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U.S. Supreme Court Rules EEOC Charge Is Not A Jurisdictional Requirement For Title VII Claims

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Commentary

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I. Employment Discrimination in the 21st Century

In recent years, discrimination and harassment issues have been widely discussed in the media. In particular, the #MeToo movement ignited legislation in states across the country aimed at addressing sexual harassment in general, and in the workplace. Some of the responsive legislation to #MeToo has included policy and training requirements for employers. Beyond discrimination based on sex, the amount of protected classes and bases for discrimination claims has also expanded. For example, many states have enacted sex discrimination laws (or have expanded the interpretation of existing laws) to include discrimination based on sexual orientation and gender identity. Concurrent with the expansion of workplace protection laws, the ease of which employees may file discrimination claims has also increased through expanded online resources and availability of information. The confluence of these factors may result in an increase in employment discrimination claims. As a result, there is a heightened need for employers to be prepared to respond to employment discrimination claims.

II. Title VII of the Civil Rights Act of 1964 and the Equal Employment Opportunity Commission

Title VII of the Civil Rights Act of 1964 (Title VII) is a landmark federal employment statute that prohibits

discrimination in employment on the basis of race, color, religion, sex, or national origin.¹ The statute does, however, enumerate certain deadlines and requirements.

Specifically, Title VII implements a deadline of 180 days from the date of the alleged discriminatory event for a claimant to file a charge of unlawful employment practice with the Equal Employment Opportunity Commission (EEOC).² The EEOC is a federal agency responsible for enforcing federal civil rights laws, including Title VII. The 180-day deadline is extended to 300 days when the aggrieved person “has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice”³

Notably, an aggrieved employee may not file suit in federal court in the first instance. As a precondition to bringing a Title VII suit against a defendant in federal court, a plaintiff must file a charge of employment discrimination against the defendant with the EEOC or an authorized state agency.⁴

On receipt of a charge, the EEOC is to notify the employer and investigate the allegations.⁵ The EEOC may “endeavor to eliminate [the] alleged unlawful employment practice by informal methods of . . . conciliation.”⁶ The EEOC also has first option to “bring a civil action” against the employer in court.⁷ The EEOC does not, however, have authority itself to adjudicate discrimination complaints. If the EEOC chooses not to sue, and whether or not the EEOC otherwise acts on the charge, a complainant is entitled to a “right-to-sue” notice 180 days after the charge is filed.⁸ On receipt of

the right-to-sue notice, the complainant may commence a civil action against her employer.⁹ If an individual were to file an action in federal court prior to following the above-mentioned procedures, the defendant employer may properly assert a failure to exhaust administrative remedies defense, and the lawsuit would be dismissed.

III. *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843 (2019)

In *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843 (2019), the U.S. Supreme Court considered whether Title VII's charge filing precondition to filing a lawsuit is a "jurisdictional" requirement. Generally speaking, "jurisdictional" refers to cases in which a court is permitted to hear and the persons over which a court may adjudicate authority. Given the significance of jurisdictional issues, they may be raised at any stage of a proceeding, and therefore are never waived by a party. Alternatively, courts will enforce mandatory procedural issues but they are subject to waiver if a party does not raise them immediately.

In *Fort Bend*, Lois M. Davis worked in information technology for Fort Bend County. Ms. Davis filed an internal complaint making sexual harassment allegations against a supervisor, who subsequently resigned. Ms. Davis then claimed her employer retaliated against her for making the complaint, and she submitted an intake form, which was followed by a charge to the appropriate administrative agency. While her EEOC charge was pending, Davis's employer told her to report to work on an upcoming Sunday. Davis informed her supervisor that she had a commitment at church that Sunday, and the supervisor responded that if she did not show up for the Sunday work, she would be subject to termination. Davis went to church, not work, that Sunday, and the county terminated her employment.

Davis thereafter attempted to supplement the allegation in her EEOC charge: She handwrote "religion" on her intake questionnaire and checked the boxes for "discharge" and "reasonable accommodation" on that form. She made no change, however, in the formal charge document. A few months later, Davis was notified of her right to sue, and she commenced a federal lawsuit in the United States District Court for the Southern District of Texas. After years of litigation, the employer asserted for the first time that the

District Court lacked jurisdiction to adjudicate Davis' religion-based discrimination claim because she had not stated such a claim in her EEOC charge.

