

## U.S. Supreme Court Rules That Title VII's Requirement to File an EEOC Charge Before Commencing a Federal Court Lawsuit is Not a Jurisdictional Rule

On June 3, 2019, the United States Supreme Court unanimously ruled in the case of *Fort Bend County, Texas v. Davis* that the requirement under Title VII of the Civil Rights Act ("Title VII") to file an administrative charge with the Equal Employment Opportunity Commission ("EEOC") is a non-jurisdictional claim-processing rule. In other words, the Court held that a plaintiff's failure to file an EEOC charge does not automatically preclude a federal court from exercising jurisdiction over the complaint; instead, an employer must "promptly" raise the defense that the plaintiff failed to satisfy the procedural requirement of filing an EEOC charge. An employer's failure to raise such a defense promptly could result in forfeiture of the defense, and a federal court may exercise jurisdiction over the complaint despite the plaintiff's failure to file an EEOC charge.

Title VII prohibits employers from discriminating against individuals on the basis of race, color, religion, sex, or national origin. Before an individual can bring a Title VII lawsuit in federal court, he or she is required under the statute to file an administrative charge with the EEOC. After the EEOC investigates the charge, it issues either a "reasonable cause" finding (and attempts to remedy the alleged discrimination through conciliation) or a "no reasonable cause" finding. If conciliation attempts fail or if the EEOC determines that there is no reasonable cause to believe that the charge has merit, the EEOC generally issues a notice that the complainant has a right to sue his or her employer in federal court within 90 days of receipt of the notice.

Prior to the Court's decision in *Davis*, federal courts were split as to whether the requirement to file an EEOC charge is a jurisdictional rule or a procedural claim-processing rule. The significance of the distinction is that a jurisdictional objection can be raised as a basis for dismissal of the complaint at any time in a federal court proceeding, but an objection due to a plaintiff's failure to follow a procedural claim-processing rule must be raised in a timely manner in order to obtain dismissal of the complaint on that basis. Some federal appellate courts, including the Fourth Circuit Court of Appeals, had held that the requirement was jurisdictional. Other federal appellate courts, including the Fifth Circuit Court of Appeals, had held that the requirement was simply a procedural claim-processing rule that is waived if it is not raised in a timely manner.

In *Davis*, the plaintiff worked in information technology for Fort Bend County. After the plaintiff's supervisor allegedly retaliated against her for reporting a co-worker's sexual harassment, the plaintiff initially completed an EEOC "intake questionnaire" in February 2011 and then filed an EEOC charge alleging retaliation in March 2011. While the charge was pending, the plaintiff's supervisor allegedly demanded that the plaintiff report for work on a Sunday. The plaintiff allegedly told her supervisor that she had a commitment at church and offered to arrange for another employee to replace her at work. According to the plaintiff, the supervisor rejected her suggestion and terminated her employment for going to church on that Sunday instead of showing up for work.

The plaintiff subsequently attempted to supplement her charge to add a religious discrimination claim by writing “religion” on her intake questionnaire. However, she failed to update the formal EEOC charge document to include her religious discrimination claim. The EEOC subsequently issued a notice of the plaintiff’s right to sue.

In January 2012, the plaintiff filed a lawsuit in federal court alleging retaliation for reporting sexual harassment and discrimination based on her religion. Fort Bend County made a motion for summary judgment after discovery, without raising the issue of the plaintiff’s failure to include a religious discrimination claim in her EEOC charge. The District Court granted the motion for summary judgment in September 2013, but the Fifth Circuit Court of Appeals reversed the District Court’s decision with respect to the religious discrimination claim in 2014. After an unsuccessful attempt to appeal to the U.S. Supreme Court, the case was remanded back to the District Court in 2015.

After the case was remanded, Fort Bend made a motion to dismiss the religious discrimination claim, asserting for the first time (nearly four years after the lawsuit was filed) that the District Court lacked jurisdiction over the religious discrimination claim because the plaintiff failed to include the claim in her EEOC charge. The District Court granted the employer’s motion to dismiss, holding that Title VII’s administrative exhaustion requirement is a jurisdictional rule that could be raised at any stage of the litigation. The Fifth Circuit Court of Appeals reversed the District Court, holding that the requirement is merely a “prudential prerequisite” to filing a lawsuit and does not preclude a federal court from exercising jurisdiction if an employer does not raise the defense in a timely manner.

The Supreme Court affirmed. The Court held that, although the requirement to file an EEOC charge is mandatory for complainants, it is merely a “claim-processing rule” -- not a limitation on a federal court’s jurisdiction over a case. The Court agreed with the Fifth Circuit Court of Appeals that Fort Bend County’s failure to raise the defense promptly constituted a waiver of the defense.

The Supreme Court’s ruling does not excuse plaintiffs from the statutory requirement to file an EEOC charge before filing a federal court lawsuit. A plaintiff’s failure to satisfy this procedural requirement will likely still result in dismissal of the lawsuit as long as the employer raises the objection promptly after the lawsuit is filed. Although the Court did not define what is meant by “promptly,” this objection should be asserted as an affirmative defense in the employer’s answer to the complaint or should be raised in a pre-answer motion to dismiss. Employers should consult with counsel immediately upon being served with an employment discrimination lawsuit to ensure that all possible objections and defenses are timely raised.

If you have any questions about this Information Memo, please contact [Justin A. Reyes](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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