

# Supreme Court Rules Employers Can Unwittingly Waive Requirement to Bring EEOC Charge Before Suit

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**SUMMARY:** Although employees remain obligated to bring their Title VII discrimination allegations to EEOC, or an equivalent office in the State government, before suing their employer, the failure to do so can only be asserted as a defense to the lawsuit if the employer raises it in the initial answer.

In a ruling that could limit employers' ability to dismiss discrimination suits filed against them, the Supreme Court sided with an employee who argued that her failure to file an EEOC charge before her lawsuit was not an outright bar to her claim. Rather, in its June 3rd opinion in the case of *Ft. Bend County v. Davis*, the high court unanimously held that the requirement for plaintiffs bringing discrimination claims under Title VII of the Civil Rights Act of 1964 to first file an administrative complaint with the EEOC, or a state analog, is merely a procedural hurdle and not a prerequisite for a court to hear a plaintiff's case. Even though an employee might violate Title VII by skipping that administrative step, this opinion establishes that an employer waives that defense by not raising it at the outset of the case. In other words, the burden is on the employer to raise the issue to the Court in a timely fashion.

Title VII imposes a multi-step process for employees who believe they have been the subject of illegal discrimination, where they must first submit the dispute to the EEOC for investigation. The EEOC can then try to resolve the case or sue the employer itself. If the EEOC decides not take action, the employee is then free to file her own suit. This "exhaustion of remedies" requirement is an important tool for employers, as it can deter employees who wish to initiate litigation immediately and possibly divert the claim into mediation.

This case emphasizes why employers should seek competent counsel as soon as they learn of any claim by an employee, whether for discrimination or otherwise. Even if an employee files an EEOC charge first, if her later lawsuit is different in some material way, the employer may be able to assert a failure to exhaust remedies defense, which may bar the claims that the employee failed to raise with the EEOC. A company that attempts to defend itself could forfeit this important right—which could not be cured by the later hiring of counsel.

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