

The EEOC Abruptly Concludes ACT Mediation Pilot But Keeps Some of the Popular Changes

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After the U.S. Equal Employment Opportunity Commission (EEOC) recently announced that it had extended its ACT Mediation pilot program, the EEOC reversed course yesterday and abruptly concluded pilot programs relating to the EEOC's conciliation and mediation efforts. The ACT Mediation pilot, which launched on July 6, 2020, expanded the categories of charges eligible for mediation, generally allowed for mediation to take place throughout an investigative process (rather than only before the investigation begins as is traditionally the case outside the pilot), and expanded the use of technology to hold virtual mediations.

Many employers and attorneys view the EEOC mediation program favorably and generally supported the pilot mediation program. Through the EEOC's mediation program, first implemented agency-wide in 1999, the agency has conducted more than 240,000 mediations and resolved over 170,000 charges. However, new EEOC Chair Charlotte A. Burrows has been a critic of the pilot program. Burrows commented that she "strongly support(s) the prompt and voluntary resolution of discrimination charges whenever doing so is consistent with our mission....The Commission will continue to strengthen its conciliation and mediation programs in accordance with the overarching goal of preventing and remedying discrimination in the workplace."

The EEOC plans to retain some of the practices that it found useful during the pilot program, including the use of video technology to hold virtual mediations whenever possible. The parties will also be able to request mediation at any point during the administrative process. Despite these improvements, the EEOC will likely return to its old standard operating procedures and permit mediation in only a limited range of charges.