Pay Discrimination Claims Under Title VII of the Civil Rights Act: A Legal Analysis of the Supreme Court's Decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*

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Summary

This report discusses *Ledbetter v. Goodyear Tire & Rubber Co., Inc*., a case in which the Supreme Court considered the timeliness of a sex discrimination claim filed under Title VII of the Civil Rights Act, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. In *Ledbetter*, the female plaintiff alleged that past sex discrimination had resulted in lower pay increases and that these past pay decisions continued to affect the amount of her pay throughout her employment, resulting in a significant pay disparity between her and her male colleagues by the end of her nearly 20-year career. Under Title VII, a plaintiff is required to file suit within 180 days after an alleged unlawful employment practice has occurred. Although the plaintiff in *Ledbetter* argued that each paycheck she received constituted a new violation of the statute and therefore reset the clock with regard to filing a claim, the Court rejected this argument, reasoning that even if employees suffer continuing effects from past discrimination, their claims are time barred unless filed within the specified number of days of the original discriminatory act. Legislation that would supercede the *Ledbetter* decision by amending Title VII has been introduced in the 111th Congress. One of the bills, H.R. 11, passed the House of Representatives on January 9, 2009. A companion bill, S. 181, has been introduced in the Senate, and it has been reported that the chamber will vote on the legislation during the week of January 12, 2009.

Contents

Contacts

In June 2007, the Supreme Court issued its decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*,[1] a case that involved questions about the timeliness of claims filed under Title VII of the Civil Rights Act, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.[2] In a 5-4 vote decision, the Court rejected the plaintiff's argument that each paycheck she received reflected a lower salary due to past discrimination and therefore constituted a new violation of the statute. Instead, the Court held that "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."[3] As a result, the Court held that the plaintiff had not filed suit in a timely manner. Although the decision may limit some pay discrimination claims based on Title VII, individuals may still sue for sex discrimination that results in pay bias under the Equal Pay Act. However, the Court's decision may make it more difficult for employees to sue for pay discrimination under Title VII.

Background

From 1979 until 1998, Lilly Ledbetter worked as a supervisor for the Goodyear Tire & Rubber Company. Although Ledbetter initially received a salary similar to the salaries paid to her male colleagues, a pay disparity developed over time. By 1997, the pay disparity between Ledbetter and her 15 male counterparts had widened considerably, to the point that Ledbetter was paid $3,727 per month while the lowest paid male colleague received $4,286 per month and the highest-paid male colleague received $5,236 per month.

In 1998, Ledbetter filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) alleging that Goodyear had unlawfully discriminated against her on the basis of her sex in violation of Title VII. According to Ledbetter, her current pay was discriminatorily low due to a long series of decisions reflecting Goodyear's pervasive discrimination against female managers in general and Ledbetter in particular. A jury found in her favor, and the district court entered judgment for backpay and damages,[4] but the appellate court reversed.[5] The Supreme Court granted review in order to resolve disagreement among the appellate courts regarding the proper application of the time limit for filing claims in Title VII disparate treatment pay cases.[6]

Title VII and Filing Deadlines for Discrimination Claims

Under Title VII, it is an "unlawful employment practice" for an employer to discriminate "against any individual with respect to his compensation ... because of such individual's race, color,

[1] 127 S. Ct. 2162 (U.S. 2007).

[2] 42 U.S.C. § 2000e-2(a).

[3] Ledbetter v. Goodyear Tire & Rubber Co., 127 S. Ct. 2162, 2169 (U.S. 2007).

[4] 2003 U.S. Dist. LEXIS 27406 (D. Ala. 2003).

[5] 421 F.3d 1169 (11th Cir. 2005).

[6] 126 S. Ct. 2965 (U.S. 2006).

religion, sex, or national origin."[7] Individuals who want to challenge an employment practice as unlawful are required to file a charge with the EEOC within a specified period—either 180 days or 300 days, depending on the state—"after the alleged unlawful employment practice occurred."[8]

The question that arose in the *Ledbetter* case was how to determine precisely what types of activities constitute an unlawful employment practice for purposes of starting the clock on the filing deadline. Ledbetter argued that two different employment practices could qualify as having occurred within the 180-day charging period preceding the filing of her EEOC claim: (1) the paychecks that were issued to her during that period, each of which she alleged constituted a separate act of discrimination, or (2) a 1998 decision denying her a raise, which she contended was unlawful because it perpetuated the discriminatory pay decisions from previous years. In contrast, Goodyear argued that Ledbetter's claim was time barred because the discriminatory acts that affected her current pay had taken place prior to the 180 days that preceded the claim Ledbetter filed with the EEOC. The Supreme Court granted review to resolve the dispute.

