



## Supreme Court Holds That Title VII's Administrative Exhaustion Requirement Is Not A Jurisdictional Prerequisite To Suit

*Fort Bend County, Texas v. Davis*, No. 18-525

Decided June 3, 2019

Today, the Supreme Court unanimously held that Title VII's requirement that employment-discrimination plaintiffs present their claims to the Equal Employment Opportunity Commission ("EEOC") before filing suit is a mandatory claim-processing rule subject to ordinary principles of waiver and forfeiture, not a jurisdictional prerequisite that can be raised at any point during the litigation.

### Background:

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, requires employees to file a charge with the EEOC before suing an employer for discrimination. When it receives a charge, the EEOC must notify the employer and investigate the allegations. If the EEOC chooses not to sue, or if the EEOC cannot complete its investigation within 180 days, the employee is entitled to a "right-to sue" notice. That notice allows the employee to sue the employer for the claim(s) presented in the charge. In this case, an employer litigated a religious-discrimination claim for five years before arguing that the plaintiff did not properly raise the claim in her EEOC charge. The district court agreed, reasoned that Title VII's charge-filing requirement is a non-waivable jurisdictional rule, and dismissed the case for lack of jurisdiction. The Fifth Circuit reversed, reasoning that the charge-filing requirement is a waivable claim-processing rule, and that the employer forfeited any arguments based on that rule by raising them too late in the litigation.

*"[A] rule may be mandatory without being jurisdictional, and Title VII's charge-filing requirement fits that bill."*

Justice Ginsburg,  
writing for the unanimous Court

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## Issue:

Is Title VII's charge-filing requirement a non-waivable jurisdictional rule or a waivable claim-processing rule?

## Court's Holding:

Title VII's charge-filing requirement is a mandatory claim-processing rule that speaks to a plaintiff's procedural obligations and "must be timely raised to come into play." It is "not a jurisdictional prescription delineating the adjudicatory authority of courts" that may be raised at any point in the litigation.

## What It Means:

- The decision does not change Title VII's requirement that employees file a charge with the EEOC before suing an employer for discrimination. However, because this charge-filing requirement is a claim-processing rule, not a jurisdictional rule, employers must promptly raise any exhaustion-related defenses or risk waiver.
- The opinion might lead to increased litigation risks and costs for employers, as federal courts can exercise subject-matter jurisdiction over Title VII claims even when the plaintiff has failed to file a proper charge with the EEOC.
- The Court did not address whether the charge-filing requirement or other mandatory claim-processing rules are subject to equitable exceptions based on concerns for fairness and justice.

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As always, Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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