



JULY 2014

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LABOR & EMPLOYMENT LAW ALERT

U.S. Supreme Court to Tackle the EEOC's Duty to Conciliate

On June 30, 2014, the United States Supreme Court granted an employer's petition for certiorari to address whether a court may dissect the U.S. Equal Employment Opportunity Commission's (EEOC) obligation under Title VII of the Federal Civil Rights Act of 1964 (Title VII) to conciliate discrimination claims before filing suit and, relatedly, whether employers can use the EEOC's failure to conciliate as an affirmative defense. *Mach Mining, LLC v. E.E.O.C.*, 738 F.3d 171 (7th Cir. 2013), *cert. granted*, No. 13-1019, 2014 WL 713205 (June 30, 2014). The Court's decision to address the EEOC's duty to conciliate has the potential to significantly change the landscape of employment discrimination cases.

In *Mach Mining*, a female applicant alleged that she had been denied employment as a coal miner at Mach Mining due to her gender. A complaint was filed with the EEOC and a subsequent investigation determined that there was reasonable cause to bring suit against Mach Mining for the alleged discrimination against female applicants. In late 2010, the EEOC notified Mach Mining that it would attempt to resolve its findings of discrimination using informal methods, as is statutorily required under Title VII. Settlement discussions occurred, but no agreement was reached. In September 2011, the EEOC notified Mach Mining that conciliation was complete and that any future discussions would be to no avail. The EEOC thereafter filed suit in federal district court on behalf of the female employee.

Mach Mining denied all claims and also asserted as an affirmative defense that the EEOC failed to participate in a good faith conciliation process. The EEOC filed for summary judgment on the issue of whether Mach Mining could assert the alleged failure to conciliate as an affirmative defense. The EEOC argued that the Seventh Circuit's decision in *EEOC v. Caterpillar, Inc.*, 409 F.3d 831 (7th Cir. 2005) compelled the district court to find that the EEOC's conciliation process was not subject to judicial review. The district court denied the EEOC's motion, but certified the issue for interlocutory appeal so that the Seventh Circuit Court of Appeals could determine whether, and to what extent, conciliation is judicially reviewable.

The Seventh Circuit ruled that Mach Mining was not able to raise the EEOC's failure to conciliate as an affirmative defense to the merits of a discrimination suit. The Seventh Circuit found in favor of the EEOC based on: (1) the language of Title VII, (2) the lack of meaningful

standards to apply in determining a deficiency in the EEOC's conciliation efforts, and (3) a concern that judicial review would undermine enforcement of Title VII. The court found that the EEOC was only required to attempt to conciliate, evidenced by the language of the statute stating that conciliation is an "endeavor to eliminate" discrimination and that a conciliation agreement must be "acceptable to the [EEOC]." The court further noted that the overall statutory scheme not only gives the EEOC the ability to make its own determinations on conciliation efforts, but also restricts the ability of the employer to exploit the details of the conciliation process at litigation.

By granting certiorari, the Supreme Court is expected to address an apparent split of authority on the conciliation issue among the federal Circuit Courts of Appeals that could shape the future of conciliation efforts in employment discrimination proceedings.

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

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This alert was drafted with assistance from Ryan M. Poplawski.

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