



## U.S. Supreme Court Weakens Employer's Procedural Defense Against Bias Suits

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On Monday, June 3, 2019, the U.S. Supreme Court unanimously ruled that federal courts can hear Title VII discrimination claims even if employees fail to first file with an administrative agency, such as the Equal Employment Opportunity Commission ("EEOC") or a state equivalent. The ruling in *Fort Bend County v. Davis*, 587 U.S. \_\_\_\_ (2019), means an employee's failure to first file with an administrative agency does not result in a court automatically dismissing the suit.

On January 15, 2019, the Supreme Court granted certiorari in *Fort Bend County v. Davis*, which presented the question of whether Title VII's administrative exhaustion requirement is a jurisdictional prerequisite to suit or a waivable claim-processing rule. The case came before the Supreme Court after Fort Bend County appealed the Fifth Circuit's decision, which held a former employee's supplemental religious discrimination charge was valid even though the employee simply penned "religion" into the margin of a supplemental form first alleging retaliation and sex bias and failed to alert Texas' EEOC equivalent. Over four years into the litigation, Fort Bend County argued that the former employee failed to exhaust the EEOC process on her religious discrimination claim. The district court agreed and further held that the exhaustion requirement is jurisdictional. *Davis v. Fort Bend County*, 2016 WL 4479527 (SD Tex., Aug. 24, 2016). On appeal, the Fifth Circuit reversed, holding the exhaustion requirement is not jurisdictional and Fort Bend County forfeited its opportunity to timely assert its claim. *Davis. Fort Bend County*, 893 F.3d 300 (2018).

In an opinion written by Justice Ginsburg, the Supreme Court affirmed the Fifth Circuit's ruling and announced that Title VII's requirement that a plaintiff exhaust all administrative remedies before filing suit is a nonjurisdictional claim-processing rule that can be waived if not timely asserted by an employer. The Court reasoned that Title VII's mandatory charge-filing provisions are merely procedural obligations and not jurisdictional prescriptions shaping a court's adjudicatory authority. Further, the Court clarified that "a rule may be mandatory without being jurisdictional," 587 U.S. \_\_\_\_ (2019).

However, the Supreme Court's latest ruling does not rob employers of all defenses against bias suits. The Court stated, "[p]rerequisites to suit like Title VII's charge-filing instructions are . . . rules that must be timely raised to come into play," 587 U.S. \_\_\_\_ (2019). Therefore, employers can still timely raise failure to exhaust administrative remedies as a defense, but the defense is waivable and an employer will forfeit it if not timely raised. The Court's decision reconciles a deep circuit split on the issue. While eight circuits have ruled that pre-suit claim exhaustion is an element of a Title VII claim, three have held it's a jurisdictional obligation.

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