

# Congress of the United States

Washington, DC 20510

June 22, 2020

The Honorable Janet Dhillon  
Chair  
Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Dear Chair Dhillon:

We write with great concern regarding the Equal Employment Opportunity Commission's (EEOC or Commission) six-month pilot, initiated on May 29, 2020, which modifies the agency's longstanding approach to the conciliation process. While few details have been released, reporting indicates the pilot will weaken this critical enforcement tool by stripping discretion from field personnel and instituting additional barriers to holding employers accountable for workplace discrimination.<sup>1</sup> We also were troubled to learn the pilot did not receive consideration of the full Commission.<sup>2</sup> To ensure the EEOC remains accountable, and its policies seek to further, not undermine, its mission, we request detailed information on the pilot and urge you to suspend its implementation until the Commission has had an opportunity to examine it.

In the seminal case affirming the importance and breadth of EEOC's conciliation authority under Title VII of the Civil Rights Act (Title VII), *Mach Mining v. EEOC*, the Supreme Court made clear that Title VII's "conciliation provision explicitly serves a substantive mission: to 'eliminate' unlawful discrimination from the workplace."<sup>3</sup> The Court further explained that Title VII's conciliation mandate requires the EEOC only "inform the employer about the specific discrimination allegation" by "describ[ing] both what the employer has done and which employees (or what class of employees) have suffered as a result," and the agency "try to engage the employer in some form of discussion."<sup>4</sup> This latitude is so the EEOC can conduct the conciliation process in the way best suited to address the unlawful discrimination allegations brought before it.

According to reporting, however, the conciliation pilot would impose additional hurdles on EEOC field investigators and attorneys that appear to serve only to ease an alleged burden on employers.<sup>5</sup> If the reporting is true, the pilot could undermine the conciliation process's substantive purpose of ending workplace discrimination, in direct conflict with the spirit and text of Title VII.

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<sup>1</sup> *EEOC Chair Alters Pre-Lawsuit Process for Resolving Bias Claims*, *Bloomberg Law*, June 1, 2020, <https://news.bloomberglaw.com/daily-labor-report/eec-chair-alters-pre-lawsuit-process-for-resolving-bias-claims>

<sup>2</sup> *Id.*

<sup>3</sup> *Mach Mining v. EEOC*, 575 U.S. 480, 491 (2015)

<sup>4</sup> *Id.* at 494

<sup>5</sup> *EEOC Update: The Commission Rolls Out Pilot Program On Conciliating Discrimination And Harassment Allegations*, *JD Supra*, June 3, 2020, <https://www.jdsupra.com/legalnews/eec-update-the-commission-rolls-out-83540/>

If this pilot will indeed further the agency’s mission of “preventing and remedying unlawful employment discrimination and to advance equal opportunity for all in the workplace,”<sup>6</sup> then it can surely withstand fair and necessary scrutiny. I therefore urge you to suspend the pilot until it receives adequate review and is determined to be necessary, in furtherance of EEOC’s mission, and consistent with Title VII.

To that end, we request the following information regarding the pilot no later than July 6, 2020:

1. Please provide a detailed explanation, as well as any responsive written documents, of why you decided to create this pilot, including any entities within and outside of EEOC that you consulted prior to doing so.
2. Please provide a detailed explanation, as well as any responsive written documents, of the pilot and how it will modify the conciliation process as it existed before this pilot. Please include details about the scope, design, and timeline of this pilot, including any consideration of permanent implementation such as through regulation.
3. Please provide a detailed explanation, as well as any responsive written documents, of why you decided not to consult with all the Commissioners in creating this pilot.
4. Please provide a detailed explanation, as well as any responsive written documents, of efforts to change the conciliation process since *Mach Mining* and prior to the development of the pilot. Please include details on the process for considering these proposals and why they were not implemented.

If you have any questions or would like to discuss compliance with this request, please contact Kathleen Borschow with the Senate Health, Education, Labor, and Pensions (HELP) Committee (Minority staff) at (202) 224-0767 or Cathy Yu with the House Committee on Education and Labor (Majority staff) at (202) 225-9721. Please direct all official correspondence to Kathleen Borschow at [Kathleen\\_Borschow@help.senate.gov](mailto:Kathleen_Borschow@help.senate.gov) for the Senate HELP Committee (Minority staff) and to Tylease Alli, Chief Clerk for the House Committee on Education and Labor (Majority staff) at [Tylease.Alli@mail.house.gov](mailto:Tylease.Alli@mail.house.gov). Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



PATTY MURRAY  
Ranking Member  
Senate Health, Education, Labor,  
and Pensions Committee



ROBERT C. “BOBBY” SCOTT  
Chair  
House Committee on Education and Labor

<sup>6</sup> Policy statement from Chair Janet Dhillon, July 15, 2019, <https://www.eeoc.gov/eo-policy-statement#:~:text=The%20mission%20of%20the%20EEOC,and%20inclusiveness%20for%20all%20workplaces>