Legal Update Article

Snooze and Lose: Defendants Need to Raise Plaintiffs' Failure to File Charge Early in Litigation

By Nadine C. Abrahams, John M. Nolan &

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Meet the Authors

Nadine C. Abrahams

(She/Her)
Principal
312-803-2512
Nadine.Abrahams@jacksonlewis.com

John M. Nolan

Principal
267-319-7840
John.Nolan@jacksonlewis.com

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The requirement under Title VII of the Civil Rights Act that a complainant file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) prior to filing suit in federal court is a prudential, claim-processing rule that does not determine whether a court has subject-matter jurisdiction over the dispute, the U.S. Supreme Court has held in a unanimous ruling. *Fort Bend County, Texas v. Davis*, No. 18-525 (June 3, 2019).

Title VII

Title VII prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. It also prohibits retaliation against individuals who assert rights under the statute. 42 U.S.C. § 2000e-2(a)(1), 3(a).

Title VII further states that, as a precondition to filing suit in federal court, a person who alleges a violation of Title VII must file a charge with the EEOC (within 180 or 300 days of the alleged violation). See 42 U.S.C. § 2000e-5(e)(1), (f)(1).

The EEOC then informs the employer of the charge, investigates the allegations, and, based on the results of the investigation, grants the complainant a right-to-sue letter or pursues litigation itself.

Background

In this case, the plaintiff had filed a charge of sexual harassment and retaliation with the EEOC. While that charge was pending, the plaintiff was fired for refusing to work on a Sunday due to a church commitment.

The plaintiff then attempted to supplement her EEOC charge by handwriting "religion" and "discharge" on an EEOC intake questionnaire, but she made no formal change to her EEOC charge. She eventually received a right-to-sue letter from the EEOC and filed suit in federal court for sexual harassment, religious discrimination, and retaliation.

After several years of litigation, only the religious discrimination claim remained. The employer filed a motion to dismiss based on the plaintiff's failure to file a charge of religious discrimination with the EEOC. The district court granted the motion. The U.S. Court of Appeals for the Fifth Circuit reversed the district court, holding that the employer waited too long to raise the issue.

Supreme Court

The Supreme Court, affirming the appellate court ruling, held that subject-matter jurisdiction was never in doubt and any procedural objections to jurisdiction had been waived.

The Court explained that federal courts exercise jurisdiction over Title VII actions pursuant to 28 U.S.C. § 1331's grant of general federal-question jurisdiction, and Title

VII's own jurisdictional provision, 42 U.S.C. § 2000e-5(f)(3). Title VII's charge-filing requirements, on the other hand, are in separate provisions of Title VII, § 2000e-5e(1) and (f)(1). The Court said, "Those provisions do not speak to a court's authority ... or refer in any way to the jurisdiction of the district courts." Rather, it explained, Title VII's charge-filing provisions speak only to a party's procedural obligations. "Like kindred provisions directing parties to raise objections in agency rulemaking, ... follow procedures governing copyright registration, ... or attempt settlement, ... Title VII's charge-filing requirement is a processing rule, albeit a mandatory one, not a jurisdictional prescription delineating the adjudicatory authority of courts," the Court said. Further, the Court clarified, the mere fact that the rule "promotes important congressional objectives" does not make it jurisdictional.

Practical Application

There are a host of other claim-processing rules in laws enforced by the EEOC. These include the requirement that an employer have at least 15 (Title VII, Americans with Disabilities Act, Genetic Information Nondiscrimination Act) or 20 (Age Discrimination in Employment Act, Equal Pay Act) employees, and that the charge be filed within 180 or 300 days after the adverse employment action (depending on whether a plaintiff obtain a right-to-sue notice and that the lawsuit be filed within 90 days of the issuance of the right-to-sue notice). The Supreme Court's ruling is a reminder to raise any claim-processing rule issue early. Employers should raise the issue either as an affirmative defense in its initial answer or in an initial motion to dismiss, and, for courts that require an answer along with an initial motion to dismiss, in both.

Jackson Lewis attorneys Collin O'Connor Udell and Mara Finkelstein wrote an amicus brief on behalf of the National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association, International Municipal Lawyers Association, National Public Employer Labor Relations Association, International Public Management Association for Human Resources, and National School Boards Association in support of Fort Bend County.

Jackson Lewis attorneys are prepared to answer any questions you may have regarding this ruling and its impact.