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Labor and Employment Alert: Supreme Court Supports a Limited Review of EEOC Conciliation Efforts

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CLIENT ALERT | 5.1.2015

On April 29, 2015, the U.S. Supreme Court unanimously held that courts may review the EEOC's conciliation efforts that are a prerequisite to the EEOC's filing suit against an employer under Title VII. The Court recognized that the EEOC has "expansive" and "abundant" discretion in how to conduct conciliation efforts and when to end them. Consequently, while courts may evaluate whether the EEOC has attempted conciliation, the scope of that judicial review is limited and "relatively barebones."

The case, *EEOC v. Mach Mining LLC*, began when a rejected female applicant complained to the EEOC that the company had allegedly never hired a female miner. The EEOC investigated and found reasonable cause to believe that Mach Mining had discriminated against the female applicant as well as a class of women who had also applied for, and had been rejected from, mining jobs with the company.

Because Title VII requires the EEOC to engage in "informal methods" of conciliation with the parties before filing suit, the EEOC informed Mach Mining by letter that it would "contact [them] soon to begin the conciliation process." There is no record of what, if anything, occurred next in the conciliation. But a year later, the EEOC sent another letter to Mach Mining stating that the "conciliation efforts as are required by law have occurred and have been unsuccessful." The EEOC then sued Mach Mining in federal court in Illinois.

In response, Mach Mining claimed that the EEOC had failed to conciliate in good faith. The EEOC in turn replied that its conciliation efforts could not be reviewed by the courts. The trial court agreed with Mach Mining and determined that it should review whether the EEOC has made a "sincere and reasonable effort to negotiate." The Seventh Circuit Court of Appeals disagreed, holding instead that the EEOC's directive to engage in conciliation could not be reviewed by the courts. Mach Mining appealed to the Supreme Court, which reversed.

The Supreme Court rejected Mach Mining’s request that courts be permitted to do “a deep dive into the conciliation process” as inconsistent with the EEOC’s authority under Title VII. At the same time, the Court rejected the EEOC’s contention that any judicial review should be “the most minimalist form of review imaginable.” The Court explained that “Congress rarely intends to prevent courts from enforcing its directives to federal agencies.” Accordingly, the Court ruled that the EEOC first must: (1) inform the employer about the specific allegations and (2) try to engage the employer in a discussion to allow the employer the opportunity to remedy the discriminatory practice. “Judicial review of those requirements (and nothing else) ensures that the Commission complies with the statute.”

The Court’s decision settles a split among the federal circuits on how much review the courts can undertake in probing the EEOC’s conciliation efforts. Notably, after *Mach Mining*, the EEOC does not need to conciliate reasonably or flexibly. Employers that have conciliated with the EEOC know that the EEOC’s approach to conciliation is often anything but reasonable or flexible. Additionally, a failure to conciliate will not result in the case being dismissed. Instead, the EEOC will simply be directed to conciliate again. Contact your Vorys lawyer if you have questions about the conciliation process or any pending EEOC matter.