

## Is EEOC Conciliation Subject To Judicial Review? Seventh Circuit To Decide

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When the EEOC files federal court lawsuits alleging discriminatory conduct, defendant-employers routinely assert a “failure to conciliate” defense. Thus, the issue becomes whether and to what extent a court can review the EEOC’s internal pre-suit conciliation process.

In its case against Mach Mining LLC, pending in the Southern District of Illinois, the EEOC took the position that the court cannot review its conciliation efforts. However, [the District Court rejected that position](#) and determined that conciliation is subject to at least some level of judicial review. In particular, the District Court noted that the EEOC’s duty to attempt conciliation in good faith under 42 USC 2000e-5(b) “is one of its most essential functions.”

The District Court noted that a number of appellate courts have addressed the issue with differing results. Some say that the EEOC’s conciliation process is entitled to deference, while others have applied a heightened level of scrutiny. Recognizing the issue could be of central importance in advancing the litigation, [the District Court granted the EEOC’s request](#) to certify the issue for interlocutory review by the Seventh Circuit Court of Appeals, which has yet to weigh in on the circuit split.

Thus, the Seventh Circuit is expected to address the following questions: (1) whether courts may review the EEOC’s informal efforts to secure a conciliation agreement acceptable to the EEOC before the EEOC files suit and (2) if so, should courts use a deferential standard of review or apply heightened scrutiny. The interlocutory appeal is *EEOC v. Mach Mining LLC*, at the Seventh Circuit under docket number 13-8012.

The case will be closely watched because the outcome will have an important impact on litigation brought by the EEOC in courts throughout the Seventh Circuit. Because the Seventh Circuit’s ruling also could deepen the split among the Appellate Circuits, the issue of judicial review of EEOC conciliation ultimately may reach the United States Supreme Court.

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