege created by the Illinois

law. *See Tutman v. WBBM-TV/CBS Inc.*, 1997 U.S. Dist. LEXIS 13281, at \*7-8 (N.D. Ill. Aug. 27, 1997) (ordering production of IDES transcript to private defendant in Title VII case).

In a March 29, 2017 letter in response to RAC's subpoena, the IDES stated that it may be in possession of documents responsive to the subpoena, and that, while it cannot voluntarily produce the documents absent a court order, "IDES will not oppose a motion to enforce the production of documents." *See* Exhibit 2. Likewise, Plaintiff EEOC did not object to service of the subpoena and does not oppose production of records responsive to that subpoena.

Given legal precedent in the Seventh Circuit on this issue, and that neither the IDES nor EEOC are opposed, RAC respectfully requests that the Court order the IDES to comply with RAC's subpoena and produce all documents responsive to that subpoena.

Respectfully submitted,

*/s/ J. Bradley Spalding*

---

J. Bradley Spalding, Texas Bar No. 00786253

J. Bradley Spalding  
Texas Bar No. 00786253  
LITTLER MENDELSON, P.C.  
1301 McKinney Street, Suite 1900  
Houston, Texas 77010  
713.652.4731

Michael A. Wilder ARDC# 6291053  
Lavanga V. Wijekoon ARDC# 6301183  
LITTLER MENDELSON, P.C.  
A Professional Corporation  
321 North Clark Street, Suite 1000  
Chicago, IL 60654  
312.372.5520

Stephanie J. Quincy  
Arizona Bar No. 014009  
QUARLES & BRADY LLP  
Renaissance One  
Two North Central Avenue  
Phoenix, AZ 85004  
602.229.5200

Andrew Trusevich  
Texas Bar No. 00785119  
RENT-A-CENTER, INC.  
5501 Headquarters Drive  
Plano, Texas 75024  
972.801.1465

Dated: April 7, 2017

**CERTIFICATE OF CONFERENCE**

I, **J. Bradley Spalding**, attorney for Defendant, certify that I conferred with counsel for Plaintiff and counsel for the Illinois Department of Employment Security regarding this matter. Counsel for the IDES advised by letter dated March 29, 2017 that it was not opposed to the relief sought herein, and counsel for Plaintiff advised by telephone on March 21, 2017, that it was unopposed to the subpoena to IDES, and via e-mail on April 6, 2017, that it was not opposed to this motion.

*J. Bradley Spalding*

---

J. Bradley Spalding

**CERTIFICATE OF SERVICE**

I, **J. Bradley Spalding**, an attorney, certify that I served the attorney of record named below with a copy of **Defendant's Motion to Compel Compliance with Subpoena** via ECF (*Electronic Case Filing*) on April 7, 2017:

**Miles Shultz**  
**Justin Mulaire**  
**P. David Lopez**  
**James L. Lee**  
**Gwendolyn Young Reams**  
**John C. Hendrickson**  
**Gregory M. Gochanour**  
U.S. Equal Employment Opportunity Commission  
500 West Madison Street, Suite 2000  
Chicago, IL 60661  
(312) 869-8045  
[miles.shultz@eeoc.gov](mailto:miles.shultz@eeoc.gov)

U.S. Equal Employment Opportunity Commission  
131 M. Street, N.E.  
Washington, DC 20507

I further certify that I served counsel for the Illinois Department of Employment Security with a copy of this motion via certified mail, return receipt requested, and electronic mail on April 7, 2017, as follows:

Andrew J. Dryjanski  
Assistant Attorney General  
State of Illinois  
33 South State Street—Suite 992  
Chicago, Illinois 60603  
[andrew.dryjanski@illinois.gov](mailto:andrew.dryjanski@illinois.gov)

*/s/ J. Bradley Spalding*  
\_\_\_\_\_  
J. Bradley Spalding

# **EXHIBIT 1**

**United States District Court**  
**FOR THE Central DISTRICT OF ILLINOIS**  
**Urbana DIVISION**

U.S. Equal Employment Opportunity Commission )  
 )  
 vs. ) **Civil Action No: 2:16-CV-02222**  
 )  
 Ren-A-Center East, Inc. )

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS**  
**OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

**TO:** Custodian of Records for: **ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY**  
**33 SOUTH STATE, FLOOR 009, CHICAGO, IL 60603**

X *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: any and all files and records (including any audio or visual testimony) maintained by the Department of Employment Security regarding a claim for unemployment insurance filed by Megan Kerr against Rent-A-Center East, Inc. on or around August 3, 2014. IDES Docket No. 4082494; Claimant ID: SSN **Redacted** .

