

Client Bulletin

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Avoiding Workplace Litigation After *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*

This past May, the United States Supreme Court decided *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 127 S. Ct. 2162 (2007). The case involved a lawsuit by a female retiree (Lilly Ledbetter) against her former employer (Goodyear) alleging that sexual discrimination through job evaluations during her employment resulted in lower pay than her male colleagues. In March 1998, Ledbetter submitted a questionnaire to the Equal Employment Opportunity Commission (EEOC) alleging sex discrimination and, in July 1998, filed a formal EEOC charge. After retiring in November 1998, Ledbetter commenced an action against Goodyear asserting claims under Title VII and the Equal Pay Act.

The District Court dismissed Ledbetter's Equal Pay Act claim, but allowed her Title VII pay discrimination claim to proceed to trial. After a jury trial, Ledbetter was awarded more than \$3 million in back pay and compensatory and punitive damages, which the trial judge reduced to \$360,000. Goodyear appealed, arguing that Ledbetter's pay discrimination claim was time-barred with respect to all pay decisions made prior to September 26, 1997, *i.e.*, 180 days before filing her EEOC questionnaire. Under Title VII, an employee challenging an employment practice based upon sexual discrimination must first file a charge with the EEOC within a specified period (180 or 300 days depending upon the state) "after the alleged unlawful employment practice occurred." An employee's failure to timely submit an EEOC charge prohibits that employee from challenging that practice in court.

The United States Court of Appeals for the Eleventh Circuit reversed holding that a Title VII pay discrimination claim cannot be based on any pay decision that occurred prior to the last pay decision which affected the employee's pay during the 180-day EEOC charging period. The Court of Appeals also held that there was insufficient evidence that Goodyear acted discriminatorily in its pay decisions denying Ledbetter a raise in 1997 and 1998. Ledbetter then appealed to the United States Supreme Court.

The Supreme Court, in a 5-4 decision, held that employees may not bring a lawsuit under US anti-discrimination law unless they have filed formal complaints with a federal agency within 180 days after their pay was set. A pay-setting decision is a "discrete act" under Title VII and the EEOC charging time period is triggered when the act occurs. This timeline applies even if the discriminatory act was not immediately apparent to the employee, and regardless of whether the discrimination continues to the present day.

In its decision the Supreme Court rejected Ledbetter's argument that each paycheck that reflects the initial discrimination is itself a discriminatory act, resetting the 180-day time period. The majority opinion by Justice Alito, held, "current effects alone cannot breathe life into prior, uncharged discrimination." Accordingly, "Ledbetter should have filed an EEOC charge within 180 days after each allegedly discriminatory pay decision was made and communicated to her."

In the dissenting opinion, Justice Ginsburg wrote that the majority opinion "overlooks common characteristics of pay discrimination" as many employees, due to usual workplace secrecy, have no idea within 180 days that they

receive lower pay than their colleagues. Justice Ginsburg also wrote that initial small disparities in pay may not be objected to by employees, typically women and minorities trying to succeed in the workplace, but these disparities “will expand exponentially over an employee’s working life as raises are set as a percentage of prior pay.” Justice Ginsburg invited Congress to overturn the decision through legislation.

In July 2007, the United States House of Representatives passed the Ledbetter Fair Pay Act of 2007. This legislation is an attempt to overturn the Supreme Court’s *Ledbetter* decision by amending Title VII to allow a “rolling” statute of limitations, *i.e.*, every paycheck represents a new act of discrimination. The legislation is currently being considered by the US Senate. If the Senate passes this legislation, it must be signed by the President before becoming law. President Bush has already stated that if the legislation reached his desk it would be vetoed essentially because the bill would result in countless lawsuits in a society that is already too litigious.

With the US presidential election taking place in November 2008, a new administration may believe that such legislation serves an important purpose to correct sexual discrimination in the workplace. When awarding pay raises, employers serve themselves well by carefully documenting why an employee received a particular raise to avoid any potential discrimination claim at a later date.



If you would like more information regarding the *Ledbetter* decision or the congressional legislation, please contact:

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