

CLIENT ALERT

Title VII Claim Proceeds Despite Failure to Amend EEOC Charge

June 10, 2019

The U.S. Supreme Court held in *Fort Bend County, Texas v. Davis*, No. 18-525 (June 3, 2019), that a Title VII claim of religious discrimination could proceed notwithstanding the failure to properly add that claim to the Charge of Discrimination filed with the Equal Employment Opportunity Commission (EEOC). In a unanimous Opinion authored by Justice Ginsburg, the Court concluded that the Title VII requirement that a charge be filed on a claim as a pre-condition to its assertion in a Title VII action in court was not a “jurisdictional” requirement that can be challenged at any stage of a proceeding. Resolving a conflict among the Courts of Appeals, the Court held that Title VII’s mandatory claim-processing rule is subject to forfeiture if not timely asserted.

In *Fort Bend County*, plaintiff Lois Davis attempted to supplement her sexual harassment and retaliation charge by handwriting the word “religion” on an Intake Questionnaire and checking boxes on that document for “discharge” and “reasonable accommodation.” She did not, however, amend her EEOC charge. The employer, Fort Bend County, did not challenge the religious discrimination claim on this basis until “[y]ears into the litigation,” when it was the only claim left standing following the grant of partial summary judgment. Fort Bend County moved to dismiss on the grounds this claim that was not set forth in the charge. The District Court granted that motion, and the Court of Appeals for the Fifth Circuit reversed.

The Supreme Court, in affirming the Fifth Circuit’s reversal, held that this Title VII charge-filing requirement was not jurisdictional. Jurisdictional mandates are, according to the Court, “generally reserved for prescriptions delineating the classes of cases a court may entertain (subject-matter jurisdiction) and the persons over whom a court may exercise adjudicatory authority (personal jurisdiction).” Mandatory claims-processing rules, in contrast, may be forfeited if the party asserting them waits too long to raise the point. The Court concluded that “a rule may be mandatory without being jurisdictional, and Title VII’s charge-filing requirement fits that bill.” The religious discrimination claim was allowed to proceed because this mandate is “properly ranked among the array of claim-processing rules that must be timely raised to come into play.”

Bottom line: The Supreme Court confirmed in *Fort Bend County* that, while Title VII claimants must still comply with the administrative pre-requisites to lawsuit, employers must not delay challenging their failure to do so. Any attempt by a plaintiff to assert a discrimination claim in court that was not stated in a charge should be promptly opposed.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Ellen Moran Dwyer

Partner – Washington, D.C.

Phone: +1.202.624.2574

Email: edwyer@crowell.com

Rebecca L. Springer

Partner – Washington, D.C.

Phone: +1.202.624.2569

Email: rspringer@crowell.com

Eric Su

Partner – New York

Phone: +1.212.803.4041

Email: esu@crowell.com

Ira M. Saxe

Partner – New York

Phone: +1.212.895.4230

Email: isaxe@crowell.com