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Reflections on the Supreme Court's Recent Ledbetter Decision: Title VII's 180-Day Rule

On May 29, 2007, in a 5-4 decision in *Ledbetter v. Goodyear Tire & Rubber Company Inc.*, the U.S. Supreme Court addressed an issue on which the federal circuit courts of appeal have long been divided:

Whether and under what circumstances a plaintiff may bring an action under Title VII of the Civil Rights Act of 1964 alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentionally discriminatory pay decisions that occurred outside the limitations period.¹



In an increasingly common five-member majority, the Court rejected "the suggestion that an employment practice committed with no improper purpose and no discriminatory intent is rendered unlawful ... because it gives some effect to an intentional discriminatory act that occurred outside the charging period."² The Court held that the lingering and current effects of a past act of discrimination cannot breathe life into a claim of discrimination when the adverse act giving rise to that claim took place outside the statutory time limitations of Title VII.³



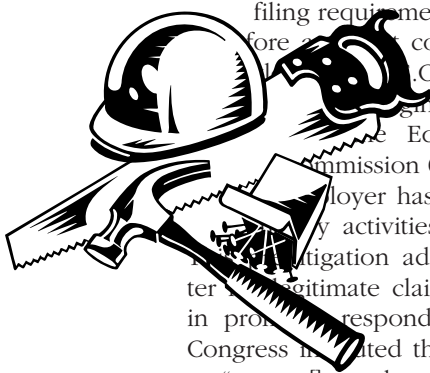
Legislation passed by Congress requires employees to comply with specific filing requirements prior to bringing a claim before a court of discrimination based on Title VII, 42 U.S.C. §2000e-5(e)(1), which requires a plaintiff alleging discrimination to file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days after an employer has allegedly engaged in discriminatory activities encompassed by the statute.⁴ The EEOC investigation administrative stage acts as a filter for legitimate claims and assists the government in properly responding to discriminatory conduct. Congress enacted the 180-day statute of limitations to "protect[] employers from the burden of defending claims arising from employment decisions that are long past."⁵

The case brought to the Supreme Court involved Lilly Ledbetter, who had worked for Goodyear Tire & Rubber Company from 1979 until 1998, when she

took early retirement.⁶ Thereafter, she commenced an action against Goodyear alleging Title VII pay discrimination as well as another claim under the Equal Pay Act of 1963. Ledbetter allegedly made less money than her similarly situated male colleagues when she left her employment with Goodyear. Goodyear defended the case claiming that Ledbetter did not satisfy the necessary 180-day statute of limitations "with respect to all pay decisions made prior to September 26, 1997—that is, 180 days before the filing of her EEOC questionnaire."⁷ Essentially, Goodyear claimed that Ledbetter's pay claims that originated from decisions made more than 180 days before she filed her EEOC questionnaire were time-barred. Ledbetter could not point to any discriminatory decisions actually made during the 180 days prior to her EEOC filing; she could only claim that her pay was affected by prior decisions made by Goodyear. Therefore, she argued that Goodyear's conduct during the 180 days prior to the filing of her EEOC questionnaire (that is, compensating her based on alleged discriminatory decisions that were made more than 180 days prior) gave present effect to those decisions, and she was thus discriminated against in her compensation during the 180 days leading up to the filing of her EEOC charge.

Although four justices on the Supreme Court found Ledbetter's arguments persuasive, the majority—Justices Alito, Kennedy, Scalia, and Thomas and Chief Justice Roberts—rejected them. The majority focused on the importance of a statute of limitations, citing *American Pipe & Construction Company v. Utah*,⁸ in which the Court stated that "[s]tatutes of limitations serve a policy of repose" for employers.⁹ Statutes of limitations further two important legislative preferences: (1) that it is unjust to fail to put a defendant on notice of a lawsuit within a specific period of time and (2) that a defendant has a "right to be free of stale claims" and should prevail over the plaintiff's right to prosecute those claims when the defendant has failed to act.¹⁰

The dissenting justices addressed the similarities between Ledbetter's circumstances and cases in which plaintiffs allege a hostile work environment. Justice Ginsburg focused her dissent on the fact that "[p]lay checks perpetuating past discrimination ... are actionable not simply because they are 'related' to a decision made outside the charge-filing period, but because they discriminate anew each time they issue."¹¹ Justice Ginsburg effectively and succinctly deciphered



the difference between the majority's opinion and that of the dissent relevant to the question presented to the Court: "One answer identifies the pay-setting decision, and that decision alone, as the unlawful practice. ... Another response counts both the pay-setting decision and the actual payment of a discriminatory wage as unlawful practices."¹² According to Justice Ginsburg, under the former approach (that of the majority), each decision concerning salary is discrete and must be addressed to the EEOC within 180 days of the decision. However, under the latter approach (that of the minority), every individual payment of a salary or wage that is infected with sex-based discrimination is itself an unlawful employment practice and provides an employee the opportunity to file charges against the employer for such discriminatory pay practices.

In the realm of employment law, this decision is significant, because it helps protect employers from liability for acts performed many years in the past. Imagine, for example, that an employee has been working for an employer for 20 years, and that during that period the employer has made 15 changes to the company's wage and salary structure. After the employment relationship ends, the employee alleges discrimination on grounds relevant to a decision the employer made 10 years prior that the employee now deems violated his or her rights as a result of an apparent ripple effect. The employee then sues the employer. As a practical matter, the employer has been operating its business for 10 years under the assumption that its practices are within the parameters of Title VII. Now, the employer is being asked to answer for a problem arising from a decision that was made 10 years earlier. As the majority noted in the Court's opinion,

The EEOC filing deadline "protects employers from the burden of defending claims arising from employment decisions that are long past." Certainly, the 180-day EEOC charging deadline ... is short by any measure, but "by choosing what are obviously quite short deadlines, Congress clearly intended to encourage the prompt processing of all charges of employment discrimination." This short deadline reflects Congress' strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation.¹³

From the employer's perspective, *Ledbetter* makes clear that the 180-day requirement set forth in Title VII will now be strictly enforced. From the employee's perspective, *Ledbetter* suggests that employees must act in a timely manner to protect their right to be free from discrimination. **TFL**

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Endnotes

¹*Ledbetter v. Goodyear Tire & Rubber Co. Inc.*, ___ U.S. ___, 127 S. Ct. 2162, 2166 (2007).

²*Id.* at 2172 (Alito, J., Roberts, C.J., Scalia, Kennedy, and Thomas, JJ. joined in the majority; Ginsburg, J., dissenting with Stevens, Souter, and Breyer, JJ.).

³*Id.* at 2169.

⁴42 U.S.C. § 2000e-5(e)(1) (2006) ("A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred.").

⁵*Delaware State College v. Ricks*, 449 U.S. 250, 256–257 (1980).

⁶*Ledbetter*, 127 S. Ct. at 2165.

⁷*Id.* at 2166.

⁸414 U.S. 538, 554–555 (1974).

⁹*Ledbetter*, *supra* n. 1, at 2170.

¹⁰*Id.* (citing *United States v. Kubrick*, 444 U.S. 111, 117 (1944) and *Railroad Telegraphers v. Railway Express Agency Inc.*, 321 U.S. 342, 349 (1944)).

¹¹*Id.* at 2180 (Ginsburg dissenting).

¹²*Id.* at 2179 (Ginsburg dissenting).