

The U.S. Supreme Court Rules That Courts Can Review Conciliation Efforts

Discrimination, HR Policies & Procedures, Title VII / May 30, 2015

The Conciliation Process

After an employee submits a charge complaining of discrimination, the Equal Employment Opportunity Commission ("EEOC") investigates the matter and gathers evidence regarding the claims in question. If the EEOC determines that "reasonable cause" exists to support a claim of illegal discrimination, pursuant to Title VII of the Civil Rights Act of 1964, it is required to undertake the conciliation process before it can bring a lawsuit against the applicable employer. Conciliation is designed to provide an informal process where the EEOC explains the alleged wrongdoing to the applicable employer and the employer is given an opportunity to attempt to address the situation so that litigation can be avoided.

In theory, conciliation should benefit both the allegedly harmed employee and the employer by avoiding a costly and time consuming lawsuit. However, what happens when the EEOC makes only a perfunctory effort at conciliation without providing the accused employer with a real opportunity to attempt to address the alleged wrongdoing and avoid litigation? Put differently, if the EEOC merely provides limited correspondence without sufficient explanation of the alleged wrongdoing and no meaningful discussion takes place regarding addressing the situation, may the employer request a court to force the EEOC to engage in good faith conciliation efforts before the EEOC can proceed with a lawsuit?

Until recently, this question remained unresolved. However, on April 29, 2015, in *Match Mining, LLC v. EEOC*, the Supreme Court issued a unanimous opinion holding that courts have the authority to engage in a limited review of the EEOC's efforts to comply with its conciliation obligation. The facts involved in the *Matching Mining* case are discussed below.

Match Mining Decision

In *Matching Mining*, a woman filed a charge with the EEOC against Match Mining, a coal mining company, claiming that the company refused to hire her as a coal miner because of her sex. The EEOC investigated the claim and determined that reasonable cause existed to show that Match Mining discriminated against the complainant based on her gender. The EEOC then sent Match Mining a letter providing the company with notice of the reasonable cause finding and inviting the company to take part in an informal dispute resolution process. The EEOC also stated that it would contact Match Mining shortly "to begin the conciliation process." Approximately a year later, the EEOC sent Match Mining a second letter stating that conciliation efforts had been unsuccessful and further efforts would be futile. It is unclear whether any additional discussions between the EEOC and Match Mining took place in the interim.

After sending the second letter, the EEOC sued Match Mining under a claim of sex discrimination in its hiring practices. The EEOC claimed that all conditions precedent to filing the lawsuit had taken place. In its responsive pleading, Match Mining disputed this statement and claimed the EEOC failed to participate in the conciliation process in good faith prior to filing the lawsuit. The EEOC then moved for summary judgment and claimed conciliation efforts were not subject to judicial

review. Further, the EEOC claimed that the two above-referenced letters confirmed it had satisfied its conciliation duty prior to filing suit. Match Mining responded by requesting the court to determine if the EEOC had been reasonable in its conciliation efforts.

The trial court agreed with Match Mining and ruled that courts should review whether the EEOC made "a sincere and reasonable effort to negotiate." The trial court then certified the case for immediate appeal. The Seventh Circuit Court of Appeals reversed and held that conciliation efforts are not subject to judicial review. Rather, the Seventh Circuit determined that the conciliation process was in the sound discretion of the EEOC. The Seventh Circuit's decision conflicted with other Courts of Appeals; therefore, the Supreme Court agreed to review this issue.

The Supreme Court disagreed with the Seventh Circuit and held that the EEOC's conciliation efforts are subject to narrow judicial review. The Supreme Court ruled that courts may enforce the EEOC's obligation to give the employer notice of a reasonable cause finding and an opportunity to achieve voluntary compliance with the requirements of Title VII. The notice must be specific so as to provide the employer with details of the applicable discrimination and identification of the employee(s) involved. The EEOC must also engage the employer in at least some level of discussion regarding attempting to remedy the alleged discrimination. However, the Supreme Court noted that courts are not to go beyond these initial efforts to determine whether the conditions precedent to filing a lawsuit have been met. In other words, courts are not to review the reasonableness of the EEOC's efforts to effectuate a successful settlement prior to filing suit. There is no express good faith negotiation requirement, as exists under the National Labor Relations Act. Rather, so long as the EEOC files a sworn affidavit stating that it provided notice of the reasonable cause finding and gave the employer an opportunity to resolve the issue, this should be sufficient to meet the requirements of Title VII and allow the EEOC to move forward with a lawsuit.

Takeaway

This is a small victory for employers because it will ensure that they are, at a minimum, provided with notice of the alleged reasonable cause finding and an opportunity to engage in a settlement dialogue prior to the EEOC filing a lawsuit. Employers would be wise to take advantage of the conciliation process, as a reasonable cause finding often foretells a costly and disruptive lawsuit is forthcoming. It is generally best for both the employer and employee to avoid this result.