

## ***Title VII's Protection Against Pay Discrimination: The Impact of Ledbetter v. Goodyear Tire & Rubber Co.***

*Dorothy Brannon Gross*

In one of its most controversial decisions in years, the Supreme Court in May issued a 5-4 ruling in *Ledbetter v. Goodyear Tire & Rubber Co.*<sup>1</sup> that severely undercuts the ability of pay discrimination victims to enforce their rights under Title VII, the main federal anti-employment-discrimination statute.<sup>2</sup> In its decision, the Court applied the statute of limitations in a way that ignored the realities of both pay discrimination claims, specifically, and workplace bias more generally. In so doing, it imposed an obstacle that will gravely inhibit the ability of bona fide discrimination victims to assert their rights. This article will examine *Ledbetter's* negative impact on rights-claiming under Title VII and map out the legislative fix necessary to restore statutory protection against pay discrimination.

***Ledbetter v. Goodyear Tire & Rubber Co.***

with Title VII's statute of limitations. The majority declined to consider whether a discovery rule might be used to extend the statute of limitations for discrimination that is unknown to the employee and flatly rejected the paycheck accrual rule.

This ruling turned primarily on the Court's interpretation of its own precedent, a 2002 ruling in *International Brotherhood of Teamsters v. United Brotherhood of Carpenters and Joiners of America*.<sup>5</sup> There, it had held that "discrete" acts of discrimination must be challenged within 180 days of their occurrence. In so ruling, the Court rejected the so-called "continuing violations" doctrine, under which some lower federal courts had permitted plaintiffs to challenge a series of related acts of discrimination together, as long as at least one had occurred within the 180 days prior to the filing of an EEOC charge.

In *Ortiz*, the Court carved out an exception for "hostile environment" harassment since, by its very nature, such a claim accrues over time and through the aggregation of multiple incidents of misconduct that together create the hostile environment. For such claims, a plaintiff can challenge harassment as long as at least one of the acts that together created the hostile environment occurred within the 180-day charge-filing period.

Thus, the issue in *Ortiz* was whether pay discrimination claims should be treated like a discriminatory firing, where the clock starts ticking immediately, or like hostile environment claims, where the clock starts ticking anew with each incident. In an opinion written by Justice Samuel Alito, the *Ortiz* majority ruled that the "discrete" act rule applies to pay discrimination claims, departing from the longstanding position of the EEOC, the agency charged with enforcing Title VII.

The Court's rejection of Ledbetter's claim turned on two basic conclusions: First, the Court ruled that under *Ortiz*, a discriminatory pay decision is a discrete act that triggers the statute of limitations. Second, it ruled that a paycheck containing a discriminatory amount of money is not a present violation, but, instead, is merely the present effect of a prior act of discrimination. "[C]urrent effects alone cannot breathe life into prior, charged discrimination," the Court wrote, "such effects have no present legal consequences."<sup>6</sup>

To reach the second conclusion, the Court relied on *Antoine Arnesens*, in which it had dismissed the discrimination claim of a flight attendant who had been wrongfully terminated and then rehired -- without seniority -- years later.<sup>7</sup> The Court refused to permit her to challenge the loss of seniority, since it held that that was just an "effect" of the prior, uncharged wrongful termination. The Court also relied on *Dorsett*,<sup>8</sup> in which a librarian who had been denied tenure, allegedly on the basis of race, was not permitted to sue within 180 days of his termination, since the notice of the tenure denial had been communicated to him a year earlier. Again, the Court held that the actual termination of his teaching contract was merely an effect of the allegedly illegal denial of tenure, rather than a present violation of Title VII.

In relying on these precedents, the Court in *Ortiz* effectively ignored another line of precedents in which it had applied a different rule to pay claims. For example, in *Borick*, all members of the Court joined Justice Brennan's separate opinion, in which he wrote: "[e]ach week's paycheck that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII."<sup>9</sup> The Court in *Ortiz* attempted to distinguish *Borick* on the theory that the employer had carried forward a discriminatory pay structure rather than a discriminatory pay decision. But a paycheck that is deflated because of a prior decision to pay an individual woman less because of her sex is no less a discrete instance of discrimination than one that is deflated because of a prior decision to pay all women less because of their sex. As Justice Ginsburg argued in dissent, the majority's opinion in *Ortiz* means that "[a]ny annual pay decision not contested immediately (within 180 days) . . . becomes grandfathered, a fact beyond the province of Title VII ever to repair."<sup>10</sup> An employer could pay a woman less than her male counterparts for her entire career, and admit that the reason for doing so is because she is female, as long as the decision to set the discriminatory wage happened at least six months earlier.

### ***Ledbetter's Inhibition of Rights-Claiming for Pay Discrimination Victims***

In order to prevail on a pay discrimination claim after *tt r*, a victim must quickly perceive that she has





Although the gender wage gap today is narrower than the 1970s measure of fifty-nine cents on the dollar, the

With *titr*, current law provides inadequate protection against pay discrimination, particularly given the difficulties individual victims have in perceiving and challenging discrimination.

*rotation* *rt* *Equ* *At*

Some pay discrimination victims will find supplementary protection in the federal Equal Pay Act of 1963, which follows the paycheck accrual rule, and may thereby enable them to avoid *titr*'s harsh statute of limitations.<sup>48</sup> The Equal Pay Act requires employers to pay men and women equally if they do substantially similar work, with possible defenses for pay disparities





The absence of a meaningful discovery rule and fair equitable tolling rules makes plaintiffs' compliance with



Even when adopted in 1991, a \$300,000 cap on damages (even lower for smaller employers) was ill-advised for a statute purportedly designed to deter employers from violating Title VII. Sixteen years later, it obviously provides insufficient monetary penalties to deter violations of the law. Surely one of the lawyers at Goodyear could have easily discovered that the Gasden plant paid its only female manager a substantially lower salary than each of its fifteen male managers, and indeed, had never paid a female manager equally to a man. If the penalties for violating Title VII were more substantial, companies like Goodyear would have more incentive to be proactive, and to make sure that they complied with equal pay requirements.

Congress should thus lift the statutory cap on damages in Title VII so as to permit plaintiffs full recovery for intentional employment discrimination and impose sufficient incentives on employers to deter discrimination in the first place.

## **Conclusion**

*tt r \_ Goo r*



---

<sup>61</sup> Equal Employment Opportunity Act of 1972, Pub L. No. 92-261, sec. 4(a), § 706(e), 86 Stat. 103, 105 (1972).

<sup>62</sup> H. R. REP. NO. 101-644(I), at 25-26, 45-46 (1990).

<sup>63</sup> H. R. REP. NO. 102-40(I), at 63-64 (1991), *s r p r n t n* 1991 U.S.C.C.A.N. 549, 601-02.

<sup>64</sup> 137 CONG. REC. H3922-05, H3922 (1991) (statement of Rep. Stenholm).

*EGI A AB E IE* , vol. 10, no. 1 (Fall 2007): 28 - 36.