The Supreme Court's Decision

Ultimately, the Supreme Court ruled in favor of Goodyear, holding that Ledbetter's suit was time barred because no unlawfully discriminatory acts had taken place within the 180-day charging period. In rejecting Ledbetter's claim on statutory grounds, the Court majority relied heavily on the principle that Title VII claims alleging disparate treatment require evidence of discriminatory intent. Because there was no evidence that Goodyear had acted with discriminatory intent when it issued the paychecks Ledbetter received during the charging period or when the company had denied her a raise in 1998, the Court found that Goodyear had not engaged in an unlawful employment practice during the specified time period. As a result, the fact that Ledbetter may have been suffering from the continuing effects of past discrimination was not sufficient for her to establish a claim within the statutorily mandated filing period.[9]

In issuing its decision, the *Ledbetter* majority relied on a series of precedents in analogous employment discrimination cases. For example, one such case, *United Air Lines, Inc. v. Evans*,[10] involved a female flight attendant who was not granted seniority when she was rehired despite the fact that she had originally been forced to resign when she got married. Although the Court agreed that the company's discriminatory policy had a continuing effect, that effect was not sufficient to establish a present violation. Similarly, in *Lorance v. AT&T Technologies, Inc.*,[11] the Court rejected a challenge to a discriminatory seniority system because the complaint had been filed when the discriminatory effect was felt, rather than within the charging period established by the original discriminatory act, namely the adoption of the seniority system. In light of these and other precedents, the Court concluded:

> The EEOC charging period is triggered when a discrete unlawful practice takes place. 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

[7] 42 U.S.C. § 2000e-2(a).

[8] Id. at § 2000e-2(a)(1).

[9] 127 S. Ct. 2162, 2167 (U.S. 2007).

[10] 431 U.S. 553 (1977).

[11] 490 U.S. 900 (1989).

> past discrimination. But of course, if an employer engages in a series of acts each of which is intentionally discriminatory, then a fresh violation takes place when each act is committed.... [C]urrent effects alone cannot breathe life into prior, uncharged discrimination.... [12]

Of primary concern to the Court was the question of discriminatory intent. In general, claims such as Ledbetter's, which allege unlawful disparate treatment, must demonstrate discriminatory intent. According to the Court, allowing Ledbetter to shift the intent associated with the discriminatory pay decisions to later paychecks would have the effect of imposing liability in the absence of the required intent.[13] The Court also appeared concerned that allowing Ledbetter's claim to proceed would undermine Title VII enforcement procedures and filing deadlines, which were designed in part to protect employers from defending against discrimination claims that are long past. According to the Court, Title VII's short filing deadline "reflects Congress' strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation."[14]

The Court also rejected Ledbetter's reliance on *Bazemore v. Friday*,[15] a pay discrimination case involving employees who were, prior to enactment of Title VII, separated into a white branch and a black branch, with the latter group receiving lower salaries. Although the *Bazemore* Court held that an employer who adopts a discriminatory pay structure violates Title VII whenever it issues a paycheck to disfavored employees, the *Ledbetter* Court distinguished the two cases, arguing that the paychecks in *Bazemore* reflected the employer's ongoing retention of a discriminatory pay structure—a current violation of the statute—while the paychecks in Ledbetter reflected the continuing effect of an isolated, past violation of the statute.[16] Finally, although the EEOC has interpreted Title VII to allow challenges based on discriminatory pay each time a paycheck is received,[17] the Court declined to defer to the agency's interpretation.[18]

In contrast, the dissent in *Ledbetter* strongly disagreed with the majority's analysis. According to the dissent, treating the actual payment of a discriminatory wage as an unlawful employment practice would be more faithful to precedent, would better reflect workplace realities, and would be more consistent with the overall purpose of Title VII. Specifically, the dissent argued that the Court's holding was inconsistent with the result in *Bazemore*, contending that *Bazemore* recognized that paychecks that perpetuate past discrimination constitute a fresh instance of discrimination every time they are issued.[19] The dissent also drew an analogy between pay discrimination claims and sexual harassment hostile work environment claims, which involve a series of discrete acts that recur and are cumulative in impact. Since hostile work environment claims may be filed even when some of the discrete acts that form the basis for a claim have taken place outside of the charging period, the dissent would have allowed Ledbetter's claim to proceed as well.[20]

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12 Ledbetter, 127 S. Ct. at 2169.

