

CLIENT NEWS BRIEF

Supreme Court Curtails Availability Of Defense To Employers In Employment Discrimination Cases

In *Fort Bend County, Texas v. Davis*, the United States Supreme Court held that the requirement to file an administrative charge with the Equal Employment Opportunity Commission (“EEOC”) prior to filing a discrimination lawsuit, which is set forth in Title VII of the Civil Rights Act of 1964 (Title VII), is not a “jurisdictional” requirement and is thus subject to waiver. This means that if an employer fails to promptly raise an objection based on an employee’s failure to file an administrative charge, courts may nonetheless have jurisdiction to preside over the case.

Background

Title VII prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. Before a complainant may file a Title VII action in civil court, a complainant must file a charge with the EEOC within 180 days of the alleged unlawful employment action. Upon receiving the charge, the EEOC notifies the employer and investigates the claim. In some instances, the EEOC may choose to bring a civil action against the employer; however, in most cases, the EEOC will issue a complainant a right-to-sue notice. Within 90 days of receipt of the right-to-sue notice, the complainant is entitled to commence a civil action against the employer. This process is often referred to as the “exhaustion of administrative remedies.”

Fort Bend County, Texas v. Davis

Attempting to seek redress for alleged harassment and retaliation for reporting sexual harassment to her employer, Fort Bend County, plaintiff Lois M. Davis submitted an intake questionnaire to the EEOC in February 2011 followed by a charge in March 2011. While her charge was pending with the EEOC, Davis was fired for failing to report to work on a Sunday when she attended church instead. Davis later attempted to supplement her charge by handwriting “religion” on the EEOC intake questionnaire she previously filled out, but she made no change to the formal EEOC charge documents. A few months later, she received a right-to-sue notice.

In January 2012, Davis filed a civil suit alleging discrimination based on religion and retaliation for reporting sexual harassment. Years into the litigation, during an appeal of an earlier motion for summary judgment, Fort Bend County moved to dismiss the case and asserted for the first time that the court lacked jurisdiction to decide Davis’s religion-based discrimination claim because she had not included the claim in her EEOC charge. The District Court held that Davis did not satisfy the charge-filing requirement with respect to the religion-based discrimination claim and that the requirement was “jurisdictional,” and could thus not be forfeited or waived by her employer. A jurisdictional bar to a claim precludes the court from considering the issue in controversy. The District Court therefore dismissed the religion-based discrimination claim because Davis never filed an administrative charge with the EEOC with respect to the religion-based discrimination claim.

The Fifth Circuit reversed the District Court’s decision and held that the charge-filing requirement is not jurisdictional and that Fort Bend County had waived

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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the defense since it was not timely raised.

On review, the Supreme Court held that while Title VII's charge-filing requirement is a mandatory claim processing rule, it is not a jurisdictional requirement affecting the authority of the courts. That is, a court may still have jurisdiction to consider a claim despite a complainant's failure to satisfy the charge-filing requirement.

Notably, although the Supreme Court held that "[y]ears into litigation" was too late to raise an objection to the charge-filing requirement, the Supreme Court's decision does not specify the appropriate time frame in which an employer must raise an objection to the charge-filing requirement before forfeiture. After this case, it is more important than ever that employers raise a failure to exhaust administrative remedies defense at the earliest possible stage of litigation.

Impact on California

Many discrimination claims filed in California arise under the Fair Employment Housing Act (FEHA) rather than Title VII. Like Title VII, FEHA prescribes specific charge-filing requirements that a complainant must satisfy before filing a civil lawsuit. While *Fort Bend County, Texas v. Davis* specifically analyzes only the charge-filing requirement under Title VII, California courts analyze FEHA claims in a similar manner, with California case law suggesting that an employer waives a defense of the charge-filing requirement if not timely raised. (See *Mokler v. County of Orange*, (2007) 157 Cal.App.4th 121.)

Takeaways

This case serves as a cautionary tale to employers. Employers should be vigilant about confirming whether complainants have met Title VII or FEHA's charge-filing requirement as soon as a lawsuit is filed, and if applicable, promptly raising an objection based on the failure to comply with the charge-filing requirement, or else risk forfeiting a potentially dispositive defense.

If you would like more information about this case, or have any questions related to employment claims arising under Title VII or FEHA, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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