Before an employee alleging employment discrimination under Title VII (on the basis of race, color, religion, sex, or national origin) may bring a lawsuit in federal court he or she must exhaust administrative remedies by bringing formal charges with the Equal Employment Opportunity Commission (EEOC) (or equivalent state agency).

The question the Supreme Court will decide in *Fort Bend County v. Davis* is if an employee fails to exhaust administrative remedies with the EEOC before filing a lawsuit is the lawsuit barred. The State and Local Legal Center *amicus brief* argues the answer to this question is yes.

Lois Davis claims she was fired for not reporting to work on a Sunday (she attended a church service), in retaliation for reporting that she was sexually harassed and sexually assaulted by a superior. She filed sexual harassment and retaliation charges with the Texas Workforce Commission. After investigating, the Commission told her she could sue and she brought a retaliation and religious discrimination lawsuit against Fort Bend. Fort Bend pointed out she didn’t exhaust her administrative remedies by filing a charge of religious discrimination with the Texas Workforce Commission.

Fort Bend argues that administrative exhaustion is a jurisdictional requirement of Title VII, meaning if an employee fails to satisfy it a court cannot hear the case. Davis argues that exhaustion is a “waivable claim-processing requirement” and that Fort Bend waived it waiting five years “and an entire round of appeals all the way to the Supreme Court” before raising it.

The Fifth Circuit held that the failure to exhaust administrative remedies is a waivable rule not a jurisdictional rule that would bar the lawsuit from proceeding. The lower court reasoned: “Here, Congress did not suggest—much less clearly state—that Title VII’s administrative exhaustion requirement is jurisdictional, and so we must treat this requirement as nonjurisdictional in character. The statute says nothing about a connection between the EEOC enforcement process and the power of a court to hear a Title VII case.”

Fort Bend argues courts may not “assume jurisdiction” over Title VII claims that were never brought before the EEOC because “[w]hen Congress establishes ‘a statutory scheme of administrative and judicial review,’ it generally intends to ‘preclude[ ] *** jurisdiction’ over claims that were not pressed through the requisite administrative channels.”

The SLLC *amicus brief* agrees with Fort Bend County and points out that the EEOC’s informal phases of investigation and conciliation promote judicial efficiency and resolution of disputes inexpensively and outside of court. The brief also explains how requiring employees to exhaust their administrative remedies is not burdensome and how holding that Title VII’s administrative exhaustion requirement is a mere claims-processing rule would impose significant costs on state and local governments.

Collin O’Connor Udell and Mara E. Finkelstein of Jackson Lewis wrote the SLLC *amicus brief* which was joined by the National Conference of State Legislatures, the National Association of Counties.
By:

Tuesday, March 5, 2019 at 03:56 PM

Tags:


[5], the National League of Cities [6], the United States Conference of Mayors [7], the International City/County Management Association [8], the International Municipal Lawyers Association [9], the National Public Labor Relations Association, the International Public Management Association for Human Resources, and the National School Boards Association.

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