

Supreme Court Decision Affects Pay Disparity Discrimination Claims

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In a 5-4 decision issued on May 29, 2007, the U.S. Supreme Court made it more difficult for employees to file discrimination claims based on pay disparities when the alleged disparities have been in effect for more than 180 days.

The case involved Lily Ledbetter, a 19-year employee at Goodyear Tire and Rubber Company in Gadsden, Alabama. Ms. Ledbetter, a female area manager employed at the plant, had been paid progressively less than the men who held the same position but was not fully aware of the disparity in pay rates. She filed her claim many years after the pay disparity first arose. In the case, the Company argued that her discrimination claim was made too late, because Title VII of the Civil Rights Act of 1964 requires plaintiffs to file discrimination claims within 180 days of the occurrence of the act that gave rise to the claim or within 300 days after the occurrence in a state (like Maine) where there is an agency authorized to accept Title VII charges. The EEOC and the federal trial court allowed the claim to proceed, and Ms. Ledbetter recovered 3.5 million dollars – most of it in punitive damages – when a jury found that she was paid less because of her gender. The award was later reduced by the judge to comply with the statutory caps under Title VII.

In the lower court, Ms. Ledbetter overcame the Company's timeliness objection by arguing that each new paycheck was a separate and actionable offense. The Supreme Court's majority, led by Justice Samuel Alito, rejected that argument and upheld the appeals court's decision to overturn the jury verdict. The majority found no exception in Title VII that would allow Ledbetter to proceed on a late-filed claim and applied the standard Title VII time limit. Justice Ruth Bader Ginsburg penned a strong dissent comparing ongoing pay disparities to hostile work environment claims where plaintiffs may be allowed to bring in evidence of a continuing course of conduct over an extended time span. She noted that secrecy surrounding pay issues in many workplaces makes it particularly difficult to discover and compare pay rates and therefore to determine whether discrimination is occurring. She invited Congress to change Title VII's 180-day limitation period as applied to pay disparity and other continuing practices. Union groups and some members of Congress announced immediately that a bill would be introduced to broaden the time period for pay disparity and other "continuing effects" claims.

The *Goodyear* decision, at least until or unless it is overruled by Congress, is good news for Maine employers because it limits the time period for exposure to pay disparity claims based on Title VII. The Maine Human Rights Commission ("MHRC") and Maine courts are free to take a different view under state law, however. The Commission and courts could agree, unlike the Supreme Court, that under the Maine Human Rights Act each pay period constitutes a separate violation. Moreover, unlike Title VII's requirement to exhaust the administrative agency process before proceeding to court, the MHRA permits a plaintiff to file a discrimination claim in court without going through the MHRC. The time period for initiating a court action is two years. Since a plaintiff who bypasses the

MHRC (typically because the 180-day time limit has been missed) is not entitled to attorneys' fees even if the claim is ultimately successful, few claims are filed directly in court. Still, the point is that Maine law already provides a longer window to file a pay claim, regardless of the Supreme Court's decision on Title VII. In addition, though Ms Ledbetter was a single plaintiff, pay disparity claims can easily take the form of a group or class action that may make direct court action worthwhile.

Pay disparity claims are somewhat difficult to prove, since legitimate business reasons for differences in pay – including qualifications, length of service, skill set, experience, and former pay rates – can usually be cited. Nevertheless, these claims are fact-intensive and may not be susceptible to summary judgment (dismissal by the court before trial). As Ms. Ledbetter's case shows (and as could be equally true in a claim based on race, age, national origin, sexual orientation, or any other protected status), juries may be sympathetic, and the stakes are high. Finally, *Ledbetter v. Goodyear Tire and Rubber* generated publicity about pay disparity claims and the necessity for quick filing, which may cause employees to look at their pay status more closely and to seek comparative information.

Maine employers should use this case as an opportunity to make sure that they can articulate a legitimate (and convincing) non-discriminatory basis for any pay differences between similarly situated individuals, and to get prompt legal advice if there appears to be exposure to a potential discrimination claim.

For more information on the impact of this U.S. Supreme Court decision, call your Bernstein Shur attorney or contact Linda D. McGill, Esq. at 207 228-7226 or lmcgill@bernsteinshur.com.