

Supreme Court Rules Title VII's Charge Filing Requirement Is Not Jurisdictional...but is Still a Required Rule

Labor & Employment Law Update

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This past February we reported that the Supreme Court agreed to review the Fifth Circuit's ruling in *Fort Bend County v. Davis* on the viability of claims brought in federal courts where the claimant had not first filed her claim with the Equal Employment Opportunity Commission (EEOC). On June 3, 2019, the Supreme Court issued its decision holding that Title VII's charge-filing requirement is a non-jurisdictional claim-processing rule that may be forfeited if not timely asserted.

Under Title VII of the Civil Rights Act of 1964, an employee is required to first bring his claims of employment discrimination with the EEOC prior to filing suit in federal court. Known as the "exhaustion requirement," courts have noted that its purpose is to give the EEOC the opportunity to investigate and resolve credible claims of discrimination, and also to provide employers fair notice and a chance to remedy complaints prior to litigation.

In *Fort Bend County*, the employee initially filed a charge with the EEOC asserting Title VII sexual harassment and retaliation claims. Later, she attempted to add a charge for religious discrimination, but failed to update the formal charge. She filed suit. After years of litigation, only the religious discrimination claim remained. The employer then argued for the first time that the religious discrimination claim should be dismissed because the employee failed to properly file a charge with the EEOC before suing.

Prior to this decision, appellate courts were split on the meaning of the exhaustion requirement. On the one hand, the majority of circuits maintained that the exhaustion requirement was merely a prerequisite to bringing suit, and therefore subject to defenses of waiver and estoppel. On the other, three circuits had ruled that the exhaustion requirement implicated subject matter jurisdiction and could not be waived.

Justice Ruth Bader Ginsburg, in a unanimous decision, settled the question on the side of the majority of circuits and wrote that the charge-filing requirements “do not speak” to a court’s authority or refer in any way to the district court’s jurisdiction, but rather “speak to a party’s procedural obligation...[requiring] complainants to submit information to the EEOC and to wait a specified period before commencing a civil action.”

What does this mean for employers? It means that while there is still a rule that employees must file a charge and exhaust their administrative remedies before filing a lawsuit, failing to do so will not automatically deprive the court of jurisdiction over the employee’s claim. However, it also means that employees are still required to comply with the rule and may not simply file a lawsuit without first filing a charge of discrimination and exhausting their administrative remedies. More importantly though for employers, it reminds us that if you do not assert failure to exhaust as a defense, it can be inadvertently waived or forfeited by “waiting too long” to raise it. To surely minimize this impact, employers should review the administrative history of pending lawsuits to ensure that an otherwise viable “exhaustion requirement” defense is not inadvertently waived or forfeited by “waiting too long” to raise it.

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