



FACT SHEET

House Committee on Education and Labor
Chairman Robert C. "Bobby" Scott

S.J. Res 13: The Congressional Review Act Resolution of Disapproval of the Equal Employment Opportunity Commission's Conciliation Rule

Background

On January 7, 2021, the Republican-chaired Equal Employment Opportunity Commission (EEOC) approved, by a 3-2 party-line vote, a final rule imposing onerous new requirements affecting workers who bring allegations of discrimination to the EEOC. The *Update of Commission's Conciliation Procedures* (conciliation rule) drew strong opposition from the civil rights community and worker advocates.

In response, the Senate passed a Congressional Review Act Resolution of Disapproval (S. J. Res. 13) to repeal this rule on May 19, 2021, by a vote of 50 to 48. The Administration has issued a [Statement of Administration Policy](#) in support of nullifying this rule in order to ensure that justice for workers "is not delayed, or potentially denied."

About the Conciliation Rule

Title VII of the Civil Rights Act of 1964, as amended, requires that, where the EEOC has reasonable cause to conclude that an employer has violated the law, it first must engage in "informal methods of conference, conciliation, and persuasion" before it files a lawsuit. Conciliation is an informal and confidential process where the parties can choose to settle a charge of employer discrimination without going to court.

This conciliation rule added a new set of burdensome requirements which compel the EEOC to provide the employer with a written summary of the known facts and non-privileged information EEOC relied on to determine the employer has violated the law, including identifying known aggrieved workers or groups of workers for whom relief is being sought (except for individual(s) who knew to request anonymity).

The rule also requires the EEOC to provide a written summary of the legal basis for its findings to the employer, including an explanation of how the law was applied.

The Impact of the Conciliation Rule

The Conciliation Rule will delay, and potentially deny, justice for workers subject to discrimination in several different ways:

The rule increases the risk of retaliation against victims and witnesses. Employers will have a greater ability to demand the identities of discrimination victims and witnesses, which will likely have a chilling effect on the willingness of victims and witnesses to come forward, particularly in cases involving vulnerable workers or survivors of harassment. Retaliation is already the most frequently alleged basis of discrimination in charges brought before the EEOC.

The rule will put a thumb on the scale in favor of employers where the EEOC has found reasonable cause that the employer violated federal civil rights laws. The mandatory disclosure requirements in the rule provide these employers with an unfair advantage should litigation be necessary by converting the conciliation and settlement process into a pre-trial litigation discovery process.

- The rule risks turning the conciliation process into a form of quasi-litigation where employer focus on claiming the EEOC failed to conciliate, rather than attempting to correct discriminatory employment practices.
- The conciliation rule delays workers' efforts to obtain relief in court by encouraging employers to litigate over the EEOC's conciliation process, before even getting to the merits of the discrimination case.

The one-size-fits-all rule issued by the Trump Administration's EEOC is at odds with the U.S. Supreme Court's unanimous 2015 decision in [Mach Mining v. EEOC](#). The Court held that "every aspect of Title VII's conciliation provision smacks of flexibility" and that EEOC must have the discretion to use whatever "informal" means of settlement are appropriate in each case. It specifically rejected a rigid formula that the EEOC must follow in every conciliation, explaining that conciliation is not "an end in itself," but rather "a tool to redress workplace discrimination."

In the five years since the *Mach Mining* decision, [EEOC has successfully conciliated an average of 42 percent of cases each year](#), and EEOC's has had a higher success rate in conciliation than before that Supreme Court decision. This improvement suggests that opening the door to litigation over compliance with this conciliation rule will actually reduce the success rate of EEOC's conciliation efforts, and ironically lead to more litigation and fewer settlements.

If Congress enacts S.J. Res 33, the EEOC will simply revert to its previous practice that the agency has the discretion under Title VII to determine the best means for informal settlements on a case-by-case basis—a position upheld *Mach Mining*. Further, there is no risk of collateral harm from the repeal of this rule because the EEOC is not dependent on this or any other regulation to carry out its conciliation requirements.

Support for Nullifying the Conciliation Rule

Civil rights groups and worker advocates have [expressed support](#) for the resolution, including: The Leadership Conference on Civil and Human Rights, National Women's Law Center, AFL-CIO, American Association of University Women (AAUW), Anti-Defamation League, Asian Pacific American Labor Alliance, Bazelon Center for Mental Health Law, Center for American Progress, Equal Rights Advocates, Feminist Majority, Futures Without Violence, Institute for Women's Policy Research, National Action Network, National Association of Councils on Developmental Disabilities, National Employment Law Project, National Organization for Women, National Partnership for Women & Families, National Workrights Institute, Public Citizen, Sikh Coalition, TIME'S UP Now, Women Employed, and Workplace Fairness.