



# Supreme Court Ruling Clears Way For \$350K Religious Bias Jury Award

Insights

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Following a decision by the U.S. Supreme Court several months ago allowing a former employee to pursue a religious discrimination claim, a Texas federal jury recently ordered her former employer to pay her \$350,000. The November 1 jury verdict came after the Supreme Court permitted her to pursue a claim under Title VII despite her failure to include the claim in her original charge with the Equal Employment Opportunity Commission (EEOC). The verdict reaffirms the risks and significant costs employers face in defending a claim — even one never filed with the EEOC — if it does not move to dismiss a complaint for failure to exhaust or, at a minimum, include this as an affirmative defense when answering the complaint.

## How Did We Get Here?

The case started when Lois Davis filed an internal complaint alleging Fort Bend County's IT Director subjected her to sexual harassment. Fort Bend investigated her complaint, and the IT Director later resigned as a result. Nonetheless, Davis filed a charge against Fort Bend with the Texas Workforce Commission (Texas' EEOC equivalent) claiming sexual harassment and retaliation. In doing so, she completed an intake questionnaire (a series of EEOC questions to determine coverage under Title VII) outlining the contours of her sexual harassment and retaliation claims.

The IT Director's resignation, however, did not resolve Davis' workplace complaints. She claimed her supervisor retaliated against her and eventually terminated her employment after she failed to report to work one Sunday due to a religious observation. After her termination, Davis amended her intake questionnaire — but not her charge — to include "religion" as another basis of discrimination. Shortly after, she filed a lawsuit in the U.S. District Court for the Southern District of Texas alleging sexual harassment, retaliation, and religious discrimination under Title VII. After the lower court dismissed Davis' claims, she appealed to the 5th Circuit Court of Appeals, which reversed the lower court's ruling on her religious discrimination claim and sent the case back for further proceedings.

On remand, Fort Bend argued to the lower court — *for the first time, five years into the lawsuit* — that Davis failed to exhaust her administrative remedies on the religious discrimination claim (i.e., she never included "religion" as a basis for discrimination in her charge with the EEOC). The lower court agreed with Fort Bend, holding that filing an administrative charge is a jurisdictional prerequisite in Title VII cases, and once again tossed Davis' lawsuit.

On appeal, however, the 5th Circuit once again sided with Davis, holding an administrative charge is simply an element of a workplace discrimination claim which can be waived by the employer. Ultimately, this meant Davis could pursue her religious discrimination claim because Fort Bend did not timely allege a “failure to exhaust” defense after Davis filed her lawsuit. The U.S. Supreme Court ultimately agreed, finding Title VII’s administrative exhaustion requirement is merely a claim-processing rule, and not a jurisdictional bar to filing a lawsuit. As a result, a federal court may retain jurisdiction over a discrimination claim even if an employee fails to allege the basis for such a claim in her administrative charge.

### **How Could This Have Been Avoided?**

Aside from the procedural takeaway, which we discussed in our June Supreme Court Alert (spoiler: you should scrutinize complaints and move to dismiss for failure to exhaust *at the earliest opportunity*), much of this could have been avoided if the employer had accommodated, or least made an effort to accommodate, Davis’ religious observance. Federal law – and several state laws – require employers to reasonably accommodate employees with sincerely held religious beliefs, practices, or observances that conflict with a work requirement. These requests often relate to work schedules, dress codes, and grooming policies.

What makes an accommodation “reasonable”? There is no hard and fast rule. However, in legal speak, an accommodation is not reasonable if it merely lessens, rather than eliminates, the conflict between religion and work. Meaning you have to accommodate the employee without unnecessarily disadvantaging the employee’s terms, conditions, or privileges of employment. Where there is more than one “reasonable” accommodation, you are not obligated to provide the employee’s preferred accommodation as long as the one you offer is deemed objectively reasonable in nature.

The exception to this rule is undue burden. You can refuse to provide a reasonable accommodation if it would pose an undue hardship, i.e., if the accommodation would impose “more than *de minimis* cost” on your business operations. If a proposed reasonable accommodation amounts to an undue burden, you are obligated to explore alternative accommodations.

### **Conclusion**

The key thing to remember is to engage in an interactive dialogue with the employee, suggest proposed accommodations (the onus isn’t solely on the employee), and document the process. Approaching the interactive process in good faith will minimize, if not completely resolve, any headaches further down the line.

And if litigation ensues, scrutinize the complaint and administrative record. If a claim is included in the complaint that was not part of the EEOC charge (or the EEOC’s investigation), work with your counsel to move to dismiss the claim at your earliest opportunity. As Fort Bend learned the hard way, there is a price to pay for not doing so.

*This Legal Alert provides an overview of a specific Supreme Court decision and subsequent trial proceedings. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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