

LITIGATION

EMPLOYMENT >> ALERT

EMPLOYERS NEED TO PROMPTLY RAISE PLAINTIFF'S FAILURE TO FILE CHARGES WITH THE EEOC

In a unanimous opinion authored by Justice Ruth Bader Ginsberg, the U.S. Supreme Court recently ruled that Title VII's requirement that employees file a charge with the U.S. Equal Employment Opportunity Commission (EEOC) before commencing an action in court is a "prudential prerequisite to suit" rather than a jurisdictional rule.

In *Fort Bend County v. Davis*, an employer seeking dismissal of a federal claim on this ground can lose that right unless it promptly raises it.

FORT BEND COUNTY V. DAVIS

Title VII of the Civil Rights Act requires a complaining employee to file a charge with the EEOC before commencing an action in federal court. After receiving a charge, the EEOC notifies the employer of the allegations and may conduct its own investigation. Thereafter, the agency may issue a right-to-sue notice authorizing the complaining employee to file a federal claim pursuant to Title VII.

In *Fort Bend County v. Davis* (*Fort Bend*), Lois Davis filed a charge with the EEOC against her employer, Fort Bend County, Texas, for sexual harassment and retaliation for reporting sexual harassment. While her charge remained pending with the EEOC, Davis was terminated after she failed to report to work one Sunday due to a religious conflict. Davis attempted

THE BOTTOM LINE

With *Fort Bend*, the Supreme Court has set limits on an employer's ability to dismiss a Title VII claim when the employee failed to raise a parallel claim with the EEOC. The *Fort Bend* decision serves as a warning that employers should promptly conduct a careful review of a Title VII claim raised against them to ensure it was raised in the corresponding EEOC complaint and, if a discrepancy exists, promptly assert the affirmative defense that the complainant failed to raise the claim before the EEOC.

to revise her EEOC charge by writing "religion" on her intake questionnaire and checked boxes for "discharge" and "reasonable accommodation," but she did not formally amend the charge document.

The EEOC then notified Davis of her right to sue Fort Bend, and she commenced a civil suit in the Southern District of Texas, including for religious discrimination and retaliation for reporting sexual harassment. The District Court granted summary judgment to Fort Bend on all claims, and Davis appealed the dismissal with respect to her religious discrimination and retaliation claims to the Fifth

Circuit Court of Appeals. The Fifth Circuit affirmed the dismissal with respect to the retaliation claim, but reversed the dismissal of the religious discrimination claim and sent the case back to the District Court.

Years into the litigation, Fort Bend filed a motion to dismiss the remaining religious discrimination claim. Fort Bend asserted that because Davis failed to formally include that claim with her EEOC charge, the District Court lacked jurisdiction over it. The District Court agreed and granted Fort Bend's motion to dismiss. On a second appeal, the Fifth Circuit reversed, holding that Fort Bend forfeited the

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right to seek dismissal by failing to timely raise this jurisdictional argument.

The Supreme Court affirmed this Fifth Circuit ruling, finding that the charge-filing requirement is not a jurisdictional rule that can be raised at any point, but rather a mandatory procedural rule and a “prudential prerequisite to suit” that is forfeited by the employer unless raised in a timely manner.

A WARNING TO EMPLOYERS

While the *Fort Bend* ruling establishes a charge-filing requirement as a procedural rule, the Supreme Court

did not dictate precisely how long a defendant has to raise the defense before it is deemed waived, or if any exceptions will apply to this rule. The Court noted that plaintiffs have “scant incentive to skirt the instruction” and defendants “have good reason promptly to raise an objection that may rid them of the lawsuit filed against them.” Therefore, employers should promptly compare all allegations raised in a Title VII lawsuit to the complainant’s EEOC charge, and should promptly seek dismissal of any claims that were not formally included in the EEOC complaint.

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