

June 12, 2019

U.S. Supreme Court: Lack of EEOC Filing Not Absolute Bar to Title VII Claims

As our clients know, employees who wish to assert claims against their employer for discrimination in violation of federal law usually have to first file a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) or a similar state agency; when someone skips this requirement, their claims may be dismissed. On June 4, 2019, the Supreme Court ruled that, for claims arising under Title VII of the Civil Rights Act of 1964, this requirement is procedural rather than jurisdictional. This means that even though a lawsuit under Title VII can still be dismissed because of the plaintiff's failure to file an administrative charge before bringing suit, the employer waives that defense by failing to assert it early in the proceedings.

In *Fort Bend Cty. v. Davis*, the Plaintiff originally accused her employer of sexual harassment and retaliation, and later added claims of religious discrimination. Somewhat later in the case, the employer argued for dismissal because the Plaintiff never included the claim of religious discrimination in an administrative charge before she sued in federal court. The U.S. Court of Appeals for the Fifth Circuit rejected this argument because the employer did not raise it until years into the litigation. The Supreme Court affirmed the Fifth Circuit's decision.

Although the ruling does not remove an employee's obligation to file with an administrative agency, it places the burden on employers to raise the defense early in the lawsuit. This decision will likely have the greatest impact in cases where an employee files charges with an administrative agency, but adds claims in a lawsuit that were not included in the administrative charge. Because arguments over whether an employee's assertions in court filings are reasonably related to their earlier administrative filings can become technical, it remains essential for employers to recognize these discrepancies and raise any procedural defense early in the lawsuit to avoid waiver.

If you have any questions about the above ruling, or its impact on your pending EEOC charges and/or lawsuits, please contact John P. Keil, Daniel J. LaRose, or any other attorney at the Firm, at (212) 758-7600.

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747 Third Avenue
New York, N. Y. 10017
Tel: 212-758-7600
www.cfk-law.com