

LABOR AND EMPLOYMENT LAW UPDATE



SUPREME COURT UPHOLDS SHORTER DEADLINES FOR GLASS CEILING CLAIMS

On May 29, 2007, a 5-4 majority of the U.S. Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.* clarified the deadlines for filing a claim alleging pay bias under Title VII of the Civil Rights Act of 1964. In doing so, the Court made it more difficult for employees to challenge pay disparities which may only become apparent or significant over an extended period of time.

The impact of the Court's decision on glass ceiling claims was not lost on Justice Ruth Bader Ginsburg, who wrote a dissenting opinion joined by Justices Breyer, Souter and Stevens. In a rare statement from the bench, she said: "In our view, this court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination."

Writing for the majority, Justice Samuel Alito emphasized the need to "protect employers from the burden of defending claims arising from employment decisions that are long past." Justice Alito was joined by Justices Roberts, Scalia, Thomas and Kennedy.

THE DEADLINES: Title VII makes it an "unlawful employment practice" to discriminate "against any individual with respect to his compensation" because of "race, color, religion, sex or national origin." In most states, an aggrieved individual must file a charge with the EEOC or its state counterpart within 300 days "after the alleged unlawful practice occurred." In other states, a charge must be filed with the EEOC within 180 days. The failure to submit a timely charge precludes legal action in court.

LEDBETTER'S CHARGE: Lily Ledbetter worked for Goodyear in Alabama from 1979 until she retired in 1998. Initially, her pay was in line with the salaries of men performing similar work. Over time, her pay slipped in comparison to male employees with equal or less seniority. By the end of 1997, she was the only female in her position and all of her male counterparts made significantly more than she did.

In Alabama, a charge must be filed within 180 days. Ms. Ledbetter filed a charge alleging pay discrimination under Title VII only after she retired.

THE MAJORITY VIEW: For purposes of pay discrimination, the unlawful employment practice is the pay-setting decision, not the actual payment itself. To be timely, a charge of discrimination must thus generally be filed within 180 or 300 days of the discriminatory pay-setting decision. With limited exceptions, a charge which is not filed within the prescribed period is untimely, even if the employee continues to feel the impact of the pay-setting decision long afterwards.

The majority justified their ruling with the hypothetical of a single discriminatory pay decision which continues to affect an employee's pay 20 years later. Justice Alito noted that the passage of time may seriously diminish the ability of the parties and the fact-finder to reconstruct what actually happened 20 years ago.

Since no pay-setting decision occurred within 180 days of the filing of her charge with the EEOC, Ledbetter's claim of pay bias was untimely.

DISSENT'S VIEW: For purposes of pay discrimination, the unlawful employment practice is both the pay-setting decision and the "current payment" of salaries infected by unlawful bias. A charge which is filed within the prescribed time period of either occurrence is timely under Title VII.

In justifying this approach, Justice Ginsburg emphasized the differences between pay disparities and other adverse actions, such as termination, failure to promote or refusal to hire, which are "easy to identify" as discriminatory:

"Pay disparities often occur, as they did in Ledbetter's case, in small increments; cause to suspect discrimination is at work develops only over time. Comparative pay information, moreover, is often hidden from the employee's view. Employers may keep under wraps the pay differentials maintained among supervisors, no less the reasons for the differentials. Small initial increments may not be seen as meat for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves."

She added: "It is only when the disparity become apparent and sizeable, e.g., through future raises calculated as a percentage of current salaries, that an employee in Ledbetter's situation is likely to comprehend her plight, and therefore, to complain."

Since Ledbetter filed her charge within 180 days of her last paycheck, the dissent would have regarded her claim as timely.

WHY THE DISSENT'S VIEW IS SIGNIFICANT:

Although the majority view ultimately prevailed and describes the current state of the law, the dissent did set forth an overt invitation to Congress to amend Title VII to "correct" the majority's "parsimonious reading of Title VII."

With Democrats presently in control of both houses of Congress, it is only a matter of time before legislation is introduced which mirrors the approach advocated by Justice Ginsburg's dissent. As Democrats vie for the Whitehouse in 2008, the Supreme Court opinion provides a catalyst for a debate about whether a glass ceiling exists in the American workforce and, if so, whether procedural limitations should bar access to the courts.

SANCTIONS AWARD UPHeld ON APPEAL

The July 2005 LABOR AND EMPLOYMENT LAW UPDATE told of a \$114,777.50 sanctions award which had been obtained by Campbell & LeBoeuf on behalf of a client who had been subjected to a frivolous lawsuit.

The firm is pleased to announce that, on April 27, 2007, the Court of Appeals of the Fifth District of Texas at Dallas affirmed the sanctions award without modification.

DISCLAIMER

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