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SUPREME COURT RULES THAT EEOC CHARGE FILING REQUIREMENT IS NON-JURISDICTIONAL

On June 3, 2019, the U.S. Supreme Court issued a unanimous decision resolving a split among the Circuit Courts regarding the parameters of a procedural defense available to employers in Title VII cases. In *Fort Bend County v. Davis*, the Court held that Title VII's EEOC charge-filing condition (also applicable to ADA claims) is a procedural prescription that can be waived, not a nonforfeitable jurisdictional requirement. The key takeaway from the decision for employers is to diligently compare an employee's EEOC charge with the court complaint to determine whether the claims align and promptly raise any objections based on a failure to exhaust the EEOC process.

In early 2011, Lois Davis filled out an EEOC intake questionnaire, claiming she was subject to sexual harassment and retaliation while working for Fort Bend County in Texas. After filing the EEOC charge, the County terminated Davis' employment for attending church in lieu of working on a Sunday. Davis claimed the termination was unlawfully based on her religion and went back to the EEOC. However, instead of formally amending her EEOC charge, Davis handwrote the word "religion" on a copy of the intake

questionnaire and submitted it to the EEOC. Shortly after receiving the revised questionnaire, the EEOC issued Davis a right to sue letter.

Davis proceeded to sue Fort Bend County in U.S. District Court alleging religious discrimination and retaliation for reporting sexual harassment. After discovery, the District Court granted Fort Bend County's motion for summary judgment on substantive grounds; the County did not pursue a failure to exhaust defense directed to the claim for religious discrimination that was never properly asserted in an EEOC charge. Davis appealed and the Fifth Circuit reversed and remanded the religious discrimination claim back to the district court. On remand, Fort Bend County moved to dismiss for lack of jurisdiction, claiming for the first time that Davis had not satisfied the charge filing requirement with respect to her claims for religious discrimination. The District Court granted the motion to dismiss but the Fifth Circuit reversed, holding that the charge-filing requirement is non-jurisdictional and, therefore, a defense based on failure to exhaust the EEOC process can be waived if not timely asserted.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

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Examining the concepts of jurisdiction and non-jurisdictional claim-processing rules, including provisions of Title VII expressly addressing jurisdiction, the Supreme Court agreed with the Fifth Circuit and likewise held that Title VII's charge filing requirement is not jurisdictional; rather it is a procedural obligation that, if not satisfied, can form the basis of a defense, but that defense can be waived if not presented in a timely manner. Practically speaking, the Court's holding means that employers need to promptly raise objections to Title VII claims alleged in a court complaint that were not asserted in the underlying EEOC (or state agency) charge or risk forfeiture of a potential claim-killing defense based on the plaintiff's failure to exhaust administrative remedies. To be sure, the EEOC charge filing process

remains alive and well: the Court observed that while "the charge-filing requirement is non-jurisdictional [this] gives plaintiffs scant incentive to skirt the instruction" as they do so at their own peril since employers "have good reason promptly to raise an objection that may rid them of a lawsuit filed against them."

The Court did not specify how soon an employer should raise an exhaustion defense, but it's safe to say that waiting four years and through an entire appeal, as Fort Bend County did, is too long. Since the filing of an EEOC charge is a prerequisite to filing suit, invariably an employer will know what claims, if any, were brought before the EEOC by the time a Title VII court complaint is served. As such, it is always best to assert an exhaustion defense at the very outset of the case, in an answer or motion to dismiss.