

Unanimous U.S. Supreme Court: EEOC Must Attempt to Conciliate Claims

Labor & Employment Law Update

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Amid much anticipation, the Court *unanimously* held in *Mach Mining, LLC v. EEOC* that under Title VII, the EEOC must attempt to conciliate prior to filing suit against an employer. U.S. Sup. Ct., No. 13-1019 (Apr. 29, 2015). Title VII's enforcement mechanism governs employment discrimination and retaliation claims related to race, color, religion, sex/pregnancy, national origin, age, and disability. Under Title VII, the EEOC's duty is to endeavor to eliminate discrimination by informal methods of conference, conciliation and persuasion and to insist upon legal compliance; the employer's obligation is to refrain from illegal conduct.

Conciliation involves communication and exchange of information between the parties. The EEOC must:

- Inform the employer about the specific allegation(s);
- Describe what the employer has allegedly done;
- Describe which employee(s) or class allegedly suffered;
- Engage in some form of discussion with the employer; and
- Provide the employer an opportunity to cure the allegedly discriminatory practice.

However, the requirement that the EEOC conciliate is but a minor victory for employers as the required effort is limited to the employer being afforded a chance to (i) discuss and (ii) rectify the specified discriminatory practice. Further, the proper remedy for the EEOC failing to take those specific conciliation steps prior to bringing a cause of action is for the court to order the EEOC to undertake the mandated efforts to obtain voluntary compliance.

What this means for businesses:

An ounce of prevention is worth years and thousands (or more) of dollars of cure. Companies should proactively ensure that their written employment policies and implemented practices comply with federal and state law.

If a claim arises or a charge of discrimination is filed, employers should engage seasoned employment counsel who regularly work with the EEOC and understand the ramifications of this decision to help investigate and respond to the charge.

And, in those cases where the EEOC finds “reasonable cause” of a violation, counsel should make certain to engage the EEOC in good faith discussion and conciliation efforts along the lines outlined by the Supreme Court with an eye to resolving the claim, if at all possible.

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