

Employer Alert: SCOTUS Holds That EEOC Charge Processing Rules can be Waived by a Defendant Since they are not Jurisdictional

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By: Tom H. Luetkemeyer

On June 3, 2019, the Supreme Court of the United States made a ruling that employers and their legal counsel need to be aware of. In [Fort Bend County v. Davis](#), the Supreme Court ruled that the charge-filing requirements for EEOC discrimination claims filed under Title VII, including that Act's scope of charge and filing rules, are not jurisdictional and instead are claims processing rules which can be waived by a defendant if not timely raised in federal court proceedings. This decision resolves a split among multiple federal Circuit Courts which have confronted the issue.

The ruling reinforces the principle that the word “jurisdictional” is generally reserved for identifying classes of cases a court may entertain (subject matter jurisdiction) and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction).

Background on the case is as follows. The plaintiff filed a federal court action based on gender harassment, retaliation, and religious discrimination. Her initial charge before the state fair employment practices agency did not, however, include a claim of religious discrimination. While her initial charge was pending, she was assigned to work on a Sunday, and the employee informed her supervisor that she had a commitment at church. When the employee went to church instead of work, she was fired. The employee then attempted to supplement the allegations in her EEOC charge by handwriting “religion” on the intake questionnaire, and she also checked boxes for discharge and reasonable accommodation.



The case had an unusual procedural journey as the District Court initially granted the employer’s motion for summary judgment on all claims. The Fifth Circuit affirmed as to the plaintiff’s retaliation claim, but reversed on her religion-based discrimination claim. After the case was returned to the District Court, the employer filed a motion to dismiss based on the failure to comply with the charge filing requirements of Title VII, arguing that those requirements were jurisdictional and could be raised at any time. The Supreme Court noted that the motion on this basis was first raised “years into the litigation” and after the case had been to the Fifth Circuit and back.

The District Court granted the motion, ruling the procedural requirements of Title VII were “jurisdictional,” but the Fifth Circuit reversed, finding the requirement to be a “prudential prerequisite to suit, forfeited in the case because [the employer] did not raise it until after an entire round of appeals.” Writing for a unanimous court, Justice Ginsberg ruled that characterizing a rule as a limit on subject-matter jurisdiction “renders it unique in our adversarial system,” and the Court has historically stressed distinctions between jurisdictional prescriptions and non-jurisdictional claims processing rules which “seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain times.”

The Supreme Court held that a claims process rule may be mandatory in the sense that a court must enforce it if the party properly and timely raises it, but that same objection may be forfeited if a party delays in raising the defense. Ultimately, this led the Supreme Court to the conclusion that Title VII’s charge filing requirement is not “of jurisdictional cast.” Although a mandatory rule, Title VII’s charge-filing requirement is a processing rule which can be waived. Employers need to be aware of this significant holding, and must raise any objection on timing or scope of a Title VII claim at the earliest possible moment in a case proceeding in federal court.

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