

No. 19-20134

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

DOVIE LAVETTE WILLIAMS,

Plaintiff - Appellant,

v.

TH HEALTHCARE LIMITED, Park Plaza Hospital  
(Parent Organization: Amisub of Texas, Incorporated),

Defendant - Appellee.

---

On Appeal from the United States District Court  
for the Southern District of Texas, No. 4:18-cv-4116  
Hon. Lynn N. Hughes, United States District Judge

---

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION AS AMICUS CURIAE IN SUPPORT OF  
PLAINTIFF-APPELLANT AND REVERSAL

---

JAMES L. LEE  
Deputy General Counsel

JENNIFER S. GOLDSTEIN  
Associate General Counsel

ELIZABETH E. THERAN  
Assistant General Counsel

JAMES M. TUCKER  
Attorney

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Office of General Counsel  
131 M St. NE, Rm. 5NW10P  
Washington, D.C. 20507  
(202) 663-4870  
[James.Tucker@EEOC.gov](mailto:James.Tucker@EEOC.gov)

Table of Contents

Table of Authorities.....ii

Statement of Interest ..... 1

Statement of the Issues..... 2

Statement of the Case ..... 2

    1. Statement of Facts..... 2

    2. District Court Decision..... 3

Argument..... 4

    The district court erred in ruling that it lacked  
    jurisdiction over Williams’s ADA and Title VII claims  
    because she untimely filed her complaint..... 4

    I. Williams timely filed her complaint ..... 5

    II. It is settled law that timely filing of a complaint is not a  
    jurisdictional prerequisite under the ADA and Title VII..... 7

Conclusion ..... 9

Certificate of Service

Certificate of Compliance

Addendum

    Federal Rule of Civil Procedure 6(a) (excerpts)..... Addendum - 1

Table of Authorities

<u>Cases</u>	<u>Page(s)</u>
<i>Arbaugh v. Y &amp; H Corp.</i> , 546 U.S. 500 (2006) .....	8
<i>Davis v. Fort Bend Cty.</i> , 893 F.3d 300 (5th Cir. 2018).....	8
<i>Espinoza v. Mo. Pac. R.R. Co.</i> , 754 F.2d 1247 (5th Cir. 1985).....	8
<i>Fort Bend Cty. v. Davis</i> , 139 S. Ct. 1843 (2019) .....	7, 8
<i>Harris v. Boyd Tunica, Inc.</i> , 628 F.3d 237 (5th Cir. 2010).....	5, 8
<i>Jenkins v. City of San Antonio Fire Dep't</i> , 784 F.3d 263 (5th Cir. 2015).....	5
<i>Taylor v. Books A Million, Inc.</i> , 296 F.3d 376 (5th Cir. 2002).....	8
<i>Zipes v. Trans World Airlines, Inc.</i> , 455 U.S. 385 (1982) .....	9

Statutes

42 U.S.C. §§ 2000e *et seq.*..... 1

42 U.S.C. § 2000e-5(f)(1) ..... 5, 7

42 U.S.C. § 2000e-5(f)(3) ..... 7

42 U.S.C. §§ 12101 *et seq.*..... 1

42 U.S.C. § 12117(a) ..... 7

Rules

Fed. R. Civ. P. 6(a)..... 5

Fed. R. Civ. P. 6(a)(1)(A) ..... 5

Fed. R. Civ. P. 6(a)(1)(B) ..... 5

Fed. R. Civ. P. 6(a)(1)(C) ..... 5, 6

Fed. R. Civ. P. 6(a)(4) ..... 5

Fed. R. Civ. P. 6(a)(5) ..... 5

Fed. R. Civ. P. 6(a)(6) ..... 5

Fed. R. App. P. 29(a)(2) ..... 1

Statement of Interest

The Equal Employment Opportunity Commission (“EEOC”) is charged by Congress with responsibility for enforcing federal prohibitions on employment discrimination, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”), and the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (“ADA”). This appeal presents the question of the proper method for calculating the ninety-day period within which a private party must bring suit under Title VII and/or the ADA after receiving a notice of right to sue from the EEOC. This appeal also involves the issue of whether the timely filing of a Title VII and/or ADA complaint is a requirement going to the district court’s jurisdiction. Because of the importance of these issues to the effective enforcement of Title VII and the ADA, the Commission respectfully offers its views to the Court. As a federal agency, the EEOC is authorized to participate as *amicus curiae* in the courts of appeals. Fed. R. App. P. 29(a)(2).

