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The Impact Of AT&T V. Hulteen

Law360, New York (June 10, 2009) -- For the second time this year, the laws relating to any employees' ability to bring pay discrimination claims against their employer has been the focus of national attention.

Earlier this year, President Barack Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009. The Ledbetter Act was passed in response to an earlier Supreme Court decision that placed stringent restrictions on the time frame within which an employee must file a claim for an alleged discriminatory pay practice.

Now, the Supreme Court has struck again with a decision entitled AT&T v. Hulteen which limits the parameters of discriminatory pay claims.

After the Ledbetter Act was passed, many speculated that a flood of pay discrimination suits would result as the act significantly expanded the time frame within which pay claims must be brought.

Interestingly, as the first post-Ledbetter Act pay discrimination case to reach the Supreme Court, Hulteen establishes yet another obstacle to some employees who feel that they are the victims of a discriminatory pay practice.

Background of Title VII and The Lilly Ledbetter Fair Pay Act of 2009

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, national origin, religion, age and disability. In 1978, the Pregnancy Discrimination Act (PDA) amended Title VII to require employers to give the same benefits to women who take pregnancy leaves as it afforded to employees who take other types of disability leave.

The Lilly Ledbetter Fair Pay Act of 2009 takes its name from Lilly Ledbetter who worked as an area manager for Goodyear Tire & Rubber Company from 1979 until she retired

in 1998. During her employment, Ledbetter found that her salary had gradually slipped in comparison to her male counterparts.

After she retired, Ledbetter filed a sex discrimination charge with the Equal Employment Opportunity Commission and later she filed a lawsuit. The case went all the way up to the Supreme Court, which held that Ledbetter could not bring her claim against Goodyear because it was too old.

Significantly, the Supreme Court held that Ledbetter was required to file her EEOC claim within 180 days after the alleged discriminatory act. Because Ledbetter was complaining about a decision to pay her less that was made long before she filed her claim with the EEOC, the Supreme Court held that no discriminatory acts occurred within the 180-day limitation period, thus her claim was stale and could not proceed. *Ledbetter v. Goodyear Tire & Rubber Co.* (2007) 550 U.S. 618.

In direct opposition to the Ledbetter decision, Congress passed the Ledbetter Act to amend Title VII by providing that “an unlawful employment practice occurs, with respect to discrimination in compensation ... when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits or other compensation is paid, resulting in whole or in part from such a decision or other practice.”

The amendment basically states that a new act of pay discrimination occurs each time an employee is paid if the payment results from some discriminatory compensation decision based upon gender, race or other categories protected by Title VII.

Under the Ledbetter Act, it does not matter how long ago the discriminatory decision was made, as long as the effects of the decision are still present, such as the employee receiving a paycheck.

AT&T v. Hulteen Narrows the Lilly Ledbetter Fair Pay Act: The “Bona Fide Seniority System” Immunity

The Hulteen decision is the first pay discrimination claim that has reached the Supreme Court following passage of the Ledbetter Act. While many suspected that the Ledbetter Act would determine the outcome in Hulteen, that was not the case. Rather, Hulteen marks a significant limitation on the scope of the Ledbetter Act.

The Hulteen decision involved a woman named Noreen Hulteen and three other AT&T female employees who took pregnancy leave from AT&T before 1978, and retired in the 1990s.

Before the Pregnancy Discriminatory Act was enacted in 1978, AT&T classified pregnancy leave as personal leave and capped the service credit that an employee would receive during pregnancy leave at 30 days.

In contrast, employees who took other types of disability leave besides pregnancy leave did not have their service credit capped and received credit for the entire length of the leave.

As soon as the PDA became law in 1978, AT&T changed its seniority system and began to credit employees who took pregnancy leave the same as employees who took other types of leave.

However, AT&T did not make any credit adjustments for female employees who took pregnancy leave before the enactment of the PDA.

As a result, the Hulteen plaintiffs filed suit claiming AT&T engaged in a discriminatory pay practice by not giving full service credit for the time they took pregnancy leave prior to 1978.

The employees claimed that this wrong was still affecting them in the form of lower pensions than they would have received if their service credit for pregnancy leave had not been capped before 1978.

Despite the passage of the Ledbetter Act, the Supreme Court rejected the employees' claim in *Hulteen*. In reaching its decision, the Supreme Court emphasized that AT&T's seniority system was not unlawful prior to the passage of the PDA in 1978.

As the court stated, "although adopting a service credit rule unfavorable to those out on pregnancy leave would violate Title VII today, a seniority system does not necessarily violate the statute when it gives current effect to such rules that operated before the PDA."

Accordingly, the Supreme Court was unwilling to determine that a seniority system which was lawful at the time it was implemented is not later made unlawful just because it has a discriminatory effect on present compensation.

The Supreme Court also relied upon a section of Title VII which provides that seniority systems are afforded "special treatment" under Title VII.

Specifically, section 703(h) of Title VII provides that benefit differentials produced by a "bona fide seniority-based pension plan" are permitted unless they are "the result of an intention to discriminate."

The court held that AT&T's pre-PDA seniority system was "bona fide" and that AT&T had no intention to discriminate by enacting the system.

While the court acknowledged that the pre-1978 seniority system had an ongoing impact on some employees, this fact alone was not enough to constitute an "intention to discriminate" on the part of the employer.

Again, the seniority system was not unlawful at the time it was implemented and it was modified immediately upon passage of the PDA.

As the court explained, at the time the seniority system was implemented, “an exclusion of pregnancy leave from a disability-benefits plan providing general coverage was not a gender-based discrimination at all.”

The court was also reluctant to conclude that the PDA could be applied retroactively to render the seniority system unlawful. The court stated that retroactive application of the PDA was “not a serious possibility.”

Therefore, the court held that AT&T’s system had no intention to discriminate, and is immune as a “bona fide” system under section 703(h) of Title VII.

Finally, the court expressed that “bona fide seniority systems allow, among other things, for predictable financial consequences, both for the employer who pays the bill and the for the employee who gets the benefit.”

Accordingly, the Supreme Court was unwilling to adjust AT&T’s seniority system and risk causing financial unpredictability for that Company.

The Bottom Line for Employers After AT&T v. Hulteen

The Lilly Ledbetter Fair Pay Act was a setback for employers defending employment discrimination lawsuits, because it allowed an employees to bring charges for pay discrimination at virtually any time during employment regardless of how long ago the discriminatory decision was made.

However, Hulteen stands for the proposition that while the Act may toll the length of time within which employees may bring pay discrimination charges, the Act does nothing to lessen the burden of employees to show that the employer engaged in intentional discrimination.

The Supreme Court in AT&T emphasized the necessity of demonstrating the existence of an “intentionally” discriminatory decision. The AT&T decision is a small victory for employers and reaffirmed their managerial discretion to devise and rely upon bona fide seniority systems.

While the Ledbetter Act has substantially expanded the playing field for pay discrimination claims, the Hulteen decision places some restrictions on the act’s application.

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