

SUPREME COURT RULES AGAINST PLAINTIFF IN PREGNANCY DISCRIMINATION CASE

Labor & Employment Law Alert -- May 19, 2009

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Reversing the 9th Circuit, and adopting the position of the 6th and 7th Circuit, the United States Supreme Court determined that AT&T had not violated the Pregnancy Discrimination Act when it calculated pension benefits without including time that women had been out on maternity leave prior to the change in the pregnancy related discrimination laws in 1979. Under the pension benefit plan in existence at the company prior to the change in the law, pregnancy leave was designated a personal leave as opposed to disability leave. This designation resulted in time out on pregnancy leave being subtracted from credited time for pension benefit purposes.

In *AT&T Corp. v. Hulteen*, which was handed down on May 18, 2009, the plaintiffs argued that despite the fact that there was no law in place which prohibited treating maternity leave differently from disability leave, they were subject to the present effects of past discrimination. The Supreme Court disagreed. The Court reasoned that there was no intent to discriminate against the plaintiffs and where, as was the case in this matter, the differential treatment was based on a bona fide seniority system, Section 703(h) exempted the differential treatment from liability under Title VII.

In an attempt to persuade the court to rule in their favor, the plaintiffs pointed to the recent actions of Congress in the Lilly Ledbetter Fair Pay Act and argued that the facts of Hulteen matter were similar to those which resulted in Congress ruling that statute of limitations on equal pay act claims began to run on each and every occasion that an employee received a pay check. The Supreme Court disagreed with this rationale instead pointing to the fact that unlike the *Ledbetter* case, the conduct of AT&T was legal at the time it was undertaken whereas it was against the law to discriminate in pay at the time Ledbetter was being paid different wages from her male counterparts for the same work. An additional rationale articulated by the Court included the fact that there should be predictability for both the employer who is responsible for payment of pension benefits as well as employees who are recipients.

Whether and to what extent there will be Congressional reaction to this decision remains to be seen. However, there appear to be sufficient differentiating factors in this case from the *Ledbetter* decision, most notably that the conduct in question was not illegal at the time it was undertaken. In all likelihood, any Congressional reaction is not likely to be as rapid as that in *Ledbetter*.