

5th Circuit: Title VII Bars Enforcement of Oral Agreement Reached During Conciliation Process

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By Cynthia G. Inda

The confidentiality provision of Title VII bars parties from enforcing oral agreements reached during the Equal Employment Opportunity Commission's (EEOC) conciliation process, according to the 5th U.S. Circuit Court of Appeals.

After nine employees of Philip Services Corp. (PSC) alleged racial discrimination and filed charges with the EEOC, the EEOC initiated the "conciliation process" with PSC. The conciliation process is a method, required by Title VII, to informally settle charges. Title VII explicitly provides that "[n]othing said or done during and as part of [the conciliation process] may be made public by the Commission ... or used as evidence in a subsequent proceeding."

During the conciliation process between PSC and the EEOC, the parties negotiated settlement terms via e-mail. About two weeks after starting the process, PSC withdrew from the negotiation. However, the EEOC claimed that, by the time PSC withdrew, the parties had reached a verbal agreement to settle the case, although the agreement had not yet been reduced to writing.

In an effort to enforce the alleged oral agreement, the EEOC sued PSC for breach of contract in district court. PSC disputed the EEOC's claim that the parties had reached a final agreement, and filed a motion to dismiss. The district court granted PSC's motion, concluding that Title VII's confidentiality provision is an "insurmountable impediment" to the EEOC's attempt to enforce the agreement.

In affirming the lower court's ruling, the 5th Circuit found that the plain language of Title VII does not carve out any exceptions to the requirement that anything "said or done" during the conciliation process must remain confidential. To determine the existence and terms of the parties' oral agreement, the EEOC and PSC necessarily would have to reveal what was "said or done" during the conciliation process—and such disclosure is clearly prohibited. Keeping private what was "said or done" during conciliation is necessary to encourage open communication and voluntary settlements, the court further noted.

EEOC v. Philip Services Corp., 5th Cir. No. 10-20291 (March 4, 2011).

Professional Pointer: The court's ruling in this case does not mean that the EEOC cannot enforce *written* agreements; the ruling only applies to purported oral agreements. The court's decision underscores the importance of not signing an agreement or committing terms to writing during the conciliation process, unless and until you are certain that you want to settle.

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Editor's Note: This article should not be construed as legal advice.

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