

INSIGHTS

## Timely Use It, or Lose It: Recent Supreme Court Case Provides Reminders for Employers, but Employees Still Need to File a Charge Before Filing Title VII Lawsuit

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In *Fort Bend County, Texas v. Davis* (U.S. June 3, 2019), the U.S. Supreme Court (Court) held that the charge-filing requirement under Title VII of the Civil Rights Act of 1964 (Title VII) is not jurisdictional. The case involved an information technology (IT) employee, Lois Davis, who complained that the Director of IT sexually harassed her. After the Director resigned, Ms. Davis claimed that her supervisor, who was friendly with the Director of IT, retaliated against her. Ms. Davis filed a Charge of Discrimination (Charge) with the Equal Employment Opportunity Commission (EEOC) alleging sexual harassment and retaliation. Sometime later, when she was fired because she refused to work on a day that she said she needed to attend a church event, Ms. Davis handwrote “religion” on the “Employment Harms or Actions” part of the Texas Workforce Commission (TWC) Intake Questionnaire form (which was relayed to the EEOC as part of the EEOC’s worksharing agreement with the TWC). She also checked the boxes for “discharge” and “reasonable accommodation.” Ms. Davis did not amend her EEOC Charge. When Ms. Davis filed suit in federal court, she claimed retaliation and religious discrimination under Title VII.

After a lengthy procedural history, which involved an initial win for Fort Bend County on summary judgment, followed by the Fifth Circuit’s reversal of summary judgment on the religious discrimination claim, the case went back to the District Court where Fort Bend County asserted for the first time in over four years of litigation that the court lacked jurisdiction over the case because Ms. Davis failed to assert religious discrimination in her Charge. Although the District Court agreed with Fort Bend County and dismissed the case, the Fifth Circuit reversed the District Court on the ground that the plaintiff’s requirement to exhaust administrative remedies (i.e., to file a charge with the EEOC) was not jurisdictional and, therefore, Fort Bend waived the defense. That decision brought the case to the Court which addressed the split in the circuits on this issue.

### **Supreme Court’s Decision:**

The Court’s determination that Title VII’s charge-filing requirement is not jurisdictional makes sense when, as Justice Ginsburg pointed out, one realizes that “jurisdictional” refers to the type

of cases the court can consider (i.e., subject matter jurisdictional) and the people over whom the court may exercise its authority (i.e., personal jurisdictional). The Court contrasted the jurisdictional requirement (which cannot be waived) with Title VII's charge-filing requirement, which requires the plaintiff to take certain procedural steps prior to litigation. In sum, as the Court noted, "a rule may be mandatory without being jurisdictional, and Title VII's charge-filing requirement fits that bill."

**What does this mean for employers?**

Employers need to carefully review the charge (and any amended charge) to determine if claims made in the lawsuit were not included in the charge. If they were not, employers need to include a defense in the answer and/or file a motion to dismiss and assert that the plaintiff failed to exhaust his/her administrative remedies. But that's not all. Employers should also review whether any of Title VII's other procedural rules were not met by the plaintiff. For example, did the plaintiff file the charge within the required period of time (i.e., 180 days or 300 days in a state with a fair employment agency)? If not, employers should add a defense and/or file a motion to dismiss asserting that requirement was not met.

**What has not changed?**

The Court's decision did not change Title VII's requirement that employees are required to file a charge with the EEOC or state fair employment agency before filing a Title VII lawsuit—this remains a mandatory claim-processing rule. The only thing this opinion clarifies is that an employer must timely raise this defense or it risks waiving it.