


JUNE 4, 2019 | DISCRIMINATION, HARASSMENT & RETALIATION

Practice Pointer: Cross-Check EEOC Charges and Complaints Filed in Court

On June 3, 2019, the U.S. Supreme Court issued a unanimous decision in [*Fort Bend County, Texas v. Davis*, No. 18-525 \(2019\)](#)  – holding that the filing of an EEOC Charge is a non-jurisdictional claim-processing rule. What this means is Title VII's charge-filing precondition – i.e. requiring employees to go through the EEOC's administrative complaint process before filing a discrimination lawsuit – does not necessarily affect the adjudicatory authority of the courts to hear Title VII claims that were not properly raised before the EEOC. Ultimately, the onus is on employers to identify and raise potential issues regarding improper claims.

In 2010, the plaintiff – an employee of Fort Bend County, Texas – claimed that she was the victim of sexual harassment and retaliation. After filing a charge against Fort Bend with the Texas Workforce Commission (which was related to the EEOC), Fort Bend fired her for attending a church event instead of reporting to work. The plaintiff subsequently attempted to supplement her charge by handwriting “religion” on the intake questionnaire, but she did not amend the formal charge document. Upon receiving a right-to-sue letter, the plaintiff filed suit in federal district court alleging religious discrimination and retaliation for reporting sexual harassment.

The district court initially granted Fort Bend summary judgment on all the claims. However, on appeal, the Fifth Circuit Court of Appeals affirmed the district court's ruling as to the retaliation claim but reversed its ruling on the plaintiff's religious discrimination claim. When the case returned to the district court, Fort Bend argued that the court lacked jurisdiction to adjudicate the discrimination claim because the plaintiff did not state that claim in her EEOC Charge. The district court ultimately agreed and granted Fort Bend's motion to dismiss on the grounds that the plaintiff did not satisfy the charge-filing requirement and that the requirement qualified as jurisdictional.

That decision was also appealed to the Fifth Circuit where it was reversed. The Fifth Circuit held that Title VII's charge-filing requirement is not jurisdictional and is instead a prudential pre-requisite to suit. The Fifth Circuit held that Fort Bend had waited too long to raise the objection and it was therefore forfeited. Fort Bend appealed the case to the U.S. Supreme Court to determine once and for all whether Title VII's charge-filing is a jurisdictional requirement that can be raised at any stage of a proceeding or whether it is a procedural prescription mandatory if timely raised by the defending party or otherwise forfeited.

The Supreme Court ultimately affirmed the Fifth Circuit's opinion in holding that the obligation to file a charge is part of a plaintiff's procedural obligations but not a jurisdictional requirement. The Court stressed the distinction between jurisdictional prescriptions and non-jurisdictional claim-processing rules, which “seek to promote the

orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times.” Notably, the Court explained that a claim processing rule may be “mandatory” in the sense that a court must enforce the rule if a party “properly raise[s]” it, but an objection based on a mandatory claim-processing rule may be forfeited “if the party asserting the rule waits too long to raise the point.”

The question of how long an employer can wait before raising an objection or defense without risking forfeiture was not discussed by the Supreme Court. However, these issues will likely be litigated and developed in the lower courts going forward. What this means for employers is that they should closely examine and compare a plaintiff’s complaint filed in federal or state court against the administrative charge filed with the EEOC or state administrative agency.

To avoid potential issues, employers need to identify any potential discrepancies in claims filed with an administrative agency and claims filed in a Complaint immediately after the Complaint is filed. If a new claim is raised in a Complaint before a court, employers should take swift action to get those claims dismissed. In other words, employers should not and cannot wait to raise a failure to exhaust administrative remedies in litigation. Rather, employers should promptly file a motion to dismiss any claims that were not properly raised before the administrative agency.