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LEGAL ALERT



## Legal Alert: Supreme Court Finds No Current Violation of Title VII Based on Pre-PDA Leave Credit Policy

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On May 18, 2009, the U.S. Supreme Court issued its 7-2 decision in *AT&T Corp. v. Hulteen*, holding that an employer does not necessarily violate the Pregnancy Discrimination Act (PDA) by paying pension benefits calculated, in part, based on a system that did not give full credit for time spent on pregnancy-related leave but did give full credit for other types of medical leave, where the pregnancy leave accrual policy was applied only prior to the enactment of the PDA. Further, the Court held that the employer's benefit calculation rule was part of a bona fide seniority system under § 703(h) of Title VII, which insulates it from challenge.

In this case, the employer provided pensions and other benefits based on a seniority system that relied on an employee's term of employment, which was the employee's period of service at the company, minus uncredited leave time. Before the PDA was enacted, the employer's policy gave full service credit for time spent on temporary disability leave but gave only partial credit for pregnancy-related leave. At the time, such a policy was lawful according to a 1976 U.S. Supreme Court decision, which held that a disability benefit plan excluding disabilities related to pregnancy was not sex-based discrimination within the meaning of Title VII.

In 1978, Congress amended Title VII by passing the PDA, which made it unlawful to discriminate against employees on the basis of pregnancy. The PDA overruled the 1976 Supreme Court decision and made it clear that it is discriminatory to treat pregnancy-related conditions less favorably than other medical conditions.

When the PDA became effective, the employer amended its policy for calculating pension benefits to give employees service credit for pregnancy leave on the same basis as leave taken for other disabilities. However, the company did not retroactively adjust the service credit calculations for women who were subject to the pre-PDA accrual policies.

The plaintiffs in this case sued the employer for sex and pregnancy discrimination under Title VII, claiming that the employer's pre-PDA policy of providing less service credit for pregnancy-related leave resulted in them receiving less in pension benefits than they would have received if they had been given full service credit for the pregnancy leave.

The Ninth Circuit ruled in favor of the employees. The Supreme Court agreed to review the case to resolve a split among the federal appeals courts

regarding whether reliance on a pre-PDA differential accrual rule to determine pension benefits constitutes a current violation of Title VII.

In holding that such a policy does not violate Title VII, the Supreme Court held that the pre-PDA accrual policy was based on a bona fide seniority system as permitted by § 703(h) of Title VII. The Court noted that "seniority systems are afforded special treatment under Title VII" because "their stability is valuable in its own right." Thus, under § 703(h), benefit differentials are permissible unless they are the result of intentional discrimination. Here, the Court found that the accrual policy was not the result of intentional discrimination because, at the time the policy was put into place, it was not unlawful sex discrimination to treat pregnancy-related leave differently from other types of leave.

Additionally, the Court held that the PDA does not apply retroactively, noting that there was "no indication at all that Congress had retroactive application in mind" when it enacted the PDA.

The Court permitted supplemental argument regarding the impact of the Lilly Ledbetter Fair Pay Act (adopted in response to the Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co.*), which amended Title VII to provide that an unlawful employment practice occurs when (among other times) an individual is affected by application of a discriminatory compensation decision or other practice.

Here, although Hulteen argued that she was affected "by application of a discriminatory decision or other practice," the Court disagreed, reiterating its determination that the accrual policy was not discriminatory because it was put into place before Congress enacted the PDA. The Court emphasized the fact that the employer amended its policy upon enactment of the PDA, further evidencing its lack of intent to discriminate.

#### **Employers' Bottom Line:**

This decision is good news for employers because a determination that the PDA applies retroactively could have required many employers to recalculate pension benefits for affected employees.

If you have any questions regarding this decision or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.