



U.S. Supreme Court Limits Pay Discrimination Lawsuits

By Betsy Katten, Esq.*

In *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S.Ct. 2162 (2007), a divided U.S. Supreme Court (5-4) ruled that workers may not sue their employers for unequal pay because of discrimination that may have occurred years earlier, even if the effects of the initial discriminatory act were not immediately apparent to the worker. The Court majority ruled that employers would otherwise find it difficult to defend against claims “arising from employment decisions that are long past.”

Ledbetter concerned whether an employee may pursue a claim under Title VII of the Civil Rights Act of 1964 alleging illegal pay discrimination when the disparate pay was received within the statutory limitations period but resulted from alleged discriminatory pay decisions that occurred outside of it. The Court's ruling affirmed the findings of the U.S. Court of Appeals for the Eleventh Circuit that Title VII's timely-filing requirement limited the plaintiff to challenging the one affirmative decision directly affecting her pay that was made within the 180-day limitations period preceding her Equal Employment Opportunity Commission (EEOC) charge. The majority's decision in *Ledbetter* may serve to protect companies from claims alleging discriminatory decisions that occurred long ago, and thus, which could be difficult to defend due to the passage of time.

Petitioner Lilly Ledbetter was a manager at an Alabama Goodyear plant who received a lower salary than her male counterparts. At trial, Ledbetter relied on evidence of discriminatory pay decisions that occurred before Title VII's 180-day limitations period to demonstrate that paychecks she received within the limitations period were lower because of her gender. A jury awarded her damages based on the cumulative effect that these salary decisions had on the pay she received within the limitations period. The Eleventh Circuit reversed, concluding that Ledbetter failed to prove that Goodyear engaged in intentional discrimination during the statutory period. The decision to pay her less was the discrete act of discrimination that triggered the limitations period, not the paycheck itself. The Eleventh Circuit's decision was contrary to the “paycheck accrual rule” recognized by other circuits and the EEOC, whereby every pay period that reflects uncorrected discrimination is independently actionable as a fresh act of discrimination. The Supreme Court accepted the case to resolve this circuit split.

The Supreme Court majority held that the later effects of past discrimination do *not* restart the clock for filing an EEOC charge, and thus, Ledbetter's claim was untimely. In addressing the issue of an EEOC charge's timeliness, the Court determined the EEOC charging period is triggered when a discrete unlawful practice takes place, such as making a pay-setting decision. A new 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. (However, when an employer engages in a series of separately actionable intentionally discriminatory acts, then a fresh violation takes place when each act is committed.)

Justice Samuel A. Alito Jr., writing for the majority, said that “current effects alone cannot breathe life into prior, uncharged discrimination.” “Ledbetter should have filed an E.E.O.C. charge within 180 days after each allegedly discriminatory pay decision was made and communicated to her,” Justice Alito wrote. “She did not do so, and the paychecks that were issued to her during the 180 days prior to the filing of her E.E.O.C. charge do not provide a basis for overcoming that prior failure.” Justice Alito conceded that the 180-day deadline is “short by any measure,” but wrote further that the “short deadline reflects Congress’s strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation.”

Moreover, the majority addressed Ledbetter’s argument that her claim should be governed by *Bazemore v. Friday*, 478 U.S. 385 (1986), which Ledbetter argued held that an employer violates Title VII and triggers a new EEOC charging period whenever the employer issues paychecks using a discriminatory pay structure. The Court majority found, however, that the applicable rule was not as Ledbetter contended, a “paycheck accrual rule” — under which each paycheck, even if not accompanied by discriminatory intent, triggers a new EEOC charging period during which the complainant may properly challenge any prior discriminatory conduct that impacted that paycheck’s amount, no matter how long ago the discrimination occurred. Rather, because Ledbetter did not produce evidence that Goodyear initially adopted its performance-based pay system in order to discriminate based on sex or that it later applied this system to her within the charging period with discriminatory animus, *Bazemore* was not applicable. Further, the Court found Ledbetter’s “paycheck accrual rule” was also unsupported by either analogies to the statutory regimes of the Equal Pay Act of 1963, the Fair Labor Standards Act of 1938, or the National Labor Relations Act, or policy arguments for giving special treatment to pay claims.

Justice Ruth Bader Ginsburg, joined by Justices John Paul Stevens, David H. Souter, and Stephen G. Breyer, wrote the dissent and, in fact, read part of her dissent from the bench. She asserted that the effects of pay discrimination can be relatively small at first, then become far more serious as subsequent raises are based on the original low pay, and that instances of pay inequities ought to be treated differently from other acts of discrimination.

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