

CLIENT ALERT

Supreme Court Holds Courts May Review Whether EEOC Fulfills Conciliation Obligations

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In a highly anticipated decision, the U.S. Supreme Court has unanimously held that courts have authority to review whether the Equal Employment Opportunity Commission (“EEOC” or “Commission”) has satisfied its statutory obligation under Title VII to attempt conciliation prior to filing suit in federal court. See 42 U.S.C. §2000e–5(b). The Court held that the scope of this judicial review, however, is narrow, given the extensive discretion granted to the Commission under Title VII. *Mach Mining, LLC v. EEOC*, No. 13-1019, opinion available [here](#).

The case arose when a Mach Mining employee filed a charge of discrimination with the EEOC. The EEOC investigated and found reasonable cause to believe that Mach Mining had discriminated against the complainant. The Commission then sent a letter inviting Mach Mining and the complainant to participate in informal methods of dispute resolution and stating that it would contact them to initiate the conciliation process. A year later (the record does not disclose what occurred in the interim), the Commission sent another letter stating that conciliation had failed and further attempts would be futile. The Commission subsequently filed suit against Mach Mining alleging sex discrimination in hiring. The EEOC’s complaint alleged that it had fulfilled all necessary conditions for filing suit, including attempted conciliation. Mach Mining disputed the EEOC’s allegation and answered that the Commission failed to conciliate in good faith as required by Title VII. The Commission then moved for summary judgment on the issue, arguing that conciliation efforts are not subject to judicial review. In reply, Mach Mining contended that the court should consider the reasonableness of the Commission’s efforts based on evidence the company planned to present regarding the conciliation process.

The district court ruled in favor of Mach Mining, agreeing that it should review whether the Commission made “a sincere and reasonable effort to negotiate.” The Court of Appeals for the Seventh Circuit reversed, ruling that the Commission’s conciliation efforts are not subject to review. The Seventh Circuit further held that statutory directive regarding conciliation provides no “workable standard” of review and that judicial review would “undermine enforcement of Title VII” by “protact[ing] and complicat[ing]” discrimination suits.

The Supreme Court vacated and remanded, holding that the EEOC’s duty to conciliate under Title VII is subject to judicial review. The Court first noted that there is a “strong presumption favoring judicial review of administrative action.” This presumption can be rebutted only where a statute demonstrates that Congress intended an agency to police its own conduct. Here, there was no evidence to overcome that presumption. Instead, the Court found that the language and structure of Title VII support judicial review of the EEOC’s compliance with its duty to conciliate.

The Court explained that Title VII obligates the Commission to attempt conciliation prior to filing a lawsuit—an obligation that is consistent with other mandatory prerequisites to file suit in Title VII litigation, which courts routinely review and enforce. In so finding, the Court rejected the Commission’s argument that Title VII provides it with wide discretion in its conciliation efforts, stating that Congress “has not left *everything* to the Commission” (emphasis in original). The Court went on to find that the EEOC fulfills its statutory obligations to conciliate where it informs the employer what practice has harmed which person or class and provides the employer with an opportunity to discuss the matter in an effort to achieve voluntary compliance.

Having decided that the Commission’s conciliation efforts may be reviewed, the Court turned to the proper scope of such review. The Court first rejected the Commission’s proposition that courts should solely rely upon a facial examination of its proffered documents. The Court stated that such a cursory review would fall short of what Title VII demands and would require courts to simply accept the Commission’s word that it has complied—a result that conflicts with the entire point of judicial review.

The Court also rejected Mach Mining’s proposal, which would impose a National Labor Relations Act (“NLRA”)—like standard of good faith along with a “bargaining checklist.” The Court quickly rebuffed any analogy between the NLRA, “which is about process and process alone,” and Title VII, which “ultimately cares about substantive results,” namely the elimination of unlawful discrimination in the workplace. The Court explained that Title VII grants the EEOC significant flexibility and leeway in seeking voluntary compliance and allows the Commission alone to determine whether to come to an agreement with an employer or resort to litigation. Imposing specific procedural steps as proposed by Mach Mining would be at odds with the Commission’s discretion. The Court also stated that judicial inquiry proposed by Mach Mining would necessitate the disclosure of the conciliation process, violating Title VII’s confidentiality provision.

Rejecting both parties’ proposals, the Court went on to hold that the conciliation mandate in Title VII provides the proper scope of judicial review. Judicial review need only ensure that the Commission complies with its obligation to inform an employer about the specific allegation and try to engage the employer in some form of discussion to provide the employer with an opportunity to remedy the allegedly discriminatory practice. The Court then explained that the Commission can demonstrate its compliance through a sworn affidavit stating its efforts have failed. Employers can then provide its own credible evidence to rebut this statement, at which point the court can conduct fact-finding to resolve the dispute. If the court finds the EEOC did not fulfill its duty, it can order the Commission to attempt conciliation.

The Supreme Court’s decision in *Mach Mining* clarifies that the EEOC must comply with its statutorily mandated duty to attempt conciliation with employers prior to filing a lawsuit. However, the decision preserves the Commission’s broad discretion in determining when conciliation efforts have failed.

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