



## Failure to File EEOC Charge Does Not Automatically Bar Title VII Claims, Supreme Court Says

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On June 3, 2019, the U.S. Supreme Court held that an employee may be able to proceed with a federal discrimination lawsuit, even if the employee has not first filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC). Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin, also requires that an employee pursue the EEOC's administrative process before being allowed to sue his or her employer in federal court. The issue before the Supreme Court was whether this requirement to exhaust administrative remedies is jurisdictional—meaning if the requirement is not met, a court lacks authority to hear the claims at all—or merely procedural, meaning a party would need to raise failure to exhaust administrative remedies as an affirmative defense to liability.

The Supreme Court confirmed the latter. In *Fort Bend County v. Lois M. Davis*, the employer waited years after litigation began to seek dismissal of the employee's Title VII religious discrimination claim on the basis that she had not filed a valid charge of discrimination. The lower court refused to dismiss the claim, holding that the requirement to exhaust administrative remedies was not jurisdictional, and that the employer had failed to timely raise the defense. The Fifth Circuit Court of Appeals upheld the trial court's decision. On Monday, the Supreme Court agreed with both lower courts.

This holding resolves a longstanding split among the federal appellate courts. Prior to the ruling, each of the First, Second, Third, Fifth, Sixth, Seventh, Tenth, and D.C. Circuit Courts had determined that the administrative remedies requirement was not jurisdictional. On the other hand, the Fourth Circuit (which includes Virginia, West Virginia, Maryland, North Carolina and South Carolina), along with the Ninth and Eleventh Circuits, had each held that an employee's failure to exhaust administrative remedies barred a court from hearing the claims. The *Fort Bend* decision therefore signals a reversal of the law on this issue for employers within the Fourth Circuit.

Importantly, the Supreme Court's ruling does not alter or eliminate the requirement that employees

engage in the EEOC administrative process before filing suit. Instead, it clarifies that an employer must affirmatively assert such defense within a reasonable time after litigation commences, or risk waiving it. Thus, employers facing Title VII lawsuits, and their counsel, must be careful to review and raise this issue early in litigation to preserve the defense.

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