

## ***Labor & Employment Alert***

# Employer Beware: The U.S. Supreme Court Allows a Plaintiff to Bypass the EEOC

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June 5, 2019

On June 3, 2019, in *Fort Bend County, Texas v. Davis*, the Supreme Court unanimously held that **federal courts can exercise jurisdiction over discrimination claims that were never brought before the Equal Employment Opportunity Commission (EEOC)**. This decision is profound as it resolves a long-standing conflict amongst the circuit courts.

Title VII of the Civil Rights Act of 1964 establishes a multi-step process that employment-discrimination plaintiffs must follow before they file a lawsuit. That process requires employees to file a charge of discrimination with the EEOC or an equivalent state agency within 180 days of the occurrence. The EEOC then investigates the charge. If the EEOC finds reasonable cause to believe the allegations, the EEOC will attempt to resolve the dispute informally. If informal resolution methods are unsuccessful, the EEOC may bring a civil action against the employer in court. If the EEOC determines that the charge is unsupported by evidence, the EEOC will dismiss the charge and notify the complainant of his or her right to sue in court.

In *Fort Bend County*, Ms. Davis filed a charge with the EEOC alleging sexual harassment and retaliation. While her charge was pending, Ms. Davis was terminated, allegedly for going to a church event on a Sunday instead of reporting to work. Davis attempted to supplement her EEOC intake questionnaire by handwriting "religion" on the form, but she did not amend the formal charge document. Months later, the EEOC informed Ms. Davis of her right to sue.

Ms. Davis filed a lawsuit in district court for the Southern District of Texas. Her retaliation claim was dismissed on summary judgment, but her religious discrimination claim remained. Years into the litigation, Fort Bend County asserted that Ms. Davis' religion claim should be dismissed because she did not assert the claim in her EEOC charge. The district court agreed and dismissed the religious discrimination claim, but the Fifth Circuit Court of Appeal reversed.

The Supreme Court granted certiorari to resolve a split among the Courts of Appeals regarding whether Title VII's charge-filing requirement is jurisdictional. The Court found that it is not. The court likened the EEOC's charge-filing

requirement to a processing rule that is waived if not timely asserted. In other words, **the filing of an EEOC charge is still mandatory, but the onus is on employers to ensure compliance.** The decision means that Ms. Davis may attempt to prove in court that her employer discriminated against her based on her religion, even though she did not properly raise that claim before EEOC.

Moving forward, employers should be mindful to carefully scrutinize employment lawsuits to verify that all claims were asserted before the EEOC. If new claims are asserted, employers should promptly object or risk litigating such issues.

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