



# Courts May Review EEOC Conciliation Efforts, According to Supreme Court

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In an employer friendly decision, last week the U.S. Supreme Court ruled unanimously that courts may review whether the Equal Employment Opportunity Commission (EEOC) has satisfied its duty to attempt pre-suit conciliation.

In *Mach Mining, LLC v. Equal Employment Opportunity Commission*, — S.Ct. —, 2015 WL 1913911 (Apr. 29, 2015), the court analyzed if judicial review was allowed regarding whether the EEOC satisfied its conciliation requirements under Title VII of the Civil Rights Act.

"We hold that a court may review whether the EEOC satisfied its statutory obligation to attempt conciliation before filing suit. But we find that the scope of that review is narrow, thus recognizing the EEOC's extensive discretion to determine the kind and amount of communication with an employer appropriate in any given case," Justice Elena Kagan wrote for the court.

The Supreme Court concluded that some level of court review was appropriate but didn't adopt either the government or Mach Mining's views of exactly what the review should look like. The government urged the "most minimalist form of review imaginable." Mach Mining wanted something "far more intrusive."

The court's decision reasoned that the limited review allowed strikes a balance between the discretion Title VII gives the EEOC and the need to ensure the EEOC follows the law.

Under Title VII, the EEOC must inform an employer of the specific allegation against them, which it normally does in a "reasonable cause" letter, and try to engage that employer in some type of written or oral discussion to give them a chance to remedy the allegedly discriminatory practice. If the EEOC then finds reasonable cause to believe a charge of discrimination is supported, it must attempt to remedy the alleged unlawful practice through informal methods of conference, conciliation and persuasion.

If those attempts are unsuccessful, and the EEOC files suit, the employer may seek court review that the EEOC did not meet its burden by utilizing these informal methods, according to this decision. Overall, the Supreme Court's ruling should help maintain the EEOC's accountability prior to filing suit, despite the limited scope of review allowed.

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