



SCOTUS Rules That Filing an EEOC Charge Is Not a Jurisdictional Requirement

IN SHORT

The Situation: The U.S. Supreme Court unanimously held that filing a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") is not a jurisdictional prerequisite to bringing a Title VII lawsuit. The requirement to file a charge is instead a claim-processing rule, mandatory if the failure to do so is timely raised as a defense, but forfeited if tardily asserted.

The Result: Employers defending Title VII lawsuits must raise a failure to exhaust administrative remedies defense in a timely fashion in order to avoid forfeiting it.

Looking Ahead: Employers sued for alleged violations of Title VII should carefully inspect complaints to ensure the claims set forth therein match the claims pursued in the respective charge of discrimination. Employers should consider early strategic options to advance their "exhaustion of administrative remedies" defense, rather than simply including it as a defense.

On June 3, 2019, the U.S. Supreme Court, in *Fort Bend County v. Davis*, held that the obligation imposed on plaintiffs alleging discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII") to file charges with the EEOC or similar state agencies is not a jurisdictional requirement, but is instead a mandatory claims-processing rule. In *Davis*, a Fort Bend County employee, Lois Davis, filed a charge of discrimination alleging unlawful sexual harassment and retaliation. While the charge was pending with the EEOC, Fort Bend County terminated Davis's employment because she was absent from work on a Sunday, choosing instead to attend a church event. After her termination, Davis amended her EEOC intake questionnaire to include "religion" on the "Employment Harms or Actions" section, also checking the boxes for "discharge" and "reasonable accommodation." She did not, however, amend her formal charge of discrimination.

Davis subsequently filed suit for sexual harassment, retaliation, and religious discrimination. "Years into the litigation, Fort Bend asserted for the first time that the District Court lacked jurisdiction to adjudicate Davis's religious discrimination claim because she had not stated such a claim in her EEOC charge." *Fort Bend County, Texas v. Davis*, 587 U.S. ____ (2019) (slip op., at 5). The district court agreed, but the U.S. Court of Appeals for the Fifth Circuit reversed. The appellate court ruled that the charge-filing requirement was not jurisdictional, but a "prudential prerequisite" to filing suit. The Supreme Court, in an opinion penned by Justice Ginsburg, unanimously affirmed.

Title VII's charge-filing provisions are not jurisdictional, because they do not speak to a court's authority, appear in jurisdictional provisions, or otherwise refer to jurisdiction. They do, however, speak to a party's procedural obligations.



Building on a line of cases stretching back 20 years, the Court reasoned that the category of "jurisdictional" rules is generally reserved for those that set forth the types of cases that a court may preside over in the first instance, i.e., subject-matter jurisdiction, and the persons

over whom it may exercise authority, i.e., personal jurisdiction. Congress may also enact special jurisdictional requirements, such as the amount-in-controversy requirement in diversity cases, but must clearly identify such instances.

Unlike most arguments, challenges to subject-matter jurisdiction may be raised at any point in the litigation. And because tardy jurisdictional objections waste court and litigant resources, the Court has distinguished between "jurisdictional prescriptions and nonjurisdictional claim-processing rules," which "require[] that the parties take certain procedural steps at certain specified times" and can be forfeited. *Id.* at 7 (citing *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)). Here, Title VII's charge-filing provisions are not jurisdictional, because they do not speak to a court's authority, appear in jurisdictional provisions, or otherwise refer to jurisdiction. They do, however, speak to a party's procedural obligations. "Like kindred provisions directing parties to raise objections in agency rulemaking, follow procedures governing copyright registration, or attempt settlement, Title VII's charge-filing requirement is a processing rule, albeit a mandatory one, not a jurisdictional prescription delineating the adjudicatory authority of the courts." *Id.* at 9-10 (citations omitted).

THREE KEY TAKEAWAYS

1. Title VII's charge-filing requirement is not jurisdictional and, thus, cannot be raised "at any point in the litigation." Rather, it is a claim-processing rule that—if not timely asserted as a defense—may be forfeited.
2. Individuals pursuing Title VII claims must still exhaust their administrative remedies by filing a charge of discrimination with the EEOC or risk a valid defense based on a failure to do so.
3. Employers should try to advance the defense based on a plaintiff's failure to file an EEOC charge, or otherwise exhaust his or her administrative remedies, rather than simply including them in the defense.



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