

Client Alert

A report
for clients
and friends
of the Firm May 2007

Supreme Court Restricts Time Frame for Bringing Discriminatory Pay Suits

In a significant victory for employers, the Supreme Court, on May 29, 2007, rejected an employee's claim that she should be permitted to sue for intentional pay discrimination that occurred several years earlier, outside Title VII's Charge-filing period. *Ledbetter v. Goodyear Tire & Rubber Co.*, No. 05-1074, 2007 WL 1528298 (U.S. May 29, 2007). In a sharply divided 5-4 opinion, the Court held that an employer's "pay-setting decision is a 'discrete act'", so that the "period for filing an EEOC Charge begins when the act occurs." *Id.* at *1. Therefore, an employee's claim that a pay decision was discriminatory must be made within 180 days (or 300 days in states with local FEP agencies) of that discrete act. The *Ledbetter* decision is significant because many lower courts had interpreted an earlier Supreme Court decision, *Bazemore v. Friday*, 478 U.S. 385 (1986) (*per curiam*), as permitting employees to recover for pay discrimination under Title VII even when the alleged discriminatory pay-setting decision had occurred long ago in the past, grounded on the theory that each new paycheck restarted the Charge-filing time clock, carrying forward the cumulative effects of the past discriminatory pay practices. In rejecting that reading of *Bazemore*, Justice Alito declared: "Ledbetter's interpretation is unsound." 2007 WL 1528298, at *9.

The Fact Context

Lily Ledbetter worked for Goodyear from 1979 until 1998 at its Gasden, Alabama, plant. During much of the time, salaried employees (like Ledbetter) were given or denied raises based on their supervisors' evaluations of their performance. In 1998, Ledbetter filed a Charge with the EEOC alleging certain acts of sex discrimination. After taking early retirement in

November 1998, Ledbetter filed suit against Goodyear asserting claims of pay discrimination under Title VII and the Equal Pay Act ("EPA"). Ledbetter alleged that although she was initially paid the same as her male colleagues, over time. She received smaller raises based upon performance evaluations that were discriminatorily motivated, and by the end of her employment, she was earning significantly less than her male comparators. Goodyear maintained that the evaluations had been nondiscriminatory.

After filing suit in federal district court, Ledbetter abandoned her EPA claims, proceeding to trial with the Title VII disparate-pay claim only. A jury found for Ledbetter and awarded backpay plus over \$3 million in punitive damages, which was later reduced by the district court. On appeal, the U.S. Court of Appeals for the Eleventh Circuit Court reversed, reasoning that there was insufficient evidence to prove that Goodyear had acted with discriminatory intent in denying Ms. Ledbetter pay increases in 1997 and 1998, the only two pay decisions within the Charge-filing period.

Ledbetter argued to the Supreme Court that Title VII was violated because she received disparate pay during the Charge-filing period that resulted from intentionally discriminatory pay practices that occurred outside the limitations period. In light of the differing views propounded by the federal Courts of Appeals concerning the proper application of the limitations period in Title VII disparate-treatment pay cases, the U.S. Supreme Court granted certiorari.

The U.S. Supreme Court Rules

The high court affirmed the judgment of the Eleventh Circuit, holding that Ledbetter's pay discrimination claim was untimely, reasoning that the continuing effects of prior discriminatory pay practices do not give rise to timely violations of Title VII where, within the Charge-filing period, there is no present evidence that discriminatory animus permeated pay decisions. Writing for a 5-4 majority, Justice Samuel Alito explained that the time for filing a Charge of employment discrimination begins when the

discriminatory act occurs, and this rule applies to any discrete act of discrimination, including discrimination in “termination, failure to promote, denial of transfer, [and] refusal to hire.” *Id.* at *1. Rejecting Ledbetter’s contention that discrimination in pay warranted different treatment from other types of employment discrimination because each paycheck carries forward into the present the prior discriminatory pay practices, triggering anew the EEOC Charge-filing period, the Court majority reasoned that “current effects alone cannot breathe life into prior, uncharged discrimination.” *Id.* That is so, the majority opinion explained, because “a pay-setting decision is a discrete act that occurs at a particular point in time” and that “Ledbetter should have filed an EEOC Charge within 180 days after each alleged discriminatory pay decision was made and communicated to her.” *Id.*

Finding support in prior Supreme Court decisions, Justice Alito noted that thirty years ago, in *United Airlines Inc. v. Evans*, 431 U.S. 553, 558 (1977), the Supreme Court had ruled “that the continuing effects of the precharging period discrimination did not make out a present violation.” Similarly, in *Lorance v. AT&T Technologies, Inc.*, 490 U.S. 900 (1989), the Court had earlier ruled that the EEOC Charge-filing period ran from the time when the discrete act of alleged discrimination occurred, not from the date when the effects of the practice were felt. Equally instructive, in *National Railroad Passenger Corporation v. Morgan*, 356 U.S. 101 (2002), the Court ruled that a Title VII plaintiff can maintain a claim only for a Charge covering discrete acts that occur within the appropriate time period.

