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# *Ledbetter v. Goodyear:* Circumscribing Title VII's Discrimination Protections

*By Mark D. Bradbury, PhD*

**In *Ledbetter v. Goodyear* (2007) the U.S. Supreme Court was asked to clarify Title VII's rules related to the timeliness of pay discrimination claims. The Court's decision formalized the legal difference between discrete instances of discrimination and the lingering effects of discrimination as they relate to how much time an employee has to file a discrimination claim with the Equal Employment Opportunity Commission. A key distinction was drawn between a discriminatory organizational pay structure and the actions of individual supervisors. Ultimately the Court equated decisions related to pay with other personnel actions and requires employees to promptly file an alleged discriminatory action with the EEOC. When considered in the context of the limitations of the Equal Pay Act, the *Ledbetter* decision further tips the weighing of interests toward the employer.**

PPay inequity by gender remains an indelible characteristic of the U.S. workplace despite two independent and long-standing federal protections against discrimination in compensation.[1] The Equal Pay Act of 1963, since incorporated into the Fair Labor Standards Act of 1938, requires employers to compensate employees of different genders at the same rate, provided the employees hold positions "the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[2] Similarly, Title VII of the Civil Rights Act of 1964 makes it unlawful "to discriminate against an individual with respect to…compensation…because of such individual's…sex."[3] Both of these laws are enforced by the Equal Employment Opportunity Commission (EEOC), albeit with different rules related to, for example, the timeliness of the filing of claims of alleged discrimination.

In *Ledbetter v. Goodyear*[4], the U.S. Supreme Court was asked to clarify the statute of limitations under Title VII as it relates to filings with the EEOC. The Act requires that a charge be filed within 180 days "after the alleged unlawful practice occurred."[5] At issue in *Ledbetter* was whether there is a distinction between discrete instances of discrimination and the lingering effects of discrimination in terms of how much time a claimant has to file a discrimination claim with the EEOC.

## Title VII

The Civil Rights Act of 1964 constituted a major overhaul of the federal government's efforts to promote equal employment opportunity. In particular, Title VII prohibited discrimination by private sector employers and labor organizations with respect to the "terms, conditions, or privileges of employment," including compensation, on the basis of an applicant's or employee's "race, color, religion, sex, or national origin."[6] In addition, a new federal enforcement agency, the EEOC, was created to implement the Act and "to intervene in a civil action…by an aggrieved party against a respondent."[7] Thus, the EEOC was charged with receiving, processing, investigating, and attempting to resolve discrimination complaints brought against employers in the private sector.[8]

## Lingering Effects Under Title VII

Title VII clearly prohibits acts of overt, intentional discrimination in employment, or so-called disparate treatment, on the basis of certain protected demographic characteristics. A key question that arises, however, is the extent to which the law also protects employees against the lingering effects of prohibited discrimination long after the actual employment decision or action occurred. This issue can be succinctly framed by two Supreme Court decisions.

In *Bazemore v. Friday*[9], a racially discriminatory compensation scheme was in place at the North Carolina Agricultural Extension Service prior to the enactment of Title VII, and persisted after the Act was extended to the public sector in 1972. Although damages could not be recovered for pre-Title VII discriminatory disparities in pay, the Court ruled that liability for such a facially discriminatory practice existed "to the extent that this discrimination was perpetuated after 1972."[10] Since an organizational policy led to the pay disparity, each paycheck was a discrete, and actionable, act of discrimination.

The Court differentiated the on-going implementation of such a facially discriminatory policy from the lingering nondiscriminatory effects of past acts of discrimination in *National Railroad Passenger Corp. v. Morgan*[11]. Allegations related to discrete discriminatory acts that occur at a particular place and time must be filed with the EEOC within 180 days, or else those claims are time-barred. Consistent with precedent[12], such discriminatory acts include "termination, failure to promote, denial of transfer, [and] refusal to hire."[13] Discrimination stemming from a hostile work environment, as opposed to that based on a discrete act, was also recognized in *Morgan*. While no single action in such a context may be actionable on its own, a court may look at the frequency, severity, nature, and interference caused by the behavior to find a Title VII violation so long as an action related to the claim occurred within the filing period. On-going effects of discrete instances of discrimination, however, do not themselves initiate a new charging period.

