
Supreme Court Says Employers Must Timely Bring Objections to Faulty Title VII Charges or Risk Forfeiture

By Autumn L. Moore / Jun 05, 2019

On June 3, 2019, the United States Supreme Court issued a unanimous decision in *Fort Bend County v. Davis*, 587 U. S. ____ (2019), holding that Title VII's charge-filing requirement is not jurisdictional, meaning that, in some circumstances, employees can skip filing a charge with the EEOC and go straight to court.

Writing for the Court, Justice Ginsburg explained in *Davis* that Title VII's statutory instructions to complainants to file a charge with the EEOC (or its state or local equivalent) prior to bringing a civil action is a "nonjurisdictional claim-processing rule." *Slip Op.* at 7. For years, there has been a conflict among the Courts of Appeal over whether Title VII's charge-filing requirement is jurisdictional, and some federal courts have ruled that they lack subject-matter jurisdiction when the charge-filing requirement has not been properly satisfied. The Supreme Court put an end to this uncertainty in the law with its ruling in *Davis*, signaling to employers that the procedural rules are not jurisdictional and will be mandatory if an objection is timely raised, but subject to forfeiture if an objection is tardily asserted.

Lois Davis, an employee in the Fort Bend County, Texas information technology department, filed a charge with the EEOC regarding workplace sexual harassment in 2011. While her charge was pending, Davis was told to report to work on a Sunday. Although she informed her supervisor that she had a church commitment, and even arranged for another employee to cover for her, Davis was told that she would be terminated if she did not show up for work on Sunday. Davis did not show up to work on Sunday, and was subsequently terminated by Fort Bend. Davis thereafter attempted to supplement the allegations in her EEOC charge and added religious discrimination to the EEOC intake questionnaire she filled out, but never updated her formal EEOC charge.

Fort Bend prevailed on summary judgment on all claims, and the Court of Appeals for the Fifth Circuit affirmed with the exception of Davis' religion-based discrimination claim. Fort Bend's initial petition for certiorari in 2015 was denied. The case returned to the district court on the religion-based discrimination claim. Fort Bend successfully moved to dismiss Davis' claim on jurisdictional grounds, for failure to exhaust administrative remedies because she never updated her EEOC charge. The Fifth Circuit reversed the district court, thereby ushering the case back the Supreme Court on Fort Bend's second petition for certiorari.

In an effort to resolve the circuit split, and to no doubt to preserve court resources when tardy jurisdictional objections are made, the Supreme Court ruled in *Davis* that Title VII's charge-filing requirement is nonjurisdictional, and therefore objections must be brought timely or an employer could forgo a potentially dispositive defense. In an attempt to provide clarity on jurisdictional rules, the Court wrote in dicta that the jurisdiction of the district courts is found either when the (1) Legislature clearly states that a certain prescription is jurisdictional (e.g., amount-in-controversy requirement for federal court diversity jurisdiction); or (2) when a long line of Supreme Court decisions attach a jurisdictional label to a certain prescription. In this case, the Supreme Court found Title VII's charge-filing rules had no link to Title VII's statutory jurisdictional language, and was more akin to rules governing copyright registration before suing for infringement or parties required to attend a settlement conference before arbitrating under the Railway Labor Act.

The Supreme Court's ruling in *Davis* serves as a stark reminder to employers to promptly raise an objection for failure to exhaust administrative remedies, and not wait until further into the litigation to do so. If you have any questions regarding the Supreme Court's ruling, or regarding the failure to exhaust administrative remedies defense, please contact Autumn Moore at amoore@clarkhill.com or 312.360.2503 or another member of Clark Hill's Labor and Employment Law practice group.