

SUPREME COURT LIMITS TITLE VII PAY DISCRIMINATION CASES

On May 29, 2007, the U.S. Supreme Court ruled that Title VII of the Civil Rights Act of 1964 limits the damages an employee can recover when isolated discriminatory acts from the distant past result in disparity in the employee's current level of pay.

Case Facts

In *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, Lilly Ledbetter claimed that Goodyear discriminated against her over a 19-year period by paying her less than male employees in the same job. In the early 1980's and again in the mid-1990's, Ledbetter received poor evaluations after she rejected sexual advances by her supervisor. The evaluations resulted in Ledbetter receiving smaller wage increases than male counterparts. Over time, Ledbetter's wage level never caught up with similarly situated male employees; thus, the results of the evaluations were perpetuated throughout her 19 years with Goodyear. At trial, Ledbetter demonstrated that she was making \$6,000 per year less than the lowest-paid male employee doing the same job.

Although the allegedly discriminatory acts took place years earlier, Ledbetter did not file a charge of discrimination until 1998, after she retired from Goodyear. She sought "make whole" relief against Goodyear in the form of back pay in an amount that would make her compensation equal to that of similarly situated male employees for the entire period of time from the first discriminatory evaluation until her retirement. Ledbetter also requested punitive damages. The jury awarded damages of more than \$3 million, but the trial judge reduced the damages to \$360,000.

On appeal, the Eleventh Circuit Court of Appeals reversed and held that Ledbetter could not recover damages that resulted from discrete discriminatory acts that took place outside of the period established by Title VII for the filing of a charge of discrimination. Under Title VII, an employee has either 180 days or 300 days within which to file a charge of discrimination related to a specific discriminatory act (in North and South Carolina the applicable limitations period is 300 days). If the employee does not file within that time, he or she is barred from pursuing any action under Title VII. Following the Eleventh Circuit's reversal, the Supreme Court agreed to consider the case.

Supreme Court Decision

The Court held that Title VII's charging period is triggered when a discrete discriminatory act takes place. Therefore, to recover for "pay bias," an employee must complain of the discriminatory act within the 180- or 300-day charging period. The Court explained that subsequent non-discriminatory acts (such as Ledbetter receiving the same raises given her male counterparts) that did not make up for prior discriminatory acts do not reopen the door for recovery based on the original discriminatory act.

Ledbetter argued that each paycheck following a discriminatory act should trigger a new EEOC filing period because it perpetuates the results of the original discriminatory act. This concept, known as the paycheck accrual rule, had been adopted by several federal appeals courts, including the Fourth Circuit Court of Appeals, which has jurisdiction over the Carolinas. The Supreme Court squarely rejected the paycheck accrual rule, holding that each new paycheck does not start a new charging period for the employee to complain of discrimination.

What Does *Ledbetter* Mean For Employers?

For employers involved in current or anticipated litigation under Title VII, the Court's ruling can significantly limit and even eliminate potential liability. *Ledbetter* should also apply to restrict untimely claims of age or disability discrimination under the Age Discrimination in Employment Act and Americans with Disabilities Act.

However, the decision would not necessarily limit all pay bias claims. For example, the Equal Pay Act (EPA) requires that men and women who work in the same workplace be given equal pay for equal work. A plaintiff alleging violation of the EPA has up to three years to assert a claim with no administrative filing required. (In addition to her Title VII claim, Ledbetter alleged a violation of the EPA against Goodyear; however, the lower court dismissed that claim.) Similarly, race discrimination claims under 42 U.S.C. § 1981 are not governed by the time constraints of Title VII—they are subject to a four-year statute of limitations.

In practice, *Ledbetter* likely will lead to lawsuits in which employees claim discrimination under the EPA or Section 1981, in addition to Title VII.

Will *Ledbetter* Remain The Law?

Congress is weighing whether to legislatively override the Court's decision. Employers should consider contacting their state chambers of commerce and representatives in Congress to voice support for the Court's decision and oppose legislation that would codify the paycheck accrual rule.

SOUTH CAROLINA WORKERS' COMPENSATION REFORM SIGNED INTO LAW

On June 25, 2007, Governor Sanford signed a bill that makes a number of changes to South Carolina workers' compensation system. Most of the changes apply to claims for injuries occurring on or after July 1, 2007. Some of the main changes affecting employers include the following:

- Dissolution of the Second Injury Fund by 2013;
- Elimination of the circuit court level of appeal;
- Shoulders and hips are added to the list of scheduled members;
- The presumption that a claimant who is found to have sustained a 50 percent or more loss or disability to the back is totally disabled may be rebutted by the defense;
- Independent owner-operators of trucks may be exempted from coverage as direct or statutory employees;
- Repetitive trauma claims must be supported by medical evidence; and
- Penalties for failing to provide coverage and for fraud are increased.

These and other changes in South Carolina's workers' compensation system will need to be addressed by employers and their carriers.

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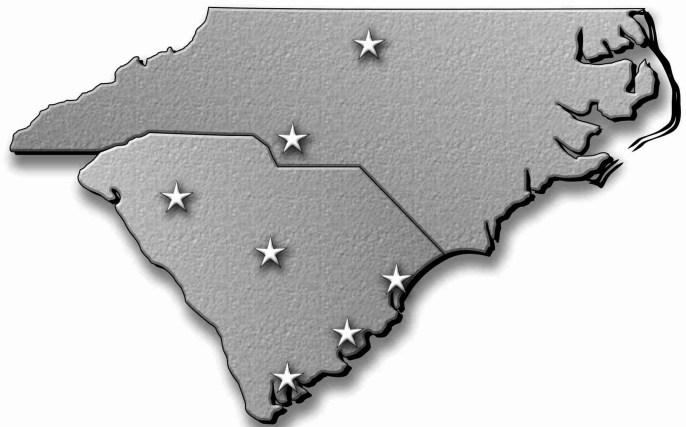
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