## Ledbetter V. Goodyear

Lilly Ledbetter worked for the Goodyear Tire and Rubber Company from 1979 to 1998. As with all other salaried employees, changes in her compensation level were dependent upon supervisory performance evaluations. Ledbetter alleged that her evaluations were systematically biased against her, and resulted in an artificially deflated level of compensation at the end of her employment with Goodyear. She initiated the complaint process with the EEOC in March 1998 on the grounds that she received a discriminatorily low salary because of her sex, thus constituting a disparate treatment violation of Title VII. This action established a time frame such that Ledbetter could only challenge actions that occurred within the previous 180 days. Although she received paychecks within the 180 day window, Goodyear argued that only those supervisory actions that may have affected Ledbetter's salary and also occurred within the prior 180 days could be included in the Title VII claim. The District Court found in favor of Ledbetter on the basis that her salary was likely affected negatively because of her sex. The 11th Circuit Court reversed, however, on the grounds that only those actions that occurred within the statutory window were admissible and, consequently, there was insufficient evidence to support the claim of sex discrimination. Ledbetter then appealed to the U.S. Supreme Court.

The central question in Ledbetter was whether disparate pay received during the 180 day statutory limitations period is covered by Title VII when the disparity is the result of acts of intentional discrimination that occurred outside of the limitations period. The petitioner, Ledbetter, argued for an expansive application of the *Bazemore* scheme, relying heavily on a phrase from Justice Brennan's opinion that "each week's paycheck that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII."[14] Conversely, Goodyear argued that the claim was time-barred by the 180 day EEOC deadline as per the *Morgan* decision since determinations of compensation were discrete acts. A 5–4 Court ruled that the filing deadline clock with the EEOC is aligned with the occurrence of the discriminatory act, rather than a subsequent instance of effect, and thereby disallowed Ledbetter's Title VII claim. In short, the observed pay disparities were the result of discrete discriminatory acts (i.e. annual considerations of raises and compensation) consistent with the *Morgan* precedent and were time-barred.

By framing the complaint in terms of disparate treatment, Ledbetter was required to show discriminatory intent on the part of Goodyear. Writing for the majority, Justice Alito concluded that petitioner's arguments were not grounded on an allegation of intent, but rather that her "paychecks were unlawful because they would have been larger if she had been evaluated in a nondiscriminatory manner prior to the EEOC charging period."[15] As such, Ledbetter's claim was that the issuance of her last paycheck in 1998 was discriminatory because it "carried forward the effects of prior, uncharged discrimination decisions."[16] Relying on the precedent set in *Morgan* and related cases, 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 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.[17]

Thus, the start of the 180 day charging period with the EEOC is commensurate with the occurrence of an identifiable action or decision that itself is a violation of Title VII, and not the lingering effects of such an action or decision that would have constituted a violation had it been pursued in a timely manner. The EEOC charging period is tied to the occurrence of a discrete act of discrimination, "not from the date when the effects…are felt," so there are no legal consequences for the present nondiscriminatory effects of "prior, uncharged discrimination."[18] In this way, Ledbetter's claim of gender-based discrimination failed to demonstrate the discriminatory intent in Goodyear's actions during the 180 day statutory window necessary for a successful disparate treatment claim.

Ledbetter's reliance on the *Bazemore* precedent was also rejected. In that case, paychecks were issued using a discriminatory pay structure that amounted to disparate treatment at an organization level. This precedent would apply to Ledbetter's claim only if Goodyear had either instituted a general pay structure in order to discriminate on the basis of sex or had "applied this system to her within the charging period with any discriminatory animus."[19] Rather, Ledbetter claimed that she was discriminated against individually by her supervisors throughout her tenure and that negatively affected all of her paychecks (although the Court did not recognize actions that occurred in Ledbetter's last 180 days of employment as sufficient themselves to prove sex discrimination). The distinctions between a discriminatory organizational pay structure and the actions of individual supervisors, and recent (within the previous 180 days) discriminatory acts and the lingering effects of past acts, meant that the *Bazemore* scheme did not apply in *Ledbetter* and that the *Morgan* precedent made the claim time-barred.