PLACE : <b>ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY</b> <b>33 SOUTH STATE, FLOOR 009</b> <b>CHICAGO, IL 60603</b>	DATE AND TIME  <b>INSTANTER</b>
---	---------------------------------------

       *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE :	DATE AND TIME
---------	---------------

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 3/21/17

CLERK OF COURT

OR

\_\_\_\_\_  
(Signature of Clerk or Deputy Clerk)

J. Bradley Spalding Jr  
(Attorney's signature)

The name, address, e-mail address, and telephone number of the attorney representing the **Defendant**, who issues or requests this subpoena, are:

**J. Bradley Spalding / Littler Mendelson, P.C.**  
**1301 McKinney Street**  
**Suite 1900, Houston, TX 77010**  
**Phone: 713-951-9400 / Fax: 713-951-9212 / bspalding@littler.com**

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in the case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:16-CV-02222

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_ on  
*(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g), (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

- (i) is a party or party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c) here that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where for the district where compliance is required may, on motion, quires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.**

These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may none the less order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**U.S. LEGAL SUPPORT INC.  
363 NORTH SAM HOUSTON PARKWAY E.  
SUITE 1200  
HOUSTON, TEXAS 77060  
PHONE: 713-653-7100; FAX: 713-653-7171**

March 3, 2017

Attn: **Any & All Records**

ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY  
33 SOUTH STATE, FLOOR 009  
CHICAGO, IL 60603

Records requested: any and all files and records (including any audio or visual testimony) maintained by the Department of Employment Security regarding a claim for unemployment insurance filed by Megan Kerr against Rent-A-Center East, Inc. on or around August 3, 2014. IDES Docket No. 4082494; Claimant ID: SSN **Redacted** .

Records pertaining to: **Megan Kerr**  
DOB: **Redacted** ; SSN: **Redacted**

Dear Sir/Madam:

US Legal Support is a records retrieval service company that provides litigation support to the legal and insurance industry. Our attorney/client has requested that we locate records specified in the enclosed legal documents, *within 14 days*.

Please provide all requested documentation and complete each document accurately and completely. If the cost of providing the records exceeds \$50.00, please contact us BEFORE copying. Please check that all copies are legible, and that no information is omitted. Texas law requires a physician/hospital/medical clinic to furnish a patient's records within 30 days after a request is received (Tex. Rev. Civ. Stat. Ann., Article 4495b, §5.08(k)). Enclosed is a **SUBPOENA WITH A DEPOSITION BY WRITTEN QUESTIONS AND/OR AFFIDAVIT**. Please assist us by:

1. Answering **ALL** questions.
2. **SIGN** the deposition by written questions and/or affidavit.
3. Have the signatures **NOTARIZED**.
4. Return all **ORIGINAL** completed documents with a legible copy of the records to:

**U.S. LEGAL SUPPORT, INC.  
RECORDS DIVISION  
363 NORTH SAM HOUSTON PARKWAY EAST, SUITE 1200  
HOUSTON, TEXAS 77060**

**IF AFTER A THOROUGH SEARCH YOU FIND NO RECORDS OF THIS PERSON, PLEASE MAKE THIS STATEMENT ON ALL DOCUMENTS, SIGN, AND HAVE THEM NOTARIZED.**

\*\*\*\*Please reference the following number when calling: 92505.001\*\*\*\*

Thank you very much for your cooperation and assistance.

Best regards,

US Legal Support

# **EXHIBIT 2**



Bureau of  
Unemployment Insurance

Lisa Madigan  
Attorney General  
State of Illinois  
Chicago

33 South State Street-Suite 992  
Chicago, Illinois 60603  
Telephone: 312-793-9210

March 29, 2017

Via Email – bspalding@littler.com

J. Bradley Spalding  
Littler Mendelson, P.C.  
1301 McKinney Street, Suite 1900  
Houston, TX 77010

RE: ***EEOC v. Rent-A-Center East, Inc.***  
**U. S. Dist. Ct. C. D. IL 16 cv 02222**  
Subpoena for IDES Records of: Megan Kerr

Dear Mr. Spalding:

This letter will serve as a response to the March 21, 2017 subpoena served on the Illinois Department of Employment Security (“IDES”).

Section 1900 of the Illinois Unemployment Insurance Act, 820 ILCS 405/1900 forbids the production and disclosure of any agency documents. Therefore, without a court order, the Illinois Department of Employment Security cannot legally release any of these documents. If you wish to pursue the release of the documents, please see EEOC v. IDES, 995 F.2d 106 (7<sup>th</sup> Cir. 1993).

Upon review of the underlying complaint, it appears IDES may be in possession of documents relevant to your case. The IDES matter was handled at the local level and did not proceed to any hearing. Therefore, there is no transcript. The only statements made by Ms. Kerr would be those reflected in the adjudication summary and her answers to misconduct questionnaires. IDES will not oppose a motion to enforce the production of documents. IDES can produce the adjudication summary and questionnaires, a summary of the benefits paid to Ms. Kerr, and any documents submitted to IDES by Ms. Kerr or her employer. Once an order is entered, IDES will produce these documents. Please contact me to set a mutually convenient date to set your motion and if you have any questions.

Very truly yours,  
LISA MADIGAN  
STATE OF ILLINOIS  
ATTORNEY GENERAL

ANDREW L. DRYJANSKI  
Assistant Attorney General  
[andrew.dryjanski@illinois.gov](mailto:andrew.dryjanski@illinois.gov)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS**

**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**RENT-A-CENTER EAST, INC.,**

Defendant.

No. 16-CV-2222

Judge Colin Stirling Bruce

Magistrate Judge Eric I. Long

**ORDER**

Before the Court is Defendant's Unopposed Motion to Enforce Subpoena. Having considered the motion and applicable authority, the Court GRANTS Defendant's motion.

IT IS ORDERED that the Illinois Department of Employment Security shall comply with the subpoena served by Defendant on March 21, 2017, and produce all responsive documents in its possession as soon as practicable.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

---

JUDGE PRESIDING