

## RAISE IT OR WAIVE IT: U.S. SUPREME COURT DECIDES THAT TITLE VII'S CHARGE-FILING REQUIREMENT IS NOT JURISDICTIONAL

In an unanimous decision authored by Justice Ginsburg, the U.S. Supreme Court recently announced that Title VII's charge-filing precondition is not a jurisdictional requirement but instead a mandatory claim-processing rule, which may be forfeited if the party asserting the rule waits too long to raise an objection.<sup>[1]</sup> This decision emphasizes the importance of timely employer action at the outset of a suit to object to a plaintiff's failure to abide by Title VII's charge-filing requirement.

Title VII of the Civil Rights Act of 1964 proscribes discrimination in employment on the basis of race, color, religion, sex or national origin and further prohibits an employer from retaliating against an employee for opposing unlawful discrimination or making or participating in a claim of unlawful discrimination.<sup>[2]</sup> Under Title VII, complainants are required to file a charge of alleged employment discrimination with the Equal Employment Opportunity Commission ("EEOC") and must receive a "right-to-sue" notice before commencing a federal civil action against an employer.<sup>[3]</sup>

In the underlying case, Lois Davis filed a charge against her employer, Fort Bend County ("Fort Bend"), alleging sexual harassment and retaliation for reporting the harassment. While her EEOC charge was pending, Davis was terminated when she failed to report to work on account of a Sunday church commitment. Although Davis attempted to supplement her pending EEOC charge, handwriting religious discrimination into her intake questionnaire form, she made no amendment to the formal EEOC charge document. Shortly thereafter, Davis received notice from the EEOC of her right to sue and commenced a civil suit against Fort Bend in a Texas district court, alleging both claims of retaliation for reporting sexual harassment and religious discrimination. Several years into the litigation, Fort Bend argued for the first time that the district court lacked jurisdiction to adjudicate the religious discrimination claim since Davis had not asserted the claim in her EEOC charge. While the district court agreed with Fort Bend and dismissed the case, the Fifth Circuit reversed, characterizing Title VII's charge-filing requirement as a "prudential prerequisite" to suit. In affirming the Fifth Circuit, the U.S. Supreme Court explained that unlike jurisdictional objections, which contest a court's ability to exercise its authority and may be raised at any point during litigation, a challenge on the basis of a mandatory claim-processing rule focuses on a party's failure to abide by certain procedural obligations and is enforceable by a court only where a party properly raises its objection. Where a party fails to raise a timely objection, enforcement of a claim-processing rule may be forfeited.

Since employers should always promptly raise objections that may rid them of a lawsuit filed against them, the court's recent decision is not particularly earth-shattering. Still, the court's ruling settles an established circuit split on the characterization of Title VII's charge-filing requirement and reminds employers that **time is of the essence** in asserting objections on the basis of Title VII's various claim-processing rules.

If you have any questions about how this decision will impact pending or future Title VII employment discrimination suits, please contact [Robin Sheridan](mailto:rsheridan@hallrender.com) at [rsheridan@hallrender.com](mailto:rsheridan@hallrender.com) or your regular Hall Render attorney.

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<sup>[1]</sup> *Fort Bend County, Texas v. Davis*, No. 18-525 (U.S. Jun. 3, 2019).

<sup>[2]</sup> 42 U.S.C. § 2000e-2(a)(1), § 2000e-3(a)-(b).

<sup>[3]</sup> 42 U.S.C. § 2000e-5(e)(1), (f)(1).