### Statement of the Issues

1. Whether the district court erred in concluding that Williams's complaint was not timely filed.
2. Whether the district court erred in holding that timely filing of a complaint is a jurisdictional prerequisite under the ADA and Title VII.

### Statement of the Case

#### 1. Statement of Facts

According to her EEOC charge, plaintiff Dovie Williams began working for Park Plaza Hospital ("Hospital") as a Registered Nurse in December 2008.<sup>1</sup> District Court Docket Number ("R.") 1-2 at 1, 3. In July 2016, Williams made a written request to the Hospital for accommodation of her disability, because, she stated, "the accommodation that worked all these years would no longer be granted." *Id.* at 1. Williams subsequently met with the Hospital's HR Director and another management official, who informed Williams that her accommodation request had been denied. *Id.* Shortly thereafter,

---

<sup>1</sup> Defendant TH Healthcare Ltd. is a subsidiary of Tenet Healthcare Corporation. R.3-1 at 1. Until August 1, 2017, TH Healthcare Ltd. did business as Park Plaza Hospital. *Id.*

Williams was “written up for several reasons” and suspended before the Hospital terminated her employment on October 17, 2016. *Id.*

On January 17, 2017, Williams filed a charge of discrimination with the EEOC. R.1-2 at 1. She alleged that the Hospital’s conduct toward her was the result of race discrimination and retaliation because she was in “a dispute with [her] former employer regarding pay discrepancies between Black and White nurses.” *Id.* Williams further contended that the Hospital also “discriminated and retaliated” against her because of her disability. *Id.*

Williams, proceeding *pro se*, filed suit in district court on Monday, October 29, 2018, using a court-provided “complaint for employment discrimination” form. R.1 at 1, 6. She checked the box on the form indicating that the EEOC had issued her a notice of right to sue, and she wrote July 29, 2018, as the date she had received the notice. *Id.* The Hospital responded with a motion to dismiss the suit as untimely filed or, in the alternative, to compel arbitration. R.3 at 3.

## 2. District Court Decision

On January 28, 2019—after the Hospital filed its motion to dismiss but before Williams filed a response to that motion—the district

court held an “initial conference” with the parties. R.4. On that same day, the court issued a four-sentence order dismissing the suit. R.5. According to the court, because Williams filed her suit ninety-two days after she received her notice of right to sue, it lacked jurisdiction over her claims. *Id.* Citing no authority for its conclusion, the court dismissed Williams’s claims with prejudice. *Id.*

### Argument

The district court erred in ruling that it lacked jurisdiction over Williams’s ADA and Title VII claims because she untimely filed her complaint.

In ruling that it lacked jurisdiction over Williams’s ADA and Title VII claims because her complaint was untimely filed, the district court erred both legally and factually. The court was simply wrong that Williams’s complaint was untimely filed. Under the Federal Rules of Civil Procedure, Williams’s time period for filing her complaint ran through October 29, 2018—the date on which she filed it. And, in any case, under this Court’s settled precedent, a plaintiff’s filing of her Title VII or ADA complaint beyond the ninety-day statutory filing period does not deprive a court of jurisdiction over her claims.

I. Williams timely filed her complaint.

In Title VII and the ADA, Congress provided that an aggrieved individual has ninety days to file suit from the date she receives her right-to-sue notice from the EEOC. *See* 42 U.S.C. § 2000e-5(f)(1) (Title VII's ninety-day filing period); 42 U.S.C. § 12117(a) (ADA provision adopting § 2000e-5(f)(1)); *see also Harris v. Boyd Tunica, Inc.*, 628 F.3d 237, 239 (5th Cir. 2010) (recognizing Title VII's ninety-day filing requirement). When courts assess the timeliness of ADA and Title VII suits, they follow the time-computation rules set out in Federal Rule of Civil Procedure 6(a). *See, e.g., Jenkins v. City of San Antonio Fire Dep't*, 784 F.3d 263, 266 (5th Cir. 2015) (relying in part on Fed. R. Civ. P. 6(a)(1)(C) in assessing the timeliness of the plaintiff's Title VII suit).

