Supreme Court Clarifies When Pay Discrimination Claims are Timely or Too Late

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In *Ledbetter v. Good Year Tire & Rubber Company* the Supreme Court held in a 5-4 decision that an employee's claims of pay discrimination under Title VII (which prohibits discrimination based on race, sex, religion, and national origin) were too late. In Ledbetter, the Court considered the following question: **Can a plaintiff bring a cause of action under Title VII for illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentional discrimination that only occurred outside the limitations period?**

Rejecting the position of the Equal Employment Opportunity Commission ("EEOC") and the position of several federal appellate courts, the Supreme Court answered this question,
"No."

ALLEGATIONS IN LEDBETTER

Lilly Ledbetter was an area manager at a Goodyear Tire & Rubber plant for almost twenty years. For most of this time period, salaried employees like Ms. Ledbetter were given or denied raises based on their supervisors' evaluation of their performance. Ms. Ledbetter alleged that relatively early in her career at Goodyear, several supervisors gave her poor evaluations because of her sex.
As a result, she alleged her pay was not increased as much as it would have been if she had been evaluated fairly. At the time of her retirement, Ms. Ledbetter was making significantly less money than her male colleagues. In short, Ms. Ledbetter alleged that the discriminatory evaluations of her work early in her career continued to affect her pay throughout her employment with Goodyear.

In 1998, Ms. Ledbetter filed a charge of discrimination against Goodyear with the EEOC. Her sex discrimination claims proceeded to trial and a jury ultimately found in her favor regarding her discriminatory pay claim, awarding her almost four million dollars.

On appeal, the Eleventh Circuit Court of Appeals threw out the jury verdict on the grounds that Ms. Ledbetter's pay discrimination claims were too late. Title VII requires employees to file a charge of discrimination with the EEOC within a short period of time after the alleged discriminatory act occurs—within 180 days or 300 days, depending on the state in which the employee lives (the deadline for Ms. Ledbetter, and for employees in North Carolina, is 180 days). The Eleventh Circuit concluded that the decisions regarding Ms. Ledbetter's pay made early in her career were time-barred because they occurred more than 180 days before she filed her EEOC charge. When the Eleventh Circuit reviewed the timely pay decisions, that is, the pay decisions made within the 180 days before Ms. Ledbetter filed her charge, it concluded no evidence existed that Goodyear had acted with discriminatory intent regarding those decisions. Ms. Ledbetter ultimately conceded this last point.

SUPREME COURT'S REASONING

The Supreme Court agreed with the Eleventh Circuit and held that Ms. Ledbetter's pay discrimination claims were too late. The Court held that a past discriminatory act that is outside the deadline, or charging period, is insufficient, even if the past act has continuing effects within the charging period. In reaching this conclusion, the Court reasoned and emphasized the following points:

The key triggering event for bringing a discrimination claim is when a discrete unlawful practice takes place, not when the effects of the practice are felt.

A discrimination claim under Title VII has two components: 1) an employment practice or decision; and 2) discriminatory intent. Of these two elements, the key is discriminatory intent. Therefore, the employee must be able to demonstrate that discriminatory intent existed during the charging period.

Ms. Ledbetter did not allege that the early discriminatory decisions regarding her pay were not communicated to her. Therefore, the Court implied she had no excuse for not acting sooner.

The EEOC filing deadline protects employers from the burden of defending claims arising from employment decisions long-past, and the short deadline evidenced "Congress' strong preference for the prompt resolution of employment discrimination allegations." Evidence relating to discriminatory intent also can fade quickly with time.

The Court also distinguished other cases and fact situations Ms. Ledbetter relied upon to support her position. The Court explained:

If an employer adopts a facially discriminatory pay structure (such as one in which the employer specifically decides to pay men more than women or decides to pay Americans more than Mexicans), the employer is engaging in intentional discrimination every time it issues a paycheck to a disfavored employee. Such a situation is different from Ms. Ledbetter's, because no evidence existed that Goodyear's pay structure was adopted in order to discriminate based on sex (or any other protected characteristic). Instead, Goodyear's pay structure, based primarily on performance reviews, was facially non-discriminatory and neutrally applied.

Pay discrimination is not similar to a discrimination claim based on a hostile work environment and therefore, the more relaxed timing rules for filing a hostile work environment claim should not apply. A hostile environment claim involves "a succession of harassing acts, each of which may not be actionable on its own," whereas pay decisions are each independently actionable.

Discriminatory compensation decisions should not be treated differently from other discriminatory employment acts such as hiring and firing. Ms. Ledbetter argued that the nature of compensation often prevents one employee from knowing what other employees are earning, and the effects of a discriminatory pay-setting decision are often small, incremental, and only realizable after enough time has passed for the employee to perceive a compounded, material difference between her compensation and her co-workers'. The Court rejected this argument because accepting it would both abrogate the intent requirement within the filing period and would result in an employee's ability to file suit against an employer at seemingly any time after a discriminatory pay-setting decision had occurred. Furthermore, the Court concluded that the policy arguments for giving "special treatment" to pay claims were not supported by the language of Title VII or the Court's precedents.

PRACTICAL IMPLICATIONS

The good news for employers is *Ledbetter* has made it more difficult for employees to bring claims of pay discrimination under Title VII because if they do not act quickly, the claim will be time-barred. On the other hand, employees may now decide to pursue discrimination claims whenever they perceive the slightest notion of unequal pay, fearful of losing their ability to seek redress once the filing period has lapsed. Additionally, employees probably will try to "get around" *Ledbetter* by bringing pay discrimination claims pursuant to other statutes, such as the Equal Pay Act or § 1981, which have no administrative prerequisites and thus, longer filing deadlines. Employees probably will also increasingly argue that they were legitimately unaware discrimination was occurring, and as a result, the filing deadlines should be equitably tolled (an argument Ms. Ledbetter did not make).

The dissent in *Ledbetter* openly encouraged Congress to correct what it believed was an incorrect interpretation of Title VII. Congress already has taken some steps in this direction. Thus, Congress may overrule Ledbetter and create an exception to allow compensation-based discrimination claims to be brought outside the standard EEOC timeline.
Attachments:

Attachment	Size
17_EmploymentLawReview_Summer 2007.pdf	157.59 KB