

# Supreme Court To Review Title VII's EEOC Administrative Requirement

## Labor & Employment Law Update

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In an important development for employers defending against discrimination claims across the country, the Supreme Court has 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 has not first filed her claim with the Equal Employment Opportunity Commission (EEOC). There is currently a circuit split in federal appellate courts on this issue. Regardless of which side the Supreme Court ultimately takes, the Court's decision will have a critical impact on the steps a claimant must take prior to filing a federal lawsuit – and the employer's bottom line.

Title VII of the Civil Rights Act of 1964 requires an employee 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.

However, over time, the appellate courts have diverged on what the exhaustion requirement actually means. Is it, as the majority of circuits (eight in total) have concluded: the exhaustion requirement is merely a prerequisite to bringing suit, and therefore subject to defenses of waiver and estoppel? Or, is it as the minority of circuits (three in total) have read Title VII: that the exhaustion requirement implicates subject matter jurisdiction and therefore cannot be waived?

As the Petitioners in *Fort Bend* noted in their Petition for Writ of Certiorari, resolution of this split in the circuits "is profoundly important." They argued that, according to the EEOC's own statistics, roughly 60,000 charges are filed with the EEOC under Title VII. Therefore, if the Supreme Court determines these charges are non-jurisdictional, many claimants could be motivated to bring their claims directly in court, forgoing the EEOC and flooding the Courts with additional litigation.

While that scenario may not be particularly likely, a Supreme Court decision holding the exhaustion requirement to be jurisdictional could have a significant benefit for employers defending against these claims. Characterizing the exhaustion requirement as jurisdictional could provide employers an additional vehicle to seek dismissal of claims not supported by an EEOC charge much earlier in the course of litigation than might otherwise be possible. Characterizing exhaustion as jurisdictional also means that employers could challenge whether exhaustion occurred later on in litigation—and even for the first time on appeal. On the other hand, if the Supreme Court sides with the majority of federal appellate courts, employers may have less of an opportunity to resolve discrimination claims through the EEOC’s investigation and dispute resolution procedures—and without any litigation at all. In short, if the exhaustion requirement is ruled not to be jurisdictional, employers could well be forced into immediately defending a host of additional – and costly – federal claims, which the “exhaustion requirement” was arguably designed to avoid.

There is no schedule yet for briefing and argument in *Fort Bend*. However, we will continue to monitor the case and update as it progresses.

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