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Supreme Court Upholds Pension Calculations that Include Pre-1979 Pregnancy Leave Crediting Rules

In AT&T Corporation v. Hulteen, the Supreme Court upheld AT&T's method of calculating benefit accruals under its pension plan for individuals that took maternity leaves from the mid 1960s through the late 1970s – i.e., based in part on pre-1979 provisions that gave less credit for pregnancy leaves than for other types of disability leaves. The Court said the Pregnancy Discrimination Act of 1978 was not intended to be retroactive, thus AT&T was not required to redress the past crediting practices in calculating current pension benefits.

Background

Prior to the Pregnancy Discrimination Act of 1978 (PDA), it was common for employers to provide less retirement credit for pregnancy absences than for other types of medical or disability leaves. From the mid 1960s to the 1970s, AT&T employees received full credit for their entire periods of absence while on disability leave, but only a maximum service credit of 30 days for personal leaves of absence, including pregnancy leaves. AT&T altered this practice in 1977 to treat pregnant employees the same as employees on other disability leaves, but limited service credit to six weeks of leave and treated maternity absences in excess of six weeks as personal leave.

In 1978, Congress passed the PDA, which amended Title VII of the Civil Rights Act of 1964 to prohibit employers from treating pregnancy-related conditions differently than other medical conditions. Under Title VII, an employer may not discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's sex. However, Section 703(h) of Title VII allows employers to offer different terms of employment pursuant to a bona fide seniority system, as long they do not result from an intent to discriminate based on sex.

On April 29, 1979, the effective date of the PDA, AT&T instituted a new program that provided service credit for pregnancy leave on the same basis as for other temporary disability leaves. AT&T did not retroactively adjust service credit calculations under its pension plan for women subject to the pre-PDA service crediting practices.

The Class Action Litigation

AT&T retiree Noreen Hulteen and others, along with the Communications Workers of America (CWA), the union for AT&T's nonmanagement employees, filed sex discrimination charges with the EEOC based on the effect of the pre-1979 crediting practices on their pension benefits. In 1998, the EEOC granted a right-to-sue letter for Hulteen and a class of similarly situated female employees. The U.S. District Court for the Northern District of

California ruled in favor of Hulteen, following the ruling in *Pallas v. Pacific Bell*, a binding decision by the U.S. Court of Appeals for the Ninth Circuit that held it was a violation of Title VII to incorporate pre-PDA accrual rules that differentiated on the basis of pregnancy into post-PDA retirement calculations. AT&T appealed, and in 2007, the Ninth Circuit affirmed and upheld the district court's decision that AT&T's pension accrual methodology discriminated based on sex and violated Title VII.

AT&T appealed to the Supreme Court. Because the Ninth Circuit decision was in direct conflict with two other court of appeal decisions on the same issue, the Sixth Circuit's 2007 decision in *Leffman v. Sprint Corporation* and the Seventh Circuit's 2000 decision in *Ameritech Benefit Plan Committee v. Communication Workers of America,* the Supreme Court agreed to review the case to settle the issue.

The Supreme Court Decision

On May 18, 2009, the Supreme Court ruled in favor of AT&T, stating that an employer does not violate Title VII by calculating present benefits using an accrual rule for periods of pre-PDA service that gave less retirement credit for pregnancy leaves than for other types of medical leaves. The Court found that AT&T's pension payments were based on a bona fide seniority system that was not intended to discriminate on the basis of sex and is protected from challenge under Section 703(h) of Title VII. The law before 1979 did not consider exclusions of pregnancy from a disability benefits plan to be gender discrimination. The Court said that the only way to conclude otherwise would be to apply the PDA retroactively but found that Congress did not intend this. The Court also rejected plaintiffs' claims of discrimination under the recently enacted Lily Ledbetter Fair Pay Act of 2009. (See our February 5, 2009 *For Your Information*.)

Conclusion

The decision provides more certainty to employers that have pension plans with continuing pre-PDA differential treatment. Buck's consultants would be pleased to review your seniority systems and retirement plan provisions, including pre-PDA provisions, and develop any communications.