

News & Types: Employment, Labor & Benefits Update

# U.S. Supreme Court Unanimously Vacates and Remands Case Due to EEOC's Lack of Conciliation Efforts

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Practices: Employment, Labor & Benefits

## EXECUTIVE SUMMARY:

Before suing an employer for discrimination, the Equal Employment Opportunity Commission ("EEOC") must try to remedy unlawful workplace practices through informal methods of conciliation. In this case, the U.S. Supreme Court held that a court may review whether the EEOC satisfied its statutory obligation to attempt conciliation before filing suit. That said, the scope of the review is narrow because it recognizes that the EEOC has discretion to determine the kind and amount of communication with an employer that is appropriate in any given case.

On April 29, 2015, the U.S. Supreme Court provided guidance regarding the Equal Employment Opportunity Commission's ("EEOC") obligations where it finds reasonable cause exists to believe that an unlawful employment practice has occurred, including the information that must be disclosed to the employer. While recognizing that the EEOC has "wide latitude" over the conciliation process, the Court rejected the EEOC's position that its conciliation activities are not subject to judicial review. *Mach Mining, LLC v. Equal Employment Opportunity Comm'n*, (No. 13-1019).

The case began when a female applicant filed a charge with the EEOC alleging that Mach Mining had refused to hire her because of her sex. The EEOC investigated the charge and found reasonable cause to believe that Mach Mining had discriminated against the complainant, as well as a class of women who had applied for mining jobs. In such a case, Title VII provides the EEOC "shall endeavor to eliminate such practice by informal methods of conference, conciliation and persuasion."

In the determination letter the EEOC sent to Mach Mining, the EEOC invited both the company and the complainant to participate in "informal methods" of dispute resolution, promising that an EEOC representative would soon "contact [them] to begin the conciliation process." About a year later, the EEOC sent a second letter stating that "such conciliation efforts as are required by law have occurred and have been unsuccessful" and that any further efforts would be futile. There was nothing in the appellate record that established what occurred between the two letters.

The EEOC proceeded to sue Mach Mining alleging sex discrimination in hiring. Mach Mining disputed that the EEOC fulfilled its statutory duty to conciliate, which is a prerequisite to filing suit. The trial court determined that

it should review whether the EEOC had "made a sincere and reasonable effort to negotiate." On appeal, the Seventh Circuit reversed the trial court's decision holding that the EEOC's conciliation efforts were not subject to judicial review. Because appellate courts in other circuits have held that Title VII allows judicial review of the EEOC's conciliation efforts, the Supreme Court heard the case to resolve this conflict.

Pointing out that Title VII mandates that the EEOC try to eliminate the discrimination through informal practices, the Court held that this necessarily involves communication between the parties, which means that the EEOC must tell the employer about the claim. The Court rejected Mach Mining's position that "In every case, the EEOC must let the employer know the 'minimum . . . it would take to resolve' the claim" and lay out the factual and legal basis for all its positions. Instead, it held that Title VII requires the EEOC to inform the employer about the specific allegation, and describe which employees have suffered as a result. The EEOC is also required to try to engage the employer in some form of discussion to give the employer an opportunity to remedy the allegedly discriminatory practices.

The Court referred to the two EEOC letters in this case as "bookend letters" and held such bookend letters by themselves are insufficient to prove that the EEOC met its statutory obligations under Title VII. The EEOC can submit a sworn affidavit stating that it performed its obligations to try to conciliate. However, if the employer provides credible contrary evidence, the court might have to conduct the factfinding necessary to decide the dispute.

The *Mach Mining* decision may be of limited benefit for most employers even though it may result in the EEOC making a greater effort to engage in conciliation, or document its conciliation efforts. In the past, employers have sought to have a lawsuit dismissed based on the EEOC's failure to engage in conciliation. However, the Court has made clear that the appropriate remedy for such a failure is to order the EEOC to undertake the mandated efforts to obtain voluntary compliance.