

Management Alert

Supreme Court Limits Pay Discrimination Claims

On May 29, 2007, the U.S. Supreme Court issued an important ruling for employers titled *Ledbetter v. Goodyear Tire & Rubber Co.*, No. 05-1074 (U.S. May 29, 2007). In a 5 to 4 decision, the Supreme Court held that to challenge alleged pay discrimination under Title VII, employees must file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) within 180 or 300 days, depending on the state, after each allegedly discriminatory pay decision. Otherwise, the claim will be barred by Title VII's statute of limitations. There are three key aspects to the case, each of which is explained below.

What Did The Supreme Court Decide?

The Supreme Court grappled with a deceptively simple issue that could arise in almost any workforce. An employer annually reviews its employees' performance and ties the results to incremental raises. One year the employer gives an employee a discriminatory performance review and pay adjustment, but the employee does not file a charge of discrimination with the EEOC within the required time period (180 days for states that do not have fair employment practices agencies, or 300 days in states that have such agencies). After that, the employer always fairly evaluates and pays the employee. Yet, because each year's incremental pay raise is based on an employee's current pay, that prior discriminatory evaluation and pay adjustment continue to have negative rippling effects on the employee's pay throughout her

employment. When the employee retires, she sues and asserts that the discrimination that occurred years ago negatively affected her for years thereafter, even resulting in a lower 401(k) retirement plan balance and smaller Social Security checks. The question posed in *Ledbetter* was whether such an employee can proceed with her claim even though she did not file an EEOC charge within 180 or 300 days of the discriminatory performance review and adjustment? The Supreme Court held that the employee cannot maintain a suit based on that past discrimination.

Lilly Ledbetter worked for Goodyear Rubber & Tire Co. (Goodyear) in Alabama. She claimed that in the early 1980s and mid-1990s her male supervisors gave her poor evaluations because of her sex, which resulted in her pay being lower than it would have been if she had been evaluated fairly. Ledbetter further claimed that because each year's raise was based on her current pay, those past pay decisions depressed the level of her pay throughout her employment, so that by the time she retired in 1998, she was earning significantly less than her male colleagues. After she retired, Ledbetter filed an EEOC charge of sex discrimination and sued Goodyear for pay discrimination. She won in the trial court, but the U.S. Court of Appeals for the Eleventh Circuit in Atlanta overturned the verdict, finding that her claim was time-barred because the only discriminatory actions the employer committed were far outside of Title VII's 180-day

statute of limitations for claims in Alabama. The Eleventh Circuit rejected Ledbetter's argument that each paycheck she received after the discriminatory evaluations in the early 1980s and mid-1990s were themselves actionable discrimination.

The Supreme Court granted review of the case to decide the question "[w]hether and under what circumstances a plaintiff may bring an action under Title VII of the Civil Rights Act of 1964 alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentionally discriminatory pay decisions that occurred outside the limitations period."

The Supreme Court held that because the later effects of past discrimination do not restart the clock for filing an EEOC charge, Ledbetter's claim was untimely. In reaching this conclusion, the five-member majority emphasized three main points. First, the bedrock rule is that the time to file an EEOC charge is triggered when a discrete unlawful practice takes place. In Ledbetter's case, she claimed that the discrete unlawful practice took place when she was evaluated and given a lower raise because of her sex in the early 1980s and mid-1990s. The Supreme Court held that a new Title VII violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination. In other words, even though discrimination occurring back in the early 1980s and mid-1990s may have adversely affected Ledbetter's pay for years thereafter, those subsequent consequences did not give rise to any separate discrete unlawful practice, because current effects alone cannot breathe life into

prior, uncharged discrimination. In sum, the Supreme Court found that Ledbetter's attempt to shift forward the intent associated with prior time-barred discriminatory acts was unconvincing, because it would shift focus away from the act that consummated the discriminatory employment practice to a later act not performed with bias or discriminatory motive, and result in imposing liability in the absence of any discriminatory intent by the employer within the actionable time period.

Second, the Supreme Court observed that Ledbetter's argument also would distort Title VII's "integrated, multistep enforcement procedure." The Supreme Court stated that the short EEOC filing deadline reflects Congress' strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation. Writing for the majority, Justice Alito observed that Ledbetter's claims of sex discrimination turned principally on the misconduct of a single Goodyear supervisor, who, Ledbetter testified, retaliated against her when she rejected his sexual advances during the early 1980s, and did so again in the mid-1990s when he falsified deficiency reports about her work. Yet, by the time of trial, this supervisor had died and therefore could not testify. The Supreme Court noted that a timely charge might have permitted this evidence to be weighed contemporaneously.

