

CLIENT ALERT
**SUPREME COURT UNANIMOUSLY REJECTS EMPLOYER'S LATE OBJECTION TO EMPLOYEE'S
EEOC DISCRIMINATION COMPLAINT**

June 7, 2019

The U.S. Supreme Court's recent decision in *Fort Bend County v. Davis*¹ resolves a split among federal circuit courts of appeal concerning whether the requirement that Title VII plaintiffs first file their discrimination charge before the Equal Employment Opportunity Commission ("EEOC") prior to suit is jurisdictional or procedural. The Supreme Court's decision, delivered by Justice Ginsburg on behalf of a unanimous court, concluded that Title VII's charge-filing procedure is not jurisdictional, which means that plaintiff Lois Davis may attempt to prove in court that she was discriminated against by her employer based on her religion, even though she did not first raise this claim before the EEOC.

Title VII of the Civil Rights Act of 1964 contains certain charge filing requirements that employment-discrimination plaintiffs must follow before filing suit in court. Employees are required to file a charge of discrimination with the EEOC or an analogous state agency within a specified time period. For employees in the private sector, the filing deadline for most charges is either 180 calendar days from the date of the discrimination or 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis. Once it receives a discrimination charge, the EEOC notifies the employer and investigates the allegations. If the EEOC finds "reasonable cause" that discrimination occurred, it may engage in informal methods of conciliation to eliminate the discrimination or it may bring a civil action in federal court. If the EEOC finds no reasonable cause that discrimination occurred, it must dismiss the charge and provide the complainant with a "right to sue" notice. Whether or not the EEOC acts on the charge, the complainant is entitled to a "right to sue" notice within 180 days of filing a charge.

In *Fort Bend County v. Davis*, the issue presented to the Supreme Court was whether plaintiff Lois Davis could maintain a discrimination suit against her employer on a claim of religion-based discrimination, which was not included in her original EEOC charge. Davis initially had filed an EEOC charge for sexual harassment and retaliation against her employer, petitioner Fort Bend County, after reporting that she was being sexually harassed by the director of her department. The director eventually was fired, but Davis alleges that she subsequently was retaliated against by her direct supervisor. While her EEOC charge was pending, Davis was told by her supervisor to report to work on an upcoming Sunday. Although Davis informed her supervisor that she had a church commitment that day, she was told by her supervisor either to show up for work or she would be terminated. Davis did not follow her supervisor's instruction and went to church that Sunday. She subsequently was terminated.

Following her termination, Davis attempted to supplement her EEOC intake questionnaire to add "religion" as part of the discrimination she allegedly suffered. However, she did not supplement the formal charge document. After the EEOC notified Davis of her right to sue, she commenced

¹ *Fort Bend County v. Davis*, No. 18-525, slip op. (U.S. June 3, 2019), a copy of which is available [\[here\]](#).

a civil action in the United States District Court for the Southern District of Texas, alleging discrimination based on religion and retaliation for reporting sexual harassment.

Following years of litigation, Davis' claims were dismissed on Fort Bend's summary judgment motion. On appeal, the Fifth Circuit Court of Appeals reversed the dismissal of her religion-based claim. When the case was remanded to the district court, Fort Bend moved to dismiss the complaint, and years later asserted for the first time that the court lacked jurisdiction over Davis' religion-based claim because Davis had not stated such a claim in her EEOC charge. Granting Fort Bend's motion, the district court held that Davis had not satisfied the EEOC's charge-filing requirement and dismissed the complaint on jurisdictional grounds. The Fifth Circuit reversed, holding that Fort Bend waited too long to raise its jurisdictional defense. The Supreme Court granted Fort Bend's petition for certiorari.

In its decision, the Supreme Court concluded that the requirement to file a charge with the EEOC or similar state agency is *not* jurisdictional. Instead, the Court found that the EEOC's charge-filing procedure is a "nonjurisdictional claim-processing rule" that may be enforceable if properly asserted by a party. However, the Court concluded that an objection based on such a nonjurisdictional rule may be forfeited if not timely raised, which was the case for Fort Bend.

The Supreme Court's ruling does not relieve employees from satisfying the EEOC's charge filing requirements prior to filing suit. However, it does place employers on notice to raise promptly and thereby preserve a failure to exhaust defense, especially in cases where an employee seeks to add additional claims in a lawsuit that were not part of the EEOC charge.

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If you have any questions regarding matters involving discrimination charges or EEOC matters in general, please contact Felicia Ennis or Martin Lee, or your regular Warshaw Burstein attorney.

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