## Dissenting View

The cumulative effect that such actions can have over time on an individual's level of compensation was a key point for the four dissenters. They drew a distinction between adverse employment actions like termination, the failure to promote, and the refusal to hire that are relatively easy to identify in time[20] and disparity in pay. Writing for the dissent, Justice Ginsberg argued that the latter often occur in small increments such that a significant amount of time must pass before the employee recognizes the pay disparity, and:

> It is only when the disparity becomes apparent and sizable…that an employee…is likely to comprehend her plight and…complain. Her initial

> readiness to give her employer the benefit of the doubt should not preclude her from later challenging…a wage depressed on account of her sex.[21]

To the contrary, Ginsberg contended that discrimination occurs whenever a paycheck is issued that reflects sex-based discrimination, so that claims based on both discrete acts and the cumulative effect of discrete acts are actionable. This view of Title VII and the *Morgan* and *Bazemore* decisions suggests that the issuance of a paycheck "constitutes an unlawful employment practice" and restarts the 180 day EEOC filing period.

In addition, the dissenters argued that pay disparities are unlike other adverse employment actions because the employer can obfuscate discriminatory actions for an extended period of time, and certainly longer than 180 days. Ginsberg observed that "employers may keep under wraps the pay differentials…, no less the reasons for those differentials."[22] Similarly, an employee may receive a raise, but a discriminatorily low raise, and thus not immediately suspect disparate treatment. And even if such an employee suspects sex-based discrimination, the differential dollar amount may be "too small, or the employer's intent too ambiguous, to make the issue immediately actionable—or winnable."[23] From this perspective, pay discrimination operates more like the hostile work environment form of discrimination recognized in *Morgan* than its discrete discriminatory act standard relied upon by the majority.

## Equal Pay Act

A notable curiosity of *Ledbetter v. Goodyear* is the absence of the Equal Pay Act in the petitioner's claim to the Supreme Court. As explained in a footnote in the opinion, Ledbetter had initially brought both EPA and Title VII claims to magistrate court, but chose to proceed to trial with only the latter. Despite obvious similarities, the two laws function differently in their protections against discrimination.[24] Notably, the EPA does not require proof of intentional discrimination as "inadvertent violations…carry the same weight, although the statute of limitations is extended for willful discrimination." Given the Court's stated rationale for siding with Goodyear, one could speculate that Ledbetter's claim could have been bolstered by the inclusion of the EPA. Indeed, Alito observed that had Ledbetter relied on the EPA, "she would not face the Title VII obstacles that she now confronts."[25] Conversely, punitive damages are available under Title VII but not the EPA.[26]

One the other hand, Justice Ginsberg observed that while Title VII protects five demographic classes, the EPA is concerned with only sex-based discrimination. While claims alleging sex discrimination can still be brought under the EPA, the *Ledbetter* ruling impedes claims based on race, color, religion, sex, and national origin under Title VII. As Ginsberg explained, the ruling would force claimants in a race-based discrimination claim related to compensation "to sue to soon to prevail, while cutting them off as time barred once the pay differential is large enough to enable them to mount a winnable case."[27]

Furthermore, some analysts suggest that having the EPA as a fall-back option for sex-based compensation discrimination claims is hardly reassuring.[28] Zeigler[29] observed that the EPA has a narrow definition of which co-workers can be used for comparison in the identification of a pay disparity and also clearly describes the legal justifications for differences in compensation. Such explicitness signals "to the unscrupulous employer how one might justify or rationalize a discriminatory practice,"[30] Indeed, Zeigler concluded that EPA claims are generally unsuccessful due to the difficulties in establishing a prima facie case, identifying an appropriate comparator, the range of affirmative defenses available to the employer, reluctance of the EEOC to pursue EPA claims, and the narrow scope of the Act to cover "only the most obvious and blatant forms of compensation discrimination."[31]

## Conclusion

In language resembling a stage aside, Justice Alito recognized that the 180 day EEOC filing deadline is "short by any measure" but such was Congress' intent to protect employers from defending claims of lingering effects based on actions taken that are long past.[32] Such a short deadline also reflects congressional preference for the prompt resolution of allegations of employment discrimination. The Court clearly expressed a reluctance to second-guess such intent, or to view *Ledbetter* as an opportunity to access policy-based arguments on the *real politic* of pay discrimination or the limitations of the EPA. Justice Alito asserted that the majority would do no more than "apply the statute as written."[33] As such, the Court clearly rejected a remedy under Title VII for a pay discrimination claim based on lingering effects. To the extent that a compensation decision (e.g. a raise or bonus) is based on one's current pay level, an uncontested discriminatory act or unsuccessful claim of discrimination early in a career literally affect salary and retirement levels for the rest of an employee's life.

