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## SCOTUS Rules Requirement to File Charge Before Suing Under Title VII is Nonjurisdictional: Employers Must Raise Defense Timely

*Legal Alert*

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In *Fort Bend County, Texas v. Davis*, 139 S. Ct. 1843 (2019), the Supreme Court of the United States resolved a split among lower appellate courts over whether the requirement that employees file a charge with the Equal Employment Opportunity Commission (“EEOC”) before initiating suit under Title VII of the Civil Rights Act of 1964 (“Title VII”) is jurisdictional. The Court ruled that it was not jurisdictional, meaning that employers who do not timely object to a law suit filed under Title VII because of an employee’s failure to file a charge with the EEOC could lose the right to do so.

Title VII prohibits discrimination in employment on the basis of certain protected classes, such as race, gender, national origin, and (as alleged in *Fort Bend*) religion, and provides employees with the right to sue employers for such discrimination. However, before an employee can sue, Title VII requires the employee file a charge with the EEOC within 180 days of the alleged unlawful employment practice (or 300 days if the employee institutes proceedings with a similar state or local agency). While the EEOC may investigate and make determinations in response to a charge, it may not adjudicate it. Regardless of what the EEOC does, within 180 days of filing a charge, the employee is entitled to a “right-to-sue” notice.

In *Fort Bend*, the employee, alleging religious discrimination, failed to file a charge on that basis with the EEOC or an equivalent state or local agency. The employer did not seek dismissal of the action on the grounds that the employee failed to file a charge of discrimination until years into the litigation. The trial court determined that the requirement to file a charge was jurisdictional, *i.e.*, it could be raised at any time and required dismissal, and dismissed the action. The Fifth Circuit Court of Appeals disagreed and overturned the trial court’s ruling, holding the requirement was not jurisdictional, meaning the employer’s failure to raise it at the outset could mean that the employer’s right to assert that defense was lost. The Supreme Court unanimously sided with the Fifth Circuit, concluding the requirement to file a charge was not jurisdictional but, rather, was a claims-processing rule. Thus, the employer lost the right to challenge the employee’s lawsuit on the grounds that she failed to file a charge because the employer did not timely raise that objection.

### **What does this mean for employers and practitioners?**

The main takeaway from this opinion is that employers faced with violations of Title VII must be careful to promptly raise the defense, when available, that the employee failed to file a charge with the EEOC within the allotted time period. In many Circuit Courts of Appeal, including the Third Circuit, this has long been the law, while in other Circuits, employers could raise this defense at any time. Now, all employers must raise it timely. Employers and their counsel should be careful to do so.

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*If you have any questions about this legal alert, or are facing any complaints under Title VII and/or any state equivalents, please feel free to contact Jeremy Cole, Adam Gersh or any other member of Flaster Greenberg's Labor & Employment Department.*