

SUPREME COURT LIMITS THE VIABILITY OF “CONTINUING VIOLATION” WAGE DISCRIMINATION CLAIMS

On May 29, 2007, the United States Supreme Court, in a 5-4 decision, made it more difficult for employees to challenge the continuing effects of past discriminatory pay decisions under Title VII of the Civil Rights Act of 1964 (see *Ledbetter v. Goodyear Tire & Rubber Co.*). Prior to *Ledbetter*, the Equal Employment Opportunity Commission (“EEOC”) and courts generally adhered to the principle that each new paycheck resulting from a discriminatory pay decision started the time clock running on the filing of a new discrimination charge under a continuing violation theory.

Ledbetter began working for Goodyear in 1979 and was one of its few female area managers. She presented evidence that all of the female area managers were paid less than male area managers and that by 1997 her male colleagues were paid 15% - 40% more than she. Ledbetter did not, however, file her charge of sex discrimination with the EEOC until July of 1998. The limitations period for filing discrimination charges with the EEOC is 180 days if the state where the employee works does not have a fair employment agency with jurisdiction over such matters or 300 days if the state does have such an agency. Agencies and courts do not have jurisdiction over charges that are not filed within the applicable limitations period after a Title VII violation has occurred.

The Supreme Court found unpersuasive Ledbetter’s argument that each paycheck is a separate act of discrimination that restarts the filing period. The Court held that the 180-day or 300-day time limitation for filing a discrimination charge with the EEOC “is triggered when a discrete unlawful employment practice takes place,” and that “a new violation does not occur and a new charging period does not commence upon the occurrence of subsequent non-discriminatory acts that entail adverse effects resulting from past discrimination.” The Court found that Ledbetter had not adduced any evidence that Goodyear initially adopted its performance-based pay system, which would have constituted a “discrete employment practice,” in order to discriminate on the basis of sex.

In dissent, Justice Ginsburg, joined by Justices Stevens, Souter and Breyer, contended that pay disparities often occur in small increments over time and may be difficult to detect. The dissenters argued that acts that recur and are cumulative in impact should be treated similar to hostile environment claims, i.e. as long as one act contributing to the claim occurs within the filing period, the entire period of the pay disparity should be considered by a court for purposes of determining liability.

The *Ledbetter* decision may be an example of bad facts (Ledbetter’s substantial delay in filing her discrimination claim) making law that weakens remedies for employees who have faced wage discrimination. It does, however, serve as a caution to employees who believe they are the victims of discriminatory pay practices to promptly seek redress within the time periods provided by law or they will be forever barred from doing so.

On May 30, Democratic senators and representatives in Congress said they would introduce legislation the first week of June to remove the “technical hurdle” created by the *Ledbetter* decision, so stay tuned for further developments.

For further information about the impact of the *Ledbetter* decision or the law regarding continuing violations, please contact **Joan M. Eagle** at 312.845.5439 or jeagle@schwartzcooper.com, or any other member of Schwartz Cooper’s Employment Law Practice Group.