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Measuring the Impact of High Court's 'Ledbetter' Ruling

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The United States Supreme Court has held in a 5-4 opinion that disparate treatment pay discrimination claims under Title VII of the Civil Rights Act of 1964, as amended, must be filed within 180 days (or 300 days, depending upon the state) after the alleged discriminatory pay decision, not within 180 (or 300) days after the plaintiff's last paycheck. *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, __ S.Ct. __, 2007 WL 1528298 (May 29, 2007). This decision makes it more difficult for employees to challenge the cumulative effects of past discriminatory pay decisions.

THE FACTS

Lilly Ledbetter was a supervisor at Goodyear Tire & Rubber Co.'s Gadsden, Ala., plant from 1979 until she took early retirement in November 1998. During most of her employment, salaried employees were given or denied pay raises based on their supervisors' evaluation of their performance. By the end of her employment by Goodyear, Ledbetter was paid significantly less than any of her male colleagues; by the end of 1997, Ledbetter was the only female working as an area manager, and the pay discrepancy between Ledbetter and her 15 male counterparts was stark: Ledbetter was paid \$3,727 per month, and the male area managers were paid from a low of \$4,286 to a high of \$5,236.

Ledbetter never filed a charge of sex discrimination in pay until near the end of her tenure with Goodyear. Ledbetter submitted a questionnaire to the EEOC in March 1998, filed a formal charge with EEOC in July 1998 and, after her November 1998 retirement, filed suit alleging, among other things, that she was subjected to pay discrimination due to her sex in violation of Title VII and the Equal Pay Act.

DISTRICT COURT PROCEEDINGS

The district court granted summary judgment to Goodyear on some of Ledbetter's claims, including her EPA claim, but allowed her Title VII disparate treatment pay claim to proceed to trial.

At trial, Ledbetter introduced evidence that during the course of her employment, some of her supervisors had given her poor performance evaluations and smaller pay increases due to her sex. These allegedly discriminatory decisions continued to affect her pay level throughout her employment and resulted in her being paid significantly less than

her male comparables toward the end of her employment.

Goodyear denied that any of the evaluations and pay increases were discriminatory.

However, the jury found in favor of Ledbetter and awarded her back pay and damages.

COURT OF APPEALS PROCEEDINGS

On appeal, Goodyear contended that Ledbetter's pay discrimination claim was time barred with respect to all pay decisions made more than 180 days prior to her filing the EEOC questionnaire in March 1998 and that no discriminatory pay decisions occurred after that date. The 11th U.S. Circuit Court of Appeals agreed with Goodyear and reversed the jury award in favor of Ledbetter. The 11th Circuit held that a Title VII pay discrimination claim could not be based on any pay decision that occurred prior to the 180-day period for timely filing of an EEOC charge and that there was insufficient evidence to show that the two pay decisions made by Goodyear within that 180-day period -- a denial of a raise in 1997 and again in 1998 -- were made with discriminatory intent.

SUPREME COURT PROCEEDINGS

Ledbetter filed a petition for a writ of certiorari with the Supreme Court, asking the Court to review: "Whether and under what circumstances a plaintiff may bring an action under [Title VII] alleging illegal pay discrimination where 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, in a 5-4 decision, affirmed the 11th Circuit



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decision that Ledbetter's pay discrimination claims were time barred. Justice Samuel Alito, writing on behalf of the majority, noted that "Ledbetter asserted disparate treatment, the central element of which is discriminatory intent."

However, Ledbetter did not assert that Goodyear's decision makers acted with actual discriminatory intent either when they issued her checks within the 180-day statutory period or when they denied her a raise in 1997 and 1998. Instead, Ledbetter argued simply that discriminatory acts that occurred prior to the charging period had continuing effects during the charging period.

The Court concluded that Ledbetter's argument was squarely foreclosed by prior precedents. The Court reiterated the principle that a discriminatory act that is not made the basis for a timely charge is merely an unfortunate event of history that has no present legal consequences. A new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts, such as the issuance of paychecks, that continue the adverse effects of past discrimination.

The Court concluded that its decision served the fundamental purposes of Title VII, noting that Ledbetter's approach would effectively eliminate the defining element of her disparate treatment claim -- intentional discrimination.

