

EEOC Announces Strategic Plan Through 2023: Enforcement of Conciliation Agreements is Top of Mind

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On August 22, 2023, the Equal Employment Opportunity Commission (EEOC) [announced](#) it approved its Strategic Plan for the Fiscal Years 2022-2026. The [Strategic Plan](#) sets forth the EEOC's strategies and objectives for achieving its mission of preventing and remedying unlawful employment discrimination and advancing equal employment opportunity. Employers should look to the Strategic Plan for insight regarding the areas of enforcement that the EEOC is most likely to focus on during the next few years.

A few of the EEOC's areas of focus through the 2026 fiscal year include:

- Increased monitoring of conciliation agreements after the EEOC finds discrimination exists in any particular matter.
- Expanding the EEOC's ability to eliminate systemic discrimination in the workplace, including by investing additional resources into training staff.
- Creating and sharing best practices for employers to prevent discrimination in the workplace.
- Enhancing technology and outreach strategies to increase the EEOC's impact on vulnerable populations and diverse communities.
- Improved intake services for charging parties and respondents.

The EEOC's intent to increase monitoring and enforcement of conciliation agreements is noteworthy because it signals the EEOC may engage in more proactive and/or aggressive tactics to verify whether employers are complying with the terms of their conciliation agreements.

Thus, employers should avoid an "out of sight, out of mind" mentality with respect to seemingly resolved discrimination charges, even despite the need to triage more immediate business and personnel issues, such as active litigation and time-sensitive investigations. As discussed below, employers should thoroughly understand the scope of the conciliation process and make conscious efforts to monitor compliance with EEOC conciliation agreements after an agreement is reached.

Refresher on the EEOC Conciliation Process

Conciliation is an informal and confidential process overseen by the EEOC aimed at settling a charge of discrimination. Under Title VII, if after an investigation the EEOC determines there is reasonable

cause to believe discrimination occurred, the EEOC is statutorily required to engage in conciliation as an effort to eliminate the alleged unlawful employment practice through informal means. The EEOC must engage in the conciliation process before it can file a lawsuit regarding the alleged discrimination. To initiate conciliation, the EEOC will issue a Letter of Determination setting forth its investigation findings and inviting the responding party to engage in conciliation.

If the respondent agrees to conciliate, the parties will communicate with their EEOC investigator to develop an appropriate remedy for the discrimination, and the respondent may present counter-offers for consideration. Conciliation is voluntary, and the parties must agree to the resolution. While conciliation can be an effective, efficient, cost-sensitive method of resolving discrimination charges, neither the employer nor the EEOC can be forced to accept particular terms. If the parties reach an agreement, the terms will be formalized in a conciliation agreement that has the full force and effect of a standard settlement agreement. If conciliation is unsuccessful, the EEOC may decide to file a lawsuit against the respondent.

Best Practices for Employers Regarding Conciliation

In light of the EEOC's forthcoming enhanced monitoring and enforcement of conciliation agreements, employers should consider the following points to avoid negative consequences.

1. **Be Cautious** — Employers should carefully consider all terms that the EEOC poses or the business is considering offering during conciliation. Since employers are not required to agree to any particular settlement terms during conciliation, they should thoroughly evaluate the practical implications of agreeing to any particular term, including the difficulty and cost associated with implementation, particularly of long-term or ongoing requirements, before offering or agreeing to the same. The EEOC will be watching and checking whether respondents are in fact complying with conciliation agreements six months, a year, and possibly even longer after the agreement is reached. So, make sure you can hold up your end of the bargain before agreeing to it.
2. **Assign a Compliance Team** — Take proactive steps to ensure your business is honoring its obligations under the agreement. Assign an individual or team within your human resources or legal department to monitor compliance with any conciliation agreement. Further, document compliance efforts and milestones reached, such as payoff of settlement amounts or submission of periodic certifications so that you can refer to your records if the need arises. Frequent monitoring will also increase the likelihood of compliance.
3. **Take Action** — If the individual or business tasked with monitoring conciliation agreement compliance detects a problem, take prompt action to remedy the issue. In extreme cases of respondents failing to adhere to the terms of their conciliation agreement, the EEOC has initiated [litigation](#) against the respondent to enforce the terms.

So, even if you have not received any recent follow-up from the EEOC, you should address any lapse in compliance as soon as possible to avoid greater exposure down the line and fully abide by the terms of the agreement.

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