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EEOC Says Ledbetter Act Does Not Apply to Pension Payments

The Lilly Ledbetter Fair Pay Act of 2009 significantly expanded the time to file pay discrimination claims under most federal anti-discrimination laws. In a case of first impression, the EEOC recently ruled that the Ledbetter Fair Pay Act does not apply to pension payments.

Background

In [Ledbetter v. Goodyear Tire & Rubber Co., Inc.](#), the U.S. Supreme Court held that the time period under Title VII of the Civil Rights Act of 1964 (Title VII) to file a pay discrimination charge with the Equal Employment Opportunity Commission (EEOC) generally runs from the date the employer makes the allegedly discriminatory decision about the employee's compensation. The Court's decision was subsequently overturned by the [Lilly Ledbetter Fair Pay Act of 2009](#) (Ledbetter Act) signed into law by President Obama on January 29, 2009. Adopting the "paycheck rule," the Ledbetter Act provides that the period for filing a charge under Title VII begins anew each time an employee receives a wage payment based in part on the challenged compensation decision, regardless of when it was made. (See our February 5, 2009 [For Your Information](#).)

On November 30, 2010, the EEOC ruled in a case of first impression that the Ledbetter Act's paycheck rule does not apply to pension payments.

The EEOC Ruling

In Brakeall v. EPA (EEOC, Appeal No. 0120093805, 11/30/10), the EEOC considered whether it had erred in dismissing as untimely the claims of a former employee of the Environmental Protection Agency (EPA) that she was discriminated against under Title VII and the Equal Pay Act with respect to her pay and retirement benefits. Specifically, Carol Brakeall claimed that she was paid less than her male counterparts during her last three years with the EPA, which impacted her retirement pay. Thus, she claimed, each pension check she received and will continue to receive is less than she was entitled to receive.

The Facts. Beginning in December 1990, Carol Brakeall worked at the EPA's Kansas City, Kansas facility as a Chief of the Information Services Section/Supervisory Information Management Specialist, level GS-13. Following a reorganization in January 1994, Ms. Brakeall assumed responsibility for the Branch but without a promotion. In June 1996, she was promoted to GS-14 Program Manager, Chief Information Resource Management (IRM) Branch. She retired from the EPA in 1997.

In May 2009, Ms. Brakeall first contacted an EEO Counselor at the EPA, and in June 2009 filed a formal discrimination complaint with that agency. Ms. Brakeall claimed that she had been the only woman serving as an

IRM Branch Chief, the position was a level GS-15 in all other EPA regions, and she had been impermissibly classified at a lower pay grade than her male counterparts. She further claimed that the discriminatory pay she received as an employee impacted her retirement pay. In August 2009, the EPA dismissed her complaint as untimely because she had failed to contact an EEO Counselor within 45 days of the allegedly discriminatory conduct as required under the EEOC's federal sector complaint processing regulations. She appealed the dismissal to the EEOC.

On Appeal. Relying on the Ledbetter Act, Ms. Brakeall challenged on timeliness grounds the dismissal of both her pay claim and her pension claim. Because Ms. Brakeall had waited more than twelve years after receiving her final paycheck to contact an EEO Counselor about the allegedly discriminatory compensation she received during her last three years with the EPA, the EEOC found her pay claim was properly dismissed as untimely.

The EEOC also upheld on the grounds of untimely EEO Counselor contact the dismissal of Ms. Brakeall's pension claim. In doing so, the EEOC differentiated between wage-based claims and claims based on pension payments. The EEOC relied on Section 2(4) of the Ledbetter Act which provides that "[n]othing in this Act is intended to change current law treatment of when pension distributions are considered paid," and the legislative history of the Act. In addition, the EEOC noted that its own Compliance Manual recognizes that courts might decide that "pension benefits are considered paid upon entering retirement and not upon issuance of each annuity check." Thus, the EEOC found that "while a series of payments of discriminatory wages may constitute a continuing violation, a series of payments of discriminatory pension benefits usually does not."

BUCK COMMENT. *The EEOC's ruling limiting the Ledbetter Act's application to pension payments is welcome news for employers, but they continue to face challenges over pay-equity claims that can be brought as a result of the Act. Thus, employers should make certain they have adequate records to support decisions that affect compensation (e.g., performance appraisals, bonuses, layoffs), and an appropriate record retention policy.*

Conclusion

The EEOC has clarified that discrimination claims involving employee paychecks should be treated differently than claims involving pension checks with respect to timeliness issues. Unlike paychecks, each pension check does not represent a new act of discrimination that resets the clock for filing a charge of discrimination. Rather, as the EEOC noted, pension payments are based on a formula that is applied only once at retirement. Thus, the time limit to file a discrimination claim would run from the retiree's receipt of his or her initial pension check.

Buck's consultants would be pleased to discuss the impact of this decision on your workplace and to assist in reviewing your current practices to minimize exposure to pay-related claims.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.