Finally, the Supreme Court found that Ledbetter mistakenly relied on the Supreme Court's statement in *Bazemore v. Friday*, 478 U.S. 385 (1986), that "[e]ach week's paycheck that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII." In that case, the state employer merged previously segregated branches but continued a dual pay scale under which

black employees were paid less than white employees. The Supreme Court held in *Bazemore* that when an employer adopts a facially discriminatory pay structure that puts some employees on a lower scale because of race, the employer engages in intentional discrimination whenever it issues a check to one of these disfavored employees. *Bazemore* stands for the proposition that an employer that adopts and intentionally retains such a pay structure can surely be regarded as intending to discriminate on the basis of race as long as the structure is used. The Supreme Court distinguished *Bazemore* by stating that, “[b]ecause Ledbetter has not adduced 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 animus, *Bazemore* is of no help to her.”

Justice Ginsburg wrote the opinion for the four dissenting justices. She believed that Ledbetter’s claim was timely because “[t]hrough component acts fell outside the charge-filing period, with each new paycheck, Goodyear contributed incrementally to the accumulating harm.” She urged Congress to pass legislation to undo the majority’s holding.

What Does The *Ledbetter* Decision Mean To Employers?

Employers should draw three broad lessons from *Ledbetter*. First, the decision clarifies the law in a pro-employer way. Prior to this decision, some courts, and the EEOC, held that pay discrimination claims like Ledbetter’s were not barred by Title VII’s 180-day or 300-day limitations period. The Supreme Court flatly rejected those

decisions and the EEOC’s approach. Had Ledbetter’s argument prevailed, employers could have been liable for discriminatory actions taken decades ago that had rippling effects over the years. In rejecting that approach, the Supreme Court emphasized that the focus should instead be on whether any intentionally discriminatory action was taken within 180 days or 300 days (depending on the state) before the employee filed his/her EEOC charge. The difference in approaches is dramatic, and the Supreme Court’s decision takes the most pro-employer approach possible. Further, it is possible that the Supreme Court’s holding could give employers a powerful weapon in defending against claims of discrimination other than just pay discrimination. *Ledbetter* arguably applies to any case where the plaintiff’s harm arose from an action that occurred outside of the limitations period.

Second, the *Ledbetter* decision sends a redemptive message to employers that, as a general matter, what matters in the eyes of the law is how they behave now, and not how their prior managers from the distant past may have acted. This message encourages a focus on current employment law compliance, fair pay practices, training, and implementing and adhering to HR best practices. The message also reinforces previous Supreme Court doctrine that employers may avoid liability for punitive damages in employment discrimination cases by establishing that they make reasonable good faith efforts to comply with the law, see *Kolstad v. Amer. Dental Ass’n.*, 527 U.S. 526 (1999), and may avoid liability altogether in some harassment cases by exercising reasonable care to prevent and correct promptly any harassing behavior. See *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998). Like these decisions, *Ledbetter* rewards employers for taking

the right steps to ensure legal compliance in the present.

Third, *Ledbetter* serves a salutary purpose of focusing lower courts on the importance of identifying a specific discriminatory action before allowing a discrimination case to proceed to trial. Some plaintiffs attempt to base pay discrimination cases on alleged systemic pay disparities—even though no specific intentionally discriminatory action is ever identified by the plaintiff. This is especially prevalent in multi-plaintiff and class action cases.

Ledbetter's emphasis on the importance of identifying a specific discriminatory action gives employers ammunition to defend against such vague attacks.

How Will Congress Respond?

In immediate reaction to the Supreme Court's ruling, several Democrats in Congress—including Senators Edward Kennedy, Tom Harkin, Hillary Rodham Clinton, and Barbara Mikulski—announced plans to introduce a bill to nullify the Supreme Court's ruling and amend Title VII to allow lawsuits in situations similar to *Ledbetter's*. Senator Kennedy said, "Yesterday's Supreme Court decision creates an unacceptable obstacle to employees' pay discrimination claims. This is not what Congress intended when we passed the landmark Civil Rights Act of 1991. We are all dedicated to ensuring that workers may seek redress in the courts each and every time they are subjected to unlawful pay discrimination."

If you have any questions concerning this Management Alert, please contact the Seyfarth Shaw LLP attorney with whom you work or any labor & employment attorney on our website at www.seyfarth.com.

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