

More Hope For Employers Who Have Ever Felt Bullied By The EEOC

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In past entries in this blog, we have noted how multiple courts have been critical of the EEOC for failing to engage in good faith settlement negotiations with employers. These cases provide some solace for employers who feel as if the EEOC takes unreasonable settlement positions simply because it has nothing to lose if settlement negotiations breakdown and litigation ensues. A recent case from a federal court in the Southern District of Ohio is the most recent case in this line. In *EEOC v. OhioHealth Corp.* (S.D. Ohio, Jun. 29, 2015), the EEOC filed a complaint alleging disability discrimination on behalf of a former employee, and the employer filed a motion for summary judgment in which it noted – among other things – that the EEOC had failed to engage in good faith conciliation efforts. The court agreed with the employer. It explained that the EEOC is required to engage in good faith conciliation efforts before it sues an employer and that, while the EEOC had argued that it had in fact engaged in such efforts, the evidence suggested otherwise. Specifically, the court noted that the evidence suggest that the EEOC had presented a “take it or leave it” settlement demand to the employer, that the EEOC had failed to provide information requested by the employer that would allow it to evaluate the demand, that the EEOC had demanded a counteroffer, and that the EEOC had declared that conciliation efforts to have failed despite the employer having expressed a willingness to continue to negotiate. What is more, clearly frustrated with the EEOC’s unwillingness to compromise, the court explained that, if the EEOC continue to refuse to engage in good faith conciliation efforts, the court would “impose any or all consequences available, including but not limited to contempt and dismissal of this action for failure to prosecute.” The case is now back in the hands of the parties – the court stayed the case so that settlement negotiations could be undertaken – and one would think that it stands a fair chance of settling. We will continue to monitor it and report again once the case moves on to its next steps.

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