

Charge of Discrimination is Not Jurisdictional

06.12.2019

On June 3, 2019, the U.S. Supreme Court unanimously ruled that the requirement under Title VII of the Civil Rights Act for employees to file an administrative charge of discrimination with the Equal Employment Opportunity Commission (EEOC) or equivalent state agency before going to court was procedural and not jurisdictional.

On June 3, 2019, the U.S. Supreme Court unanimously ruled that the requirement under Title VII of the Civil Rights Act for employees to file an administrative charge of discrimination with the Equal Employment Opportunity Commission (EEOC) or equivalent state agency before going to court was procedural and not jurisdictional.

Specifically, Title VII provides that workers must first file a “charge” outlining their legal claims with the commission or agency, which investigates the claims, before the worker files a lawsuit over the allegations in the charge. There was a split among the federal courts of appeal whether this requirement under Title VII is jurisdictional, such that it can be raised at any stage of a lawsuit, or procedural, such that it applies if timely raised but may be waived.

The decision in *Fort Bend County, Texas v. Davis*, ___ U.S. ___ (2019), resolves the split in favor of employees. As a result, courts may be able to hear claims under Title VII, even if the employee does not first file a charge with the appropriate federal or state administrative agency, provided the employer does not raise the issue as a defense to the employee’s claim. Notably, the ruling did not nullify Title VII’s requirement that claimants file charges with the EEOC or state agencies before going to court. But it establishes that employers can lose the defense if they wait too long to assert it.

Background Facts

In 2011, Lois Davis filed a charge of discrimination with the EEOC against her employer, Fort Bend County, Texas, alleging harassment and retaliation. Subsequently, the county terminated Davis for not working on a Sunday, notwithstanding her request to switch shifts because of an obligation at her church. After being terminated, she added to her EEOC intake questionnaire the word “religion” and checked the boxes for “discharge” and “reasonable accommodation” on the document. She did not amend her actual charge document. Davis later received a notice of right to sue from the EEOC, and filed a lawsuit against Fort Bend County alleging harassment, retaliation and religious discrimination.

Several years into the litigation, after Davis’ case had been on appeal and remanded to the trial court regarding her religious discrimination claim, Fort Bend County moved, for the first time in the case, to dismiss that claim. The county argued that the court lacked jurisdiction to hear it because Davis had not exhausted her administrative remedies by

filing a charge of religious discrimination with the EEOC. The trial court agreed, dismissing Davis' religious discrimination claim.

On appeal, the Fifth Circuit Court of Appeals reversed, finding that it did not matter whether Davis filed a charge of religious discrimination because the charge-filing requirement is not jurisdictional but rather a procedural requirement that can be waived. The Fifth Circuit determined that Fort Bend County waived the defense by failing to raise it in a timely fashion.

The county petitioned the U.S. Supreme Court to review the decision. The high court agreed to do so and ruled unanimously that the requirement is a procedural defense, not a jurisdictional issue, noting: "Defendants, after all, have good reason promptly to raise an objection that may rid them of the lawsuit filed against them."

Reminder for Employers

The court's decision does not remove the requirement of filing a charge of discrimination and is unlikely to have a significant impact on how employers handle discrimination lawsuits. Notably, in this case the employer did not raise the issue of Davis' failure to exhaust her administrative remedies through a charge of religious discrimination until five years into the litigation. However, the decision serves as a reminder to employers of the importance of promptly raising the issue when an employee fails to file a charge of discrimination.

Our Insights are published as a service to clients and friends. They are intended to be informational and do not constitute legal advice regarding any specific situation.