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U.S. Supreme Court Limits Employees' Ability to Challenge the Discriminatory Effects of Pay Decisions

Overview

In a win for employers, the United States Supreme Court has strictly construed and applied the statutory time limit for filing a claim for wage discrimination under Title VII of the Civil Rights Act of 1964, holding that an employee must file his or her claim within the statute-of-limitations period for each separate pay decision. Thus, employees cannot challenge the ongoing effect of pay decisions made outside that period because the later effects of past discrimination do not restart the clock for filing a charge of discrimination. *Ledbetter v. Goodyear Tire & Rubber Co.*, S. Ct., No. 05-1074 (May 29, 2007).

Ledbetter's Employment with Goodyear Tire & Rubber

Lilly Ledbetter began working at Goodyear Tire & Rubber Company in a supervisory role in 1979. In 1992, she began working as a salaried area manager, supervising shifts of hourly workers who operated the machines used to manufacture tires. Of the approximately 80 other area managers that Goodyear employed while she worked at the plant, only two were women.

Goodyear determined annual salary increases based on individual performance reviews conducted by salaried employees' supervisors at the end of each year. In such a review, the supervisor evaluated the salaried employee's performance, ranked the performance against that of other salaried employees, and then recommended a salary increase within a range established by Goodyear guidelines. Ledbetter's supervisor ranked her performance "at or near the bottom" of the other area managers almost every year between 1992 and 1997, and awarded her either a modest raise or no raise each year. Ledbetter's

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supervisor did not complete a performance review or consider her for a raise in 1997 because Goodyear planned to lay her off, yet Goodyear never did so. During 1997, Ledbetter's salary was 15% lower than the lowest paid male area manager and 40% lower than the highest paid area manager. In 1998, her supervisor again ranked her performance during 1997 near the bottom of the area managers and denied her a raise. In January 1998, Ledbetter began working in a manual labor role as a technology engineer. In November 1998, she accepted early retirement.

In March 1998, Ledbetter filed a questionnaire under Title VII with the Equal Employment Opportunity Commission (EEOC), and in July of that year she filed a formal charge of discrimination, alleging, among other charges, that she had received a low salary as an area manager because of her sex. In November 1999, after getting a right to sue notice from the EEOC, Ledbetter filed suit against Goodyear in the United States District Court for the Northern District of Alabama. She alleged that Goodyear's unlawful salary practices resulted in low paychecks, including paychecks she had received within the 180-day statutory period. However, she sought damages for the paychecks she had received for the entire period of the alleged discriminatory pay practices, which went back as far as 1992.

A jury found in favor of Ledbetter, awarding her more than \$3.8 million, which the trial judge reduced to \$360,000. The 11th Circuit overturned the verdict because Title VII's statutory period restricted Ledbetter's Title VII claim to discriminatory acts that occurred within 180 days of the date she filed the questionnaire with the EEOC and held that no reasonable jury could have found that the issuance of the paychecks was illegally motivated by sex discrimination.

The Supreme Court's Decision

In a 5-4 decision, the Supreme Court upheld the 11th Circuit's holding that Ledbetter's Title VII pay discrimination claim was untimely. The Court rejected all of Ledbetter's arguments, concluding that:

- the EEOC charging period is triggered when a discrete unlawful employment practice takes place;
- each evaluation or other decision resulting in lower paychecks was such a discrete act, not each paycheck;
- current effects of prior discriminatory acts cannot breathe life into prior, uncharged discrimination;
- Ledbetter could not shift the intent from one act (the act that consummates the discriminatory employment practice) to a later act (issuance of paychecks) that was not performed with

bias or discriminatory motive; and

- the short EEOC filing deadline reflects Congress's strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation.

The Court also rejected Ledbetter's reliance on the rule in *Bazemore v. Friday*, 478 U.S. 385 (1986), which stated that an employer violates Title VII and triggers a new EEOC charging period whenever the employer issues paychecks using a discriminatory pay structure, because Ledbetter did not present evidence that Goodyear initially adopted its performance-based pay system in order to discriminate on the basis of sex or that it later applied this system to her within the charging period with any discriminatory intent.

In a dissent written by Justice Ginsburg, the minority argued that the unlawful employment practice in question was the *current* payment of a salary infected by gender-based discrimination, which occurred each time Ledbetter received a paycheck. In other words, Ledbetter should have been able to allege a single "cumulative" wrong consisting of a succession of acts. Concerned by the majority's "cramped interpretation" of Title VII, the dissent invited Congress to pass legislation overturning the decision and effectuating the broad remedial purpose of Title VII.

Important Points for All Employers

- Employers can continue to rely on the 180 (or 300) day statute of limitations on claims under Title VII. However, employers may face an increased number of small claims because employees likely will be more vigilant about reporting alleged discriminatory conduct within this period in order to preserve a Title VII claim.
- Because the majority rejected the EEOC's view that Ledbetter's claim was timely and the dissent called on Congress to overturn this decision, the law in this area may remain in flux.
- Employers should be on the lookout for legislative action by Congress and/or administrative action by the EEOC. The day following the decision, several Democratic senators stated that they will introduce legislation the week of June 4, 2007 to overturn the effects of the decision. The EEOC also could modify its *Compliance Manual* to comport with the Supreme Court's decision while at the same time preserving to the greatest extent possible

an expansive view of pay claims.

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If you would like further information on any subject covered in this Advisory, please contact one of the attorneys listed below, any member of Mintz Levin's [Employment, Labor and Benefits Section](#), or the Mintz Levin attorney who ordinarily handles your legal affairs.

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