Under *Ledbetter*, the burden squarely falls on the employee to contest any pay-related decision or action within 180 days or else they may feel indefinite lingering effects. As such, the incentive for the employee is to regard each pay-related decision with suspicion, and to act swiftly to submit a claim to the EEOC alleging discrimination. Although the employer, Goodyear, was the prevailing party in *Ledbetter*, the decision may prove to be a Pyrrhic victory for employers if they are forced to counter increasingly speculative allegations of discrimination filed by employees under Title VII.

## Notes

1 e.g., Alkadry, M.G., & Tower, L.E. (2006). Unequal pay: The role of gender. *Public Administration Review, 66*(6), 888-898.; Crampton, Suzanne M., Hodge, J.W., & Mishra, J.M. (1997). The Equal Pay Act: The first 30 years. Public Personnel Management, 26(3), 335-344..; Wyman, E. (2003). The current legal framework of sex/gender discrimination law: The unenforced promise of equal pay acts: A national problem and possible solution from Maine. *Maine Law Review, 55*, 23-62.; Greenlaw, P., & Lee, R. (1993). Three decades of experience with the Equal Pay Act.*Review of Public Personnel Administration, 13*(4), 43-58.; Selden, S.C. (2006). A solution in search of a problem? Discrimination, affirmative action, and the new public service. *Public Administration Review, 66*(6), 911-923.; Zeigler, S.L. (2006). Litigating equality: The limits of the Equal Pay Act. *Review of Public Personnel Administration, 26*(3), 199-215.

[2] EPA, 1997, Part 1620§13

[3] 42 U.S.C. §2000e-2(a)(1)

[4] *Ledbetter v. Goodyear*, No. 05-1074 (2007).

[5] Claims that are initiated with a state or local agency with authority to enforce Title VII have 300 days to reach the EEOC (42 U.S.C. §2000e-5(e)(1)).

[6] 42 U.S.C. §2000e-2(a)(1)

[7] 42 U.S.C. §2000e-4(g)(6)

[8] Title VII was amended by the Equal Employment Act of 1972 to cover the federal, state, and local governments in their capacities as employers (Kellough, J.E. (2006). *Understanding Affirmative Action: Politics, Discrimination, and the Search for Justice*. Washington, DC: Georgetown University Press.)

[9] *Bazemore v. Friday*, 478 U.S. 385 (1986).

[10] *Bazemore v. Friday*, op.cit., 1986, p.395.

[11] *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002).

[12] *See United Air Lines v. Evans*, 431 U.S. 553 (1977), *Delaware State College v. Ricks*, 449 U.S. 250 (1980), and *Lorance v. AT&T Technologies*, 490 U.S. 900 (1989).

[13] *National Railroad Passenger Corp. v. Morgan*, op.cit., 2002, p.114.

[14] Ibid, p.395.

[15] Ibid, p.5, emphasis in original.

[16] Ibid, p.5

[17] *Ledbetter v. Goodyear*, op.cit., 2007, p.8–9.

[18] Ibid, p.7 & 9

[19] Ibid, p.18.

[20] see *National Railroad Passenger Corp. v. Morgan*, op.cit., 2002.

[21] *Ledbetter v. Goodyear*, No. 05-1074 (2007) (Ginsberg, R., dissenting). p. 3.

[22] Ibid, p.3

[23] Ibid, p.8

[24] Zeigler, S.L., op.cit., 2006. p. 202.

[25] *Ledbetter v. Goodyear*, op.cit., 2007, p.21.

[26] Zeigler, op.cit., 2006.

[27] *Ledbetter v. Goodyear*, dissent, op.cit., 2007, p.17.

[28] Alkadry, M.G., & Tower, L.E., op.cit., (2006).; Wyman, E., op.cit., (2003).

[29] Zeigler, op.cit., 2006.

[30] Ibid, p.202.

[31] Ibid, p.210

[32] *Ledbetter v. Goodyear*, op.cit., 2007, p.11.

[33] Ibid, p.23–24

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