The District Court held that Davis had not satisfied the charge-filing requirement with respect to her claim of religion-based discrimination, and that the requirement qualified as "jurisdictional," which made it non-forfeitable.¹⁰ The Fifth Circuit reversed, and ruled that Title VII's charge-filing requirement is not jurisdictional, and instead, the requirement is a prerequisite to suit that was forfeited in Davis' case because it was not raised until after an entire round of appeals.¹¹ The Fifth Circuit's decision aligned with several other circuit courts.¹²

The Supreme Court unanimously held that the requirement that plaintiffs file a charge with the EEOC before asserting claims under Title VII in court is a procedural obligation that does not implicate a court's jurisdiction.¹³ Justice Ginsburg wrote at the end of the decision, "a rule may be mandatory without being jurisdictional, and Title VII's charge-filing requirement fits that bill."¹⁴

VI. Practical Implications and Advice

Fort Bend boils down to the age-old phrase, "use it or lose it." Practically speaking, *Fort Bend* may not have a monumental impact on federal employment discrimination litigation. Plaintiffs would be taking a huge risk in filing a federal court action prior to adhering to the administrative process under Title VII, since a timely objection by the defendant employer would result in dismissal of the action.

Regardless, employers are well advised to invest time on the front end into evaluating all possible defenses when an employee lodges a complaint. In particular, if an employer receives an internal complaint from an employee, it is best served (and in some jurisdictions required by law) to conduct a thorough objective investigation and to take any appropriate action as needed. If an employee thereafter files a complaint with a state agency and/or the EEOC, employers should respond to the agency in a timely manner and follow best practices and guidelines. For example, in recent years the EEOC released guidance on the components of an effective position statement (the employer's statement of its position regarding the charge,

including supporting documents) in response to the EEOC discrimination charge.¹⁵ Finally, if the employee subsequently files a federal lawsuit, the employer should immediately raise all possible defenses, including failure to exhaust administrative remedies, to be sure that such defenses are preserved.

Endnotes

1. 42 U.S.C. § 2000e-2(a)(1).
2. 42 U.S.C. § 2000e-5(e)(1).
3. *Id.*; *McPherson v. N.Y.C. Dep't of Educ.*, 457 F.3d 211, 213 (2d Cir. 2006).
4. See 42 U.S.C. § 2000e-5; *Shah v. N.Y. State Dep't of Civil Serv.*, 168 F.3d 610, 613 (2d Cir. 1999) (“A Title VII claimant may bring suit in federal court only if he has filed a timely complaint with the EEOC . . .”).
5. § 2000e-5(b).
6. *Id.*
7. § 2000e-5(f)(1).
8. *Id.*; 29 CFR § 1601.28.
9. § 2000e-5(f)(1).
10. 2016 U.S. Dist. LEXIS 113510 (SD Tex., Aug. 24, 2016).
11. *Davis v. Fort Bend Cty.*, 893 F.3d 300, 307 (5th Cir. 2018).
12. See *Fowlkes v. Ironworkers Local 40*, 790 F.3d 378, 385 (2d Cir. 2015) (clarifying that “the failure of a Title VII plaintiff to exhaust administrative remedies raises no jurisdictional bar to the claim proceeding in federal court”); *Adamov v. U.S. Bank Nat'l Ass'n*, 726 F.3d 851, 855–57 (6th Cir. 2013) (concluding that “the question of administrative exhaustion is nonjurisdictional”); *Williams v. Target Stores*, 479 F. App'x 26, 28 (8th Cir. 2012) (noting that failure to exhaust administrative remedies is not a jurisdictional prerequisite under Title VII); *Vera v. McHugh*, 622 F.3d 17, 29–30 (1st Cir. 2010) (“Although typically a failure to exhaust administrative remedies will bar suit in federal court, ‘the exhaustion requirement is not a jurisdictional prerequisite’ to filing a Title VII claim in federal court.” (quoting *Frederique-Alexandre v. Dep't of Nat'l & Envtl. Res.*, 478 F.3d 433, 440 (1st Cir. 2007))); *Kraus v. Presidio Tr. Facilities Div./Residential Mgmt. Branch*, 572 F.3d 1039, 1043 (9th Cir. 2009) (concluding that Title VII’s exhaustion requirement is not a jurisdictional prerequisite for suit); *Douglas v. Donovan*, 559 F.3d 549, 556 n.4 (D.C. Cir. 2009) (“[T]he exhaustion requirement, though mandatory, is not jurisdictional. . . .”); *Gibson v. West*, 201 F.3d 990, 994 (7th Cir. 2000) (holding “that, as a general matter, the failure to exhaust administrative remedies is a precondition to bringing a Title VII claim in federal court, rather than a jurisdictional requirement”); but see *Logsdon v. Turbines, Inc.*, 399 F. App'x 376, 379 n.2 (10th Cir. 2010) (noting that in the Tenth Circuit “EEOC exhaustion is still considered jurisdictional” even if undermined by recent Supreme Court cases (quoting *In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993))); *Jones v. Calvert Grp., Ltd.*, 551 F.3d 297, 300 (4th Cir. 2009) (“[A] failure by the plaintiff to exhaust administrative remedies concerning a Title VII claim deprives the federal courts of subject matter jurisdiction over the claim.”).
13. *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. at 1846.
14. *Id.* at 1851.
15. https://www.eeoc.gov/employers/position_statements.cfm. ■

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