Rule 6(a) provides that the statutory filing period excludes the day triggering it (i.e., the day Williams received her notice of right to sue), but includes every intermediate calendar day. Fed. R. Civ. P. 6(a)(1)(A), (B) (attached at Addendum - 1). In addition, if the last day of that filing period, so calculated, falls on a Saturday, Sunday, or legal holiday, the filing deadline is extended until the next non-holiday weekday. Fed. R. Civ. P. 6(a)(1)(C); *see also* Fed. R. Civ. P. 6(a)(4)-(6) (attached at

Addendum - 1) (defining, for purposes of Rule 6(a), the terms “last day,” “next day,” and “legal holiday”).

In this case, the record reflects—and the Hospital did not present any evidence to contest—that Williams received her notice of right to sue on July 29, 2018. *See* R.1 at 5; R.3 at 5. Also, the district court based its ruling on Williams’s having received her notice on that date. *See* R.5. Ninety days from July 29, 2018—not including July 29 itself but including all intermediate calendar days—was Saturday, October 27, 2018. Thus, the Hospital argued and the district court agreed, Williams’s complaint had to be filed no later than October 27. *See* R.3 at 4-5; R.5.

But both the Hospital and the court overlooked Rule 6(a)(1)(C). Because October 27 fell on a Saturday, Williams’s filing deadline was actually Monday, October 29, 2018. *See* Fed. R. Civ. P.6(a)(1)(C) (attached at Addendum - 1). As it is uncontested that Williams filed her complaint on October 29, 2018, there can be no genuine dispute that she filed it on time. The district court erred in holding otherwise.

II. It is settled law that timely filing of a complaint is not a jurisdictional prerequisite under the ADA and Title VII.

If this Court agrees that Williams's complaint was timely filed, this alone is sufficient grounds to vacate the district court's dismissal order. Nonetheless, the Commission addresses the court's second, legal error pertaining to jurisdiction because of its potential broader implications for other cases.

Both the ADA and Title VII confer federal subject-matter jurisdiction on the United States district courts. 42 U.S.C. § 2000e-5(f)(3); 42 U.S.C. § 12117(a) (ADA provision adopting the “powers, remedies, and procedures” set out in 42 U.S.C. § 2000e-5). As mentioned previously, Congress provided in these statutes that an aggrieved individual has ninety days to file suit from the date she receives her right-to-sue notice from the EEOC. *See supra* at 5 (citing 42 U.S.C. § 2000e-5(f)(1); 42 U.S.C. § 12117(a)). This complaint-filing provision is separate from these statutes' jurisdictional grants, and does not speak in jurisdictional terms or otherwise refer to the jurisdiction of the district courts. *See id.*; *cf. Fort Bend Cty. v. Davis*, 139 S. Ct. 1843, 1850-51 (2019) (holding that Title VII's pre-suit charge-filing requirement is not jurisdictional; noting that “Title VII's charge-filing

requirement is not of jurisdictional cast. . . . Those [charge-filing] provisions ‘d[o] not speak to a court’s authority’ . . . or ‘refer in any way to the jurisdiction of the district courts’”) (citations omitted) (affirming *Davis v. Fort Bend Cty.*, 893 F.3d 300 (5th Cir. 2018)); *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515 (2006) (holding that Title VII’s employee-numerosity requirement is not jurisdictional; recognizing that such provision “does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts”) (quoting *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982)).

