



Welcome News for Those Accused of Pay Discrimination

Andrew Gould, Esq.

Lilly Ledbetter worked for the Goodyear Tire and Rubber Co. for 19 years. She retired in 1998, and soon thereafter, Ledbetter got an anonymous letter saying she had been paid significantly less than her male colleagues doing the same work. Believing the letter to be credible, Ledbetter sued. A jury ruled in her favor, but the verdict was thrown out on appeal. The case made its way to the Supreme Court, and a decision came down May 29, 2007 in favor of employers. *Ledbetter v. Goodyear* (May 29, 2007) (<http://www.supremecourtus.gov/opinions/06pdf/05-1074.pdf>).

Most employers are familiar with Title VII of the Civil Rights Act of 1964. Title VII is the principal federal anti-discrimination statute, and it bars discrimination in employment on the basis of a slew of protected categories, including race, color, gender, national origin, and religion. But it also has a requirement that you must bring your charge of discrimination (filed with the

Equal Employment Opportunity Commission [EEOC]) within 180 days of the illegal employment practice that you are challenging.

In Ledbetter's case, she was challenging her pay during the twenty years prior to the date she filed her EEOC charge. In order to avoid the obvious timeliness argument of challenging these prior decisions, Ledbetter argued that each paycheck she received revived the 180-day charge-filing period because each "carried forward" the effects of prior, uncharged discrimination decisions" and, as a result, she claimed her suit was timely. The Supreme Court, however, did not buy it. The Court concluded that each alleged decision regarding compensation (i.e. raises, denials of promotion, etc.) constituted separate unlawful employment acts, which, as a result, required Ledbetter to file her administrative charge of discrimination within six months of each of those decisions. The fact that her paychecks may have

reflected past discriminatory conduct was insufficient to revive her otherwise untimely claim.

The Supreme Court's ruling is significant. It reflects an acknowledgment of the importance of statutes of limitations and that employers must be given some end date to an employee's possible challenge of past employment practices. The flip side of that, at least in Ledbetter's case, is the ruling would have required her to challenge her compensation even though she had no knowledge that she was being paid differently compared to her male counterparts. The ruling also appears to ignore the fact that wage discrepancies may be insignificant and only noticeable over the course of many months or years. One additional impact of the decision relates to the numerous pending wage claims. As recently reported by *The New York Times*, nearly 40,000 pay claims were filed by employees from 2001 to 2006. This number will no doubt drop going forward as damages

will necessarily be limited and claims outright eliminated by the Court's decision.

While this decision is favorable for employers, it is always the best practice to ensure that your pay practices are not unlawful. Employers are not required to pay their employees the same salary or wage rate, however, differences in pay should be based on legitimate business criteria (i.e. skill set, experience level, past training) and not on differences in sex, race, or any other protected characteristic. But if you find yourself involved in a dispute involving allegations of pay discrimination, Ledbetter may provide you with an additional defense to such a claim.

Have a topic you want me to write about? Email me at andrew.gould@wickphillips.com

Andrew Gould is a labor and employment attorney. Board Certified by the Texas Board of Legal Specialization, with the law firm Wick Phillips, LLP.



Automation & Robotics

Automated inspection and blocking equipment

Contact us for the integrated quality control solution for your lab.

Measurement, finish blocking & pad printing

A & R Optical Machinery Inc.

414-453-8653 arom@ar.be www.ar.be