

**Federal courts have little leeway to review EEOC dispute resolution process, Oklahoma City attorney says**

*Michael Lambert, an attorney with the Oklahoma City law firm of GableGotwals, discusses Supreme Court ruling in Mach Mining v. Equal Employment Opportunity Commission.*

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**Q&A with Michael Lambert**



*Q: What was the issue before the Supreme Court* in *Mach Mining v. Equal Employment Opportunity Comm’n?*

A: Whether federal courts have authority to review the *Equal Employment Opportunity Commission’s (EEOC)*  conciliation efforts in discrimination cases, and if so, to what extent may federal courts review those efforts. Federal law authorizes the EEOC to investigate claims of workplace discrimination and, in some instances, to sue an employer to rectify allegedly on-going discriminatory conduct. Before the EEOC may sue an employer an employee must file a charge with the EEOC; the EEOC must find reasonable cause for the charge; and the EEOC must attempt informal conciliation with the employer to eliminate the unlawful discrimination. The EEOC may sue an employer only if a conciliation agreement *suitable to the EEOC* cannot be reached.

*Q: What exactly is conciliation and how does it play into this case?*

A: Conciliation in this context refers to an informal dispute resolution process to end the alleged discriminatory practice. In *Mach Mining*, a female employee filed a claim with the EEOC alleging sex-based discrimination. The EEOC found reasonable cause for the claim and sent Mach Mining a letter inviting both the employer and employee to participate in informal dispute resolution. What happened next is not clear, but about one year later, the EEOC sent a second letter to Mach Mining stating that further conciliation efforts would be futile. The EEOC then sued. Mach Mining believed the EEOC failed to conciliate in good faith and asked a federal court to pass judgment on the reasonableness of the EEOC’s conciliation efforts.

*Q: How did the Supreme Court rule?*

A: According to the Supreme Court, federal courts have little leeway to review the EEOC’s conciliation efforts. Indeed, the only review a federal court may conduct is to ensure the EEOC communicated with the employer about the unlawful discrimination, and that the EEOC contacted the employer to give it an opportunity to remedy the discriminatory practice. Outside of this barebones review, the EEOC has expansive discretion to decide how to conduct conciliation efforts and when to end them.

*Q: What does this mean for employers?*

A: Employers should be receptive to the requests and demands of the EEOC during the administrative (pre-litigation) process. But during this administrative process, employers should also insist that the EEOC comply with its obligations of giving notice and an opportunity to address the allegedly-discriminatory conduct because the employer’s ability to raise the issue later is severely diminished.

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