

Supreme Court OKs Judicial Review of EEOC's Conciliation Efforts

In 2013, the US Court of Appeals for the Seventh Circuit ruled that employers cannot challenge — and courts cannot review — the EEOC's efforts to resolve employment discrimination claims before filing suit. Unlike other federal appellate courts that had considered the issue, only the Seventh Circuit took that view. In a unanimous decision issued on April 29, the Supreme Court acknowledged that the EEOC has wide — but not sole — discretion in deciding how to conciliate claims, and endorsed limited federal court review of the agency's efforts to achieve an employer's voluntary compliance. Whether the ruling will affect EEOC litigation strategies or give employers more leverage to reach pre-suit settlements with the agency remains to be seen.

Background

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, national origin or sex. The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII and has authority to investigate and settle employment discrimination charges, and to file lawsuits alleging discrimination. However, Title VII directs the EEOC to try to settle discrimination claims "by informal methods of conference, conciliation and persuasion" before filing suit.

After finding reasonable cause to believe that an Illinois mining company (Mach Mining) failed to hire qualified female applicants, the EEOC sent a determination letter to the company and invited it to try to resolve the matter. Roughly one year later, the EEOC sent Mach Mining a letter saying that conciliation efforts had occurred and failed. The EEOC then sued. The company moved to dismiss the case based on the EEOC's failure to try to resolve the matter before filing suit. The EEOC contended that its conciliation efforts were non-reviewable, but the federal district court disagreed. Concluding that courts could review whether the EEOC made a "sincere and reasonable effort to negotiate" before filing suit, the court dismissed the case. The EEOC appealed.



Other Appeals Courts

Seven other federal appeals courts — the Second, Fourth, Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits — have recognized a failure-to-conciliate defense to a Title VII claim, and endorsed judicial review of the EEOC's conciliation efforts.

In December 2013, the US Court of Appeals for the Seventh Circuit reversed the district court, ruling that an employment discrimination case should not be dismissed because the EEOC allegedly failed to properly conciliate before filing suit and that the courts cannot review those conciliation efforts. Notably, the Seventh Circuit declined to impose a good faith conciliation standard on the EEOC, saying it was not required by Title VII.

Both Mach Mining and the EEOC urged the Supreme Court to review the Seventh Circuit's decision and determine whether — and to what extent — courts may enforce the EEOC's duty to conciliate employment discrimination claims before filing suit. On June 30, the Supreme Court [agreed](#) to resolve the circuit split. (See our [July 9, 2014 For Your Information](#).)

Comment. This lawsuit revolved around allegations of sex discrimination in violation of Title VII. Because the procedures under Title VII also apply to charges filed under the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act, the case has broader implications.

The Supreme Court Weighs In

On April 29, the Supreme Court unanimously [held](#) that the EEOC's conciliation activities are subject to judicial review. In its *Mach Mining, LLC v. EEOC* opinion, the Court reiterated that Title VII directed the EEOC to try to settle employment discrimination claims before filing suit, and noted that "Congress rarely intends to prevent courts from enforcing its directives to federal agencies." Rejecting the EEOC's argument that its conciliation efforts are off-limits, the Court pointed out that courts routinely enforce other prerequisites to Title VII suits (such as filing a timely discrimination charge and obtaining a right-to-sue letter).

Faring no better was the EEOC's argument that Congress intended to preclude judicial review because Title VII failed to provide a workable standard for courts to apply in determining whether the EEOC met its statutory obligations. The Court concluded that the absence of a standard to conduct the conciliation process may have given the EEOC wide latitude, but it did not give the EEOC the authority to determine that it actually satisfied the law's conciliation requirement.

Limited Scope of Review

Having concluded that federal courts have a role to play in determining whether the EEOC meets its conciliation obligation and remedying a failure to engage in conciliation, the Court addressed the proper scope of judicial review. While the EEOC's conciliation efforts are not immune from judicial review, the Court found, the scope of such review is limited. It did, however, set out certain minimum standards that the EEOC's conciliation efforts must satisfy. Thus, courts can verify that the EEOC: (1) notifies the employer of the specific discriminatory practice(s) alleged and the person or class of persons involved; and (2) gives the employer an opportunity to discuss the allegations and try to resolve them voluntarily.

The Court said that a sworn affidavit from the EEOC confirming that it took those actions — a relatively minimal burden — often will be enough to show that it met its conciliation obligations. However, if an employer provides credible evidence that the EEOC "did not provide the requisite information about the charge or attempt to engage in a discussion about conciliating the claim," a court must conduct the necessary fact-finding to decide that dispute.

Even if the employer prevails, the appropriate remedy will be to order the EEOC to try to secure voluntary compliance, putting litigation on hold while it does.

In Closing

The Supreme Court has rejected the EEOC's position that its conciliation efforts are not reviewable by federal courts. While the scope of review the Court endorsed is narrow, it does provide some checks on the EEOC's actions. Whether employers may find they have more leverage to reach pre-litigation settlements and whether the EEOC may adjust its enforcement strategies in light of this decision remains to be seen.

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