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U.S. Supreme Court Clarifies Procedures for Federal Employment Discrimination Law Claims

Supreme Court Unanimously Holds That Title VII's Pre-Suit Administrative Charge Requirement Is Not Jurisdictional and Can Be Waived If Employers Do Not Timely Object.

SUMMARY

In *Fort Bend County v. Davis*,¹ a unanimous Supreme Court held that Title VII's requirement that a claimant file an administrative charge with the Equal Employment Opportunity Commission (the "EEOC") or comparable state or local agency prior to filing a lawsuit is a "claim-processing rule[]" that must be timely raised" by a defendant rather than a "jurisdictional requirement" that can be raised at any time during the proceeding, and therefore is subject to waiver. This decision resolved a split in the circuit courts of appeals. As a result of this decision, employers must object to an employee's failure to exhaust the administrative process in a timely manner or else the defense will be waived notwithstanding the employee's failure to comply with Title VII's administrative requirements.

BACKGROUND

Title VII requires that an employee seeking to bring a discrimination suit in federal court first file a charge with the EEOC or a comparable state or local agency within 180 days "after the alleged unlawful employment practice occurred." After receiving a charge, the EEOC must notify the employer and investigate. The EEOC must "endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." The EEOC can commence a civil action against the employer if it believes there has been a violation of law. If, however, the EEOC finds that there is "n[o] reasonable cause to believe that the charge is true," then it must dismiss the charge and give the complainant notice of right to sue. The EEOC must provide the complainant with this "right-to-

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sue” notice within 180 days from the date the charge is filed. A complainant may file a civil case against the employer within 90 days of receiving the “right-to-sue” notice.²

PROCEEDINGS BELOW

Lois Davis worked for Fort Bend County in information technology. In 2010, she complained to the human resources department that the information technology director was sexually harassing her. The director resigned following an investigation. Davis alleges that her supervisor—who was “well acquainted” with the director who resigned—retaliated against her for reporting the sexual harassment by, among other things, reducing her job responsibilities. In 2011, Davis submitted an “intake questionnaire” followed by a formal charge to the Texas Workforce Commission alleging sexual harassment and retaliation. While the charge was pending, the supervisor allegedly informed Davis that she was required to work on Sunday, a day on which she had a church obligation, or face termination. Davis allegedly went to church and her employment was “subsequently terminated. Davis attempted to add religious discrimination to her charge by handwriting “religion” on the intake questionnaire but did not change the formal charge document. A few months later, she received her “right-to-sue” notice.³

In 2012, Davis filed suit in the United States District Court for the Southern District of Texas alleging retaliation and religious discrimination under Title VII. The district court granted Fort Bend’s motion for summary judgment in 2013, but the Fifth Circuit Court of Appeals reversed as to Davis’s religious discrimination claim. Only then, after four years of litigation, did Fort Bend County argue that the district court lacked jurisdiction over Davis’s claims because she failed to state her religious discrimination claim in her administrative charge based on her failure to add the claim to the formal charge document.

The district court held that the exhaustion requirement is jurisdictional, which therefore cannot be forfeited, and that Davis had failed to exhaust her administrative remedies.⁴ The Fifth Circuit reversed, holding that the exhaustion requirement is a “prudential prerequisite” to suit rather than a jurisdictional requirement, and that Fort Bend County had forfeited its right to bring this assertion due to its four-year delay.⁵

The decision contributed to a split among the courts of appeals over whether Title VII’s charge-filing requirement is jurisdictional.⁶ Eight circuit courts, the First, Second, Third, Sixth, Seventh, Tenth, and D.C. Circuits, had held that the requirement is nonjurisdictional, and three circuit courts, the Fourth, Ninth, and Eleventh Circuits, had held that the requirement is jurisdictional.

THE SUPREME COURT’S DECISION

In a unanimous decision authored by Justice Ginsburg, the Supreme Court held that “Title VII’s charge-filing instruction is not jurisdictional” and that “prerequisites to suit like Title VII’s charge-filing instruction . . . are properly ranked among the array of claim-processing rules that must be timely raised to come into play.”⁷

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The Court observed that the word “jurisdictional” is “generally reserved for describing the classes of cases a court may consider (subject matter jurisdiction) and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction).” The Court explained that rules may be jurisdictional if Congress “incorporat[es] them into a jurisdictional provision”—such as a provision providing that “[t]he district courts shall have original jurisdiction. . . .”—or if “a long line of Supreme Court decisions left undisturbed by Congress attach[es] a jurisdictional label to the prescription.” The Court emphasized that jurisdictional arguments are “unique” and may “wast[e] court resources and disturbingly disarm litigations” when “tardy.” The Court then identified a number of nonjurisdictional claim-processing rules that it considered comparable to the Title VII claim-processing rule and that are subject to waiver, including preconditions under the Copyright Act, the Railway Labor Act, and the Clean Air Act. The Court found that, although Congress need not use “magic words” to render a provision jurisdictional, the Court will “leave the ball in Congress’ court” and will find that “when Congress does not rank a [prescription] as jurisdictional, courts should treat the restriction as nonjurisdictional in character.”⁸

In this case, the Court held that Title VII’s charge-filing requirement is “not of jurisdictional cast.” The Court noted that Title VII has a separate jurisdictional provision and found that Title VII’s charge-filing provisions “do not speak to a court’s authority” or “refer in any way to the jurisdiction of the district courts.” Rather, the charge-filing provision “speak[s] to . . . a party’s procedural obligations.”⁹

The Court rejected Fort Bend County’s argument that the charge-filing requirement is jurisdictional in nature due to the “congressional purposes embodied in the Title VII scheme,” principally the goals of fostering conciliation and giving the EEOC the opportunity to file suit in the first instance. Rather, the Court explained that the promotion of “important congressional objectives” does not confer jurisdictional status on a particular prescription and found that “a rule may be mandatory without being jurisdictional, and Title VII’s charge-filing requirement fits that bill.”¹⁰

IMPLICATIONS

Possible Increased Availability of Federal Forum for Title VII Claims. Although the Court’s decision arguably could make it easier for employees to bring claims in federal court without exhausting administrative requirements, the Court specifically noted that employees still have “scant incentive to skirt” the charge-filing requirements because employers will “have good reason promptly to raise an objection that may rid them of the lawsuit filed against them.”¹¹

Effect on Employers Seeking Dismissal of Claims. The decision, by resolving a deep circuit split, provides significant clarity to courts, employers and employees. Upon being served with a complaint, employers should promptly consider whether the employee properly exhausted the administrative requirements and if not must timely assert the defense, or else risk the waiver of it.

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ENDNOTES

- 1 *Fort Bend County, Texas v. Davis*, 587 U.S. __ No. 18-525 (June 3, 2019).
- 2 Slip op. at 2–3.
- 3 *Id.* at 3–4.
- 4 *Id.* at 5.
- 5 *Davis v. Fort Bend County*, 893 F.3d 300, 307–08 (5th Cir. 2018).
- 6 Slip op. at 5.
- 7 *Id.* at 1.
- 8 *Id.* at 6–8.
- 9 *Id.* at 9.
- 10 *Id.* at 11.
- 11 *Id.*

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