

Title VII Claims Not Raised In EEOC Charge Must Be Timely Challenged

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On June 3, 2019, the U.S. Supreme Court unanimously ruled in *Fort Bend County v. Davis* that Title VII's administrative exhaustion requirement is a claims-processing requirement, not a jurisdictional requirement, which means that an employee's failure to exhaust administrative remedies must be timely raised as an affirmative defense.

In *Davis*, after an entire round of appeals all the way to the Supreme Court, the employer moved to dismiss an employee's religious discrimination claim on the ground that the court lacked jurisdiction to adjudicate the claim because the employee failed to raise the claim in her EEOC charge.

The district court granted the employer's motion and dismissed the claim, but the Fifth Circuit Court of Appeals reversed, holding that Title VII's charge-filing requirement is not jurisdictional and that the employer forfeited any right to challenge the employee's failure to exhaust her administrative appeals because the employer did not timely raise the defense. In *Davis*, the Supreme Court affirmed that "Title VII's charge-filing requirement is not of jurisdictional cast" and, therefore, is subject to waiver.

In sum, Title VII's requirement for a claimant to exhaust administrative remedies is mandatory, but not jurisdictional. Thus, the upshot of *Davis* for employers is clear: When served with a complaint asserting Title VII claims, an employer (and/or its attorney(s)) should review and analyze the administrative history of the Title VII claim to ensure that the claim was adequately asserted and exhausted during administrative proceedings.

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If not, the employer must raise the failure to exhaust administrative remedies as an affirmative defense at the earliest practicable juncture in the case or risk forfeiting its right to challenge the Title VII claims on this threshold ground.