

Appeals Court Limits The Scope of Lilly Ledbetter Fair Pay Act

February 18, 2010

EMPLOYMENT BULLETIN - FEBRUARY 18, 2010

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In the first appellate-level opinion interpreting the Lilly Ledbetter Fair Pay Act of 2009, the Court of Appeals for the District of Columbia Circuit held in *Schuler v. PriceWaterhouseCoopers, LLC*, that an employer's denial of a promotion was not a "discriminatory compensation decision or other practice," within the meaning of the statute. In that case, the plaintiff acknowledged that his claim was untimely prior to the enactment of the Ledbetter Act but argued that the new law extended the statute of limitations and thus revived his claim. The Court rejected this, explaining that the Ledbetter Act was limited to claims of pay discrimination.

The Ledbetter Act, signed into law in early 2009, was the Obama administration's first major piece of employment legislation and was intended to overturn the U.S. Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co.* In that case, Lilly Ledbetter had sued her employer for gender discrimination after discovering that she had been receiving less pay than male employees performing the same work. She had alleged that during her almost 20-year employment at Goodyear, she had received poor evaluations because of her sex and, as a result, her pay was not increased as much as it would have been if she had been evaluated fairly. The Supreme Court concluded that her claim was untimely, explaining that the time for filing a charge of discrimination runs from when an employer makes a discriminatory decision about an employee's compensation and not each time the employee receives a paycheck affected by that discrimination. Because Ledbetter had filed her charge long after the allegedly discriminatory performance evaluations, the Supreme Court ruled that Ledbetter's claim was time-barred. The Ledbetter Act reverses this holding, providing that the time period for filing a charge runs from each paycheck that is the result of a "discriminatory compensation decision or other practice." The statute does not define what conduct is covered by the phrase "other practice," causing some commentators to speculate that the new law might be broader than what was at issue in *Ledbetter v. Goodyear*.

This was precisely the issue in *Schuler v. PriceWaterhouseCoopers, LLC*. In that case, the plaintiffs were employed in the Washington, D.C. offices of PriceWaterhouseCoopers. They filed suit in 2005 under the federal Age Discrimination in Employment Act alleging that they had been denied promotion to the partnership on several occasions in 1999, 2000, 2001, and 2004 because of their age. The district court dismissed most of plaintiff Harold Schuler's ADEA claim as untimely, because he had failed to file a charge of discrimination with the EEOC within 300 days of the alleged acts of discrimination.

On appeal, Schuler conceded that his claim was untimely prior to the enactment of the Lilly Ledbetter Fair Pay Act, but argued that the statute revived his claim. He contended that the defendant's decision not to promote him to partner was an "other practice" intertwined with a discriminatory compensation decision, because as a regular employee he received significantly less compensation than he would have as a partner. The appellate court rejected this reasoning, holding that "in employment law, the phrase 'discrimination in compensation' means paying different wages or providing different benefits to similarly situated employees, not promoting one employee but not another to a more remunerative position." The Court also disagreed with Schuler's argument that the phrase "other practice" demonstrated Congress' intent to cover more than wage discrimination. In its view, Congress drafted and passed the Ledbetter Act to overturn *Ledbetter v. Goodyear*, and thus the statute was directed at the specific form of discrimination in that case, not any other unspecified types of employment discrimination. Thus, the Court affirmed the district court's dismissal of Schuler's ADEA claims as untimely.

Since its passage early last year, the plaintiffs' bar has claimed that the Ledbetter Act's "other practice" language extends the time to file a charge of discrimination for many types of discrimination, not just pay discrimination. The D.C. Circuit's decision in *Schuler* is significant because it rejects this broader view of the law. However, other courts of appeals in the country have yet to weigh in on the issue and may reach a different conclusion.