13 Id. at 2170.

14 Id. at 2170-71.

15 478 U.S. 385 (1986).

16 Ledbetter, 127 S. Ct. at 2172-74.

17 EEOC Compliance Manual §2-IV-C(1)(a), http://www.eeoc.gov/policy/docs/threshold.html.

18 Ledbetter, 127 S. Ct. at 2177, n. 11.

19 Id. at 2180.

20 Id. at 2180-81.

The dissent also distinguished pay bias claims from other types of employment discrimination, arguing that pay discrimination is fundamentally different from other types of employment bias. For example, employees, who are generally aware when they suffer adverse employment actions related to promotion, transfer, hiring, or firing, may not know they have suffered pay discrimination, particularly because salary levels are often hidden from the employee's view and pay disparities become apparent only over time. As a result of these differences, the dissent argued that the precedents upon which the Court relied were inapplicable because those cases involved easily identifiable acts of discrimination.[21] Finally, the dissent criticized the majority's opinion as inconsistent with the overall anti-discrimination purpose of Title VII.

Effect of the Decision

The Court's decision in *Ledbetter* is likely to affect the workplace in several different ways. First, employees may have a more difficult time bringing pay discrimination claims under Title VII. If employees bring pay discrimination claims early in order to meet the statutory filing deadline, they may have difficulty proving discrimination if the pay disparity remains small. If employees bring pay discrimination claims later, however, then they may not be able to meet the filing deadline. As a result of this dilemma, employers may experience an increase in pay discrimination claims being filed against them, since some employees may file claims in order to meet the deadline even in cases where discrimination is unclear.

It is also important to note that the *Ledbetter* decision affects more than just pay bias cases involving sex discrimination. Because Title VII applies to discrimination on the basis of race, color, national origin, sex, and religion, many other classes of claimants are affected by the decision. Furthermore, the *Ledbetter* case may also affect pay discrimination under parallel employment discrimination statutes that are patterned on Title VII, such as the Age Discrimination in Employment Act (ADEA), the Rehabilitation Act of 1973, or the Americans with Disabilities Act (ADA). Employees who file pay discrimination claims alleging race or age discrimination, for example, may be more negatively affected by the decision than employees who allege sex discrimination because the latter group still has recourse under the Equal Pay Act (EPA). The EPA, which prohibits discrimination on the basis of sex with regard to the compensation paid to men and women for substantially equal work performed in the same establishment,[22] does contain a statute of limitations for filing claims but has, thus far, been interpreted in such a way that each issuance of an unequal paycheck is treated as a new discriminatory act.[23]

In addition, the *Ledbetter* decision has implications for Congress. Since *Ledbetter* was decided on statutory grounds, legislators who disagree with the Court's interpretation may introduce legislation clarifying that unlawful employment practices under Title VII include each issuance of a paycheck that reflects a discriminatory compensation practice. For example, the *Lorance* decision, cited as precedent by the *Ledbetter* majority, was subsequently superceded by Congress in the Civil Rights Act of 1991.[24] After the *Ledbetter* decision was handed down, several bills that

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[21] Id. at 2181-83.

[22] 29 U.S.C. § 206. For more information on pay discrimination laws, including the EPA, see CRS Report RL31867, *Pay Equity Legislation*, by Jody Feder and Linda Levine.

[23] See, e.g., Cardenas v. Massey, 269 F.3d 251 (3d Cir. 2001).

[24] P.L. 102-166.

would have amended Title VII in light of the opinion were introduced in the 110th Congress, but only H.R. 2831, which passed the House in July 2007 but which did not survive an effort to invoke cloture in the Senate, was the focus of significant legislative action. Currently, two companion bills—H.R. 11 and S. 181—have been introduced in the 111th Congress. The House passed H.R. 11 on January 9, 2009, and it has been reported that the Senate will vote on the legislation during the week of January 12, 2009.

As passed by the House, H.R. 11 would clarify that the time limit for suing employers for pay discrimination begins each time they issue a paycheck and is not limited to the original discriminatory action. This change would be applicable not only to Title VII of the Civil Rights Act, but also to the Age Discrimination in Employment Act (ADEA), the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA).

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