This Court recognizes that the ninety-day filing requirement is to be “strictly construed,” and dismissal is generally appropriate when the plaintiff fails to meet that requirement. *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379-80 (5th Cir. 2002). This Court has also held, however, that this “ninety-day filing requirement is not a jurisdictional prerequisite, but more akin to a statute of limitations” and, accordingly, is “subject to equitable tolling.” *Boyd Tunica*, 628 F.3d at 239; *see also Espinoza v. Mo. Pac. R.R. Co.*, 754 F.2d 1247, 1248 n.1 (5th Cir. 1985) (same). *Cf. Fort Bend*, 139 S. Ct. at 1851 (“Title VII’s charge-filing requirement is a processing rule, albeit a mandatory one, not a

jurisdictional prescription delineating the adjudicatory authority of courts.”); *Zipes*, 455 U.S. at 393 (“[F]iling a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling.”).

Here, the district court ruled that it lacked jurisdiction over Williams’s claims because it believed she had filed her complaint outside the required ninety-day filing period. R.5. It cited nothing in support and did not mention, much less attempt to distinguish, *Boyd Tunica* or any other authority holding that timely filing is *not* a jurisdictional requirement under Title VII and/or the ADA. R.5. Moreover, the Hospital did not advance this jurisdictional argument in its motion to dismiss, and, accordingly, it cited no precedent even suggesting such a result. *See* R.3 at 4-5. The district court’s ruling here contravenes this Court’s long-settled precedent and, accordingly, constitutes legal error.

### Conclusion

For the foregoing reasons, the EEOC respectfully requests that this Court vacate the district court’s dismissal of the complaint.

Respectfully submitted,

JAMES L. LEE  
Deputy General Counsel

JENNIFER S. GOLDSTEIN  
Associate General Counsel

ELIZABETH E. THERAN  
Assistant General Counsel

s/ James M. Tucker  
JAMES M. TUCKER  
Attorney

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
131 M St. NE, Rm. 5NW10P  
Washington, D.C. 20507  
(202) 663-4870  
[James.Tucker@EEOC.gov](mailto:James.Tucker@EEOC.gov)

Certificate of Service

I certify that on June 19, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that for all participants in the case who are registered CM/ECF users (in this case, Defendant-Appellee), service of the foregoing brief will be accomplished by the appellate CM/ECF system. I further certify that on this same day one physical copy of the foregoing brief was served, via First Class Mail, postage prepaid, on Plaintiff-Appellant at her mailing address of record, as follows:

Dovie Lavette Williams  
3339 Angel Lane  
Houston, TX 77045

s/ James M. Tucker

JAMES M. TUCKER  
Attorney

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Office of General Counsel  
131 M St. NE, Rm. 5NW10P  
Washington, D.C. 20507  
(202) 663-4870  
[James.Tucker@EEOC.gov](mailto:James.Tucker@EEOC.gov)

Certificate of Compliance

I hereby certify that the foregoing brief complies with the type-volume requirements set forth in Federal Rule of Appellate Procedure 32(a)(7)(B). Excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 1,727 words, from the Statement of Interest through the Conclusion, as determined by the Microsoft Word 2016 word processing program, with 14-point proportionally spaced type for text and 14-point proportionally spaced type for footnotes.

s/ James M. Tucker

JAMES M. TUCKER  
Attorney

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Office of General Counsel  
131 M St. NE, Rm. 5NW10P  
Washington, D.C. 20507  
(202) 663-4870  
[James.Tucker@EEOC.gov](mailto:James.Tucker@EEOC.gov)

# ADDENDUM

Federal Rules of Civil Procedure Rule 6

Rule 6. Computing and Extending Time; Time for Motion Papers

**(a) Computing Time.** The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

**(1) *Period Stated in Days or a Longer Unit.*** When the period is stated in days or a longer unit of time:

**(A)** exclude the day of the event that triggers the period;

**(B)** count every day, including intermediate Saturdays, Sundays, and legal holidays; and

**(C)** include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

....

**(4) *“Last Day” Defined.*** Unless a different time is set by a statute, local rule, or court order, the last day ends:

**(A)** for electronic filing, at midnight in the court’s time zone; and

**(B)** for filing by other means, when the clerk’s office is scheduled to close.

**(5) *“Next Day” Defined.*** The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

**(6) *“Legal Holiday” Defined.*** “Legal holiday” means:

**(A)** the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day;

**(B)** any day declared a holiday by the President or Congress; and

**(C)** for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.