The Court stated that if Ledbetter’s argument was followed, it would distort Title VII’s “integrated, multistep enforcement procedure” which imposed a filing deadline for bringing charges of discrimination. 2007 WL 1528298, at *7. *See also Occidental Life Ins. Co. of Cal. v. EEOC*, 432 U.S. 355, 359 (1977). The Court noted that “we have repeatedly rejected suggestions that we extend or truncate Congress’ deadlines” and that “[t]he EEOC filing deadline ‘protect[s] employers from the burden of defending claims arising from employment decisions that are too long past.’” *Id.* at *7-8 (citations omitted). Continuing further, the Court explained that the 180-day Charge-filing period is short by any measure, and that by choosing a short deadline, “Congress clearly intended to encourage the prompt processing of all charges of employment discrimination.” *Id.* at *8.

As a practical matter, Justice Alito explained, where a plaintiff complains that s/he was disparately treated in compensation, the employer’s pay decision will almost always be documented and will typically not be in dispute, but the employer’s intent is almost always disputed, and evidence relating to intent may fade quickly with time. “The passage of time may seriously diminish the ability of the parties and the factfinder to reconstruct what actually happened.” *Id.* In this case, the

Court noted, the supervisor who had allegedly retaliated against Ledbetter had died, and therefore could not testify at trial. This circumstance, the Court reasoned, not only supported the rationale for its holding but demonstrated the wisdom of the Congressional judgment in employment discrimination cases for a Charge-filing deadline of only several months’ duration, noting the public policy purposes of repose. In this regard, the majority reasoned, the short Charge-filing period represented a legislative judgment that it is “unjust to fail to put the adversary on notice to defend within a specified period of time....” *Id.* at *11.

Turning to Ledbetter’s reliance on *Bazemore* and her formulation (also followed by some lower courts) that it stood for the proposition that the present effects of prior discriminatory pay practices could fall within the Charge-filing period, Justice Alito nimbly distinguished that case. Although the *Bazemore* Court had stated: “[e]ach week’s paycheck that delivers less to a black than to a similarly-situated white is a wrong actionable under Title VII, regardless of the fact that this pattern was begun prior to the effective date of Title VII,” Justice Alito explained that the ruling was limited to those instances where the employer’s current compensation scheme carried forward a discriminatory pay structure that had never been remedied. *Id.* at *10-11. In contrast, he reasoned, a new Title VII violation does not occur, and a new charging period is not triggered, when an employer issues paychecks pursuant to a system that is “facially nondiscriminatory and neutrally applied,” relying on the Court’s *Lorance* opinion. *Id.* at *11. Here, in Ledbetter’s case, the *Bazemore* paradigm was inapplicable because Ledbetter had not adduced 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 with discriminatory animus within the Charge-filing period.

While Justice Ginsburg argued in her dissent that a pay discrimination claim should be treated like a hostile work environment claim because both types are “based on the cumulative effect of individual acts,” the Court majority disagreed, explaining that Ledbetter alleged a series of discrete discriminatory acts, each of which was independently identifiable and actionable. *Id.* at *17. In contrast, as *Morgan* made clear, “[A] hostile work environment . . . typically comprises a succession of harassing acts, each of which ‘may not be actionable on its own.’” *Id.* at *19. The dissent’s approach, the Court majority concluded, reflected a “fundamental misinterpretation of *Morgan*.” *Id.* at *12.

What This Case Means for Employers

Where discrete employment practices are concerned (*e.g.*, discipline, failure to promote, disparate pay practices), aggrieved employees must file Charges within 180 days or 300 days from the date the discriminatory act occurs or the employee becomes aware of the decision. Otherwise, such

claims will be time-barred. Equally significant, it is likely that Justice Alito's statement concerning discriminatory intent — "the employer's intent is almost always disputed, and evidence relating to intent may fade quickly with time" — will be cited repeatedly whenever intent is in issue and aggrieved employees delay in bringing claims. *Id.* at *8.

Notwithstanding this ruling, employees may still bring pay discrimination claims against employers under the Equal Pay Act to challenge discrimination in compensation based on sex and afford themselves the longer two or three year limitations period provided under this statute. Notably, as well, the EPA does not require the filing of an EEOC Charge or proof of intentional discrimination. Employers should also bear in mind that state and local statutes often provide employees with longer limitations periods for filing discrimination claims. Hence, the impact of the Ledbetter decision is limited.

In her dissenting opinion, Justice Ruth Bader Ginsburg called upon Congress to correct the Court's "cramped interpretation" and "parsimonious reading of Title VII" writing: "[o]nce again, the ball is in Congress' court," as it did with the 1991 Civil Rights Act, which superseded a series of Supreme Court decisions on civil rights. *Id.* at *24. Democrats are already preparing legislation aimed at overturning the Ledbetter Court's interpretation of Title VII, treating compensation decisions along the lines set out in *Morgan* for harassment claims to enable aggrieved employees to recover for the present day effects of prior discriminatory pay practices that carry forward with each pay check.

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