Further, the Court noted that statutes of limitations served the policy of repose -- the right to be free of stale claims. The EEOC filing deadlines protected employers from the burden of defending claims arising from employment decisions that are long past, which may otherwise seriously diminish the ability of the parties and the fact finder to reconstruct what actually happened. The short deadline also reflected Congress' preference for the prompt resolution of employment discrimination claims through voluntary conciliation and cooperation.

The Court rejected Ledbetter's reliance on *Bazemore v. Friday*, 478 U.S. 385, 395 (1986).

In *Bazemore*, public employees were originally segregated into a "white" branch and a "Negro" branch, with the later receiving less pay. In 1965, the two branches were merged. After Title VII was extended to reach public employees in 1972, black employees brought suit claiming that pay disparities attributable to the old dual pay scale persisted.

The Court of Appeals rejected their claim, which it interpreted to be that discriminatory pay differences should have been affirmatively eliminated.

The Supreme Court in *Bazemore* disagreed, holding that when an employer adopts and intentionally retains a facially discriminatory pay structure that puts some employees on a lower scale because of race, "[e]ach week's paycheck that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII."

The Supreme Court in *Ledbetter* explained that this language in *Bazemore* meant that a freestanding violation within the charging period may always be the subject of a timely charge, regardless of its relationship to other untimely violations.

Ledbetter also unsuccessfully attempted to liken pay discrimination claims to hostile work environment claims, arguing that as both are based on the cumulative effect of individual acts, claims of discrimination outside the limitations period are timely under the continuing violation theory, citing *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101,114 (2002). The Court in *Ledbetter* concluded that this argument was inconsistent with *Morgan*. In *Morgan*, the Court held that hostile work environment claims were timely if filed within 180 days of the last hostile act.

However, the *Ledbetter* Court noted that the Court in *Morgan* expressly distinguished between discrete acts of discrimination that constitute separate actionable unlawful employment practices and a

hostile work environment, which is typically composed of a series of harassing acts, each of which may not be actionable on its own but, taken together, create a hostile environment.

The Court concluded that, unlike in *Morgan*, Ledbetter's pay discrimination claim did not allege "a single wrong consisting of a succession of acts," but instead alleged a series of discrete discriminatory acts, each of which was independently identifiable and actionable and that could have -- and should have -- been made the subject of a timely EEOC charge.

In a strong dissent, Justice Ruth Bader Ginsberg, joined by Justices John Paul Stevens, David Souter and Stephen Breyer, argued that the Court's decision was in conflict with Congressional intent, the interpretation of the EEOC and the realities of wage discrimination. The dissent argued that "the Courts of Appeals have overwhelmingly judged as a present violation the payment of wages infected by discrimination: Each paycheck less than the amount payable had the employer adhered to a nondiscriminatory compensation regime ... constitutes a cognizable harm."

The dissent would have found that plaintiff's claims, similar to that of a hostile environment claim, were continuing and cumulative and that the Court's decision was "a cramped interpretation of Title VII, incompatible with the statute's broad remedial purpose."

In addition, the dissent urged Congress to "act to correct this Court's parsimonious ruling of Title VII," as it had done in 1991 when it amended the Civil Rights Act in response to certain rulings of the Supreme Court.

The *Ledbetter* opinion has been lauded by business groups and criticized by women's rights groups, but the lasting impact of the Court's ruling remains to be seen.

Plaintiffs counsel can be expected to craft and prosecute pay claims under theories not expressly rejected by the *Ledbetter* majority. For example, Ledbetter did not seek review of the holdings that there was insufficient evidence of discrimination with respect to the 1997 and 1998 pay decisions, did not seek review of the dismissal of her EPA claim, did not ask the Court to decide whether the 180 days should begin to run only after the plaintiff discovered the discriminatory effect of the cumulative pay decisions and had apparently never argued that Goodyear initially adopted its performance-based pay system in order to discriminate on the basis of sex and that Goodyear later applied such a system to her within the charging period with discriminatory animus. All of those arguments foregone by Ledbetter may have fared better with the Supreme Court majority.

Moreover, taking the dissent's suggestion, four Democratic senators have said they will introduce legislation to clarify federal law to state that the statute of limitations under Title VII would restart for each payment of a discriminatory wage.

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