

EEOC Terminates Mediation Pilot Program Eight Months Early

By

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The Equal Employment Opportunity Commission (EEOC) has [announced](#) that it had concluded its mediation pilot program.

The announcement, issued on January 27, 2021, referred to the mediation pilot as a “six-month” pilot program announced in July 2020. The press release did not acknowledge that only three weeks earlier, on January 6, 2021, the agency issued a press release stating the EEOC’s mediation pilot had been extended through September 30, 2021.

The EEOC’s mediation pilot had expanded categories of charges eligible for mediation in July 2020. (For details, see our article, [EEOC Looks to Increase Early Resolutions With Pilot Conciliation, Mediation Programs](#).) Historically, EEOC mediations were limited to the very early stages of the EEOC process, and EEOC enforcement personnel could keep a charge from mediation after determining the charge raised issues of class or systemic discrimination or raised novel claims. In the pilot program, the EEOC promised to send a charge to the mediation unit at any point in the administrative process. The pilot worked with a short list of mediation exceptions: charges that had no merit, Commissioner charges, and charges where the EEOC decided a party’s interest would not be well-served by mediation.

Janet Dhillon, a Republican and Chair of the EEOC from May 15, 2019, to January 20, 2021, championed the mediation pilot program. Dhillon had announced the extension of the pilot to September 30, 2021, while still Chair. Charlotte Burrows, a Democrat, opposed the pilot program when it was announced in July 2020, when Burrows was serving as an EEOC Commissioner. At that time, Burrows labeled the mediation pilot a “grave injustice and a violation of EEOC’s responsibility to enforce the law.”

President Joe Biden [named Burrows Chair of the EEOC](#) on January 20, 2021. In the press release announcing that the mediation program is concluded, Burrows said she supports voluntary resolution of charges “whenever doing so is consistent with our mission.” The EEOC’s press release said that the agency would incorporate into the mediation program some of the practices it has found useful. The only specific practice the EEOC mentioned as being incorporated, however, is to use video technology to hold virtual mediations. Given Burrows’ earlier criticism of the mediation pilot, the EEOC is expected to return to business as usual and allow mediation in a narrower range of charges.

If you have any further questions about the EEOC or its mediation program, please contact a Jackson Lewis attorney.

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