



## Not So Fast: U.S. Supreme Court Allows Judicial Review to Keep the EEOC in Check

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In *Mach Mining, LLC v. Equal Employment Opportunity Commission*, No. 13-1019 (April 29, 2015), the Supreme Court unanimously held that courts may review whether the Equal Employment Opportunity Commission (the "EEOC") has made a good faith effort to conciliate with an employer prior to filing suit for unlawful employment practices.

Federal law states that the EEOC "shall endeavor to eliminate [ . . . ] alleged unlawful employment practice[s] by informal methods of conference, conciliation and persuasion." 42 U.S.C. § 2000e-5(b). The EEOC's obligation to engage in good faith conciliation efforts is mandatory: a condition precedent to filing a discrimination lawsuit against an employer. However, many employers believe that the EEOC merely "goes through the motions" without making a meaningful effort to resolve the dispute before filing suit. The Supreme Court's ruling will allow employers recourse if the EEOC fails to meet its obligation to engage in good faith conciliation efforts.

This lawsuit arose from an EEOC "reasonable cause" determination after investigating a claim of sex discrimination into Mach Mining, LLC's ("Mach Mining") hiring practices. The EEOC sent Mach Mining a letter announcing the determination, and inviting Mach Mining to contact the EEOC to participate in "informal methods" of conciliation. Approximately one year later, the EEOC sent a second letter to Mach Mining, informing them that it planned to file suit because conciliation had been unsuccessful and further efforts would be "futile."

The EEOC's complaint against Mach Mining alleged that it had satisfied all conditions precedent to filing the lawsuit. In its answer, Mach Mining contested this allegation, stating that the EEOC had failed to conciliate in good faith prior to filing suit. The EEOC claimed that its conciliation efforts were not subject to judicial review. The Southern District of Illinois agreed with Mach Mining and found that the court had discretion to review whether the EEOC fulfilled its good faith obligation. The EEOC appealed and the Seventh Circuit sided with the EEOC, finding that the EEOC's conciliation efforts were outside the scope of judicial review. Other appellate courts, however, had found that judicial review of the EEOC's conciliation efforts was appropriate, such as the Sixth and Eleventh Circuits. The Supreme Court of the United States granted *certiorari* to address "whether and to what extent such an attempt to conciliate is subject to judicial consideration."

The EEOC presented two arguments in support of its position that its conciliation efforts were not subject to judicial review:

1. Title VII did not provide adequate standards by which to judge the EEOC's performance of its statutory duty; and
2. The confidentiality provisions of Title VII prohibited judicial review of the conciliation process.

Both arguments were rejected by the Court.

The Court noted that Title VII affords the EEOC "a wide latitude over the conciliation process." However, the Court stated that "legal lapses and violations occur, and especially so when they have no consequence." The Court recognized the strong presumption of judicial review of administrative actions, and focused on the intent of Congress to foster "cooperation and voluntary compliance" with Title VII anti-discrimination laws.

In addressing the scope of judicial review, the Court rejected the EEOC's proposition that a facial examination of certain EEOC documents would suffice. The Court also rejected Mach Mining's suggestion that the Court undertake a highly detailed inquiry.

The Court found that, in order to meet its statutory obligations, the EEOC must inform the employer about the specific discriminatory allegation and then attempt to engage the employer in either a written or oral discussion, providing the employer with an opportunity to remedy the allegedly discriminatory practice. The Court suggested the EEOC include in its complaints a sworn affidavit as to the undertaken good faith conciliation efforts. The employer will have an opportunity to provide its own credible evidence that the EEOC has not satisfied its obligations, prompting the court to undertake a judicial review of the EEOC's efforts.

While the Court expressly upheld the broad discretion Title VII grants to the EEOC, it has provided employers with judicial recourse if the EEOC files suit without engaging in good faith conciliation efforts and providing the employer an opportunity to correct the allegedly discriminatory behavior.