# Lilly Ledbetter Fair Pay Act of 2009

C. Jason Willcox

**Moore, Clarke, DuVall & Rodgers, P.C.**

Albany • Valdosta • Atlanta

Moore Clarke DuVall & Rodgers

Attorneys at Law

# What was the Law?

- A “pay-setting decision” *was* been defined as a "discrete act," with the result that the period for filing an EEOC charge began when the act occurred.
- Under most situations, historically an EEOC charge must have been filed within 180 days of the occurrence of the alleged unlawful employment practice.
- If an employee failed to submit the EEOC Charge of Discrimination in a timely manner, the employee is prohibited from pursuing the matter in court.*

# What was the Law?

- Timely Charge
  - A discriminatory act which is not made the basis for a timely charge is merely an unfortunate event in history which has no present legal consequences.
  - An EEOC charging period runs from the time when the discrete act of alleged intentional discrimination occurred, not from the date when the effects of the practice were felt.

# What was the Law?

- Charging Period
  - For these reasons, Courts have historically held that a claim made under Title VII is time barred if it is not filed within the 180/300 day time limits.
  - If the victim of an employer's unlawful employment practice does not file a timely complaint, the unlawful practice ceases to have legal significance, and the employer is entitled to treat the unlawful practice as if it were lawful. *City of Hialeah v. Rojas*, (11th Cir. 2002)

# What was the Law?

- KEY TERMS/ISSUES
  - Time for filing EEOC Charge begins when the discriminatory act occurs, not when employee learned of the act.
  - A new violation did not occur or create a new charging period upon the occurrence of a subsequent non-discriminatory act that involved adverse effects resulting from past acts of discrimination.

# The History of Lilly Ledbetter

- General allegations in the lawsuit:
  - Ledbetter claimed that Goodyear paid her a smaller salary than it paid her male co-workers at Goodyear's Gadsden, Alabama, tire plant because of her sex.
  - Goodyear countered that:
    - sex had not played any role in the setting of her salary,
    - Ledbetter may prevail only if she could prove that unlawful discrimination tainted an annual review of her salary made within 180 days of her filling a charge of discrimination with the EEOC.

# The History of Lilly Ledbetter

- The US Supreme Court
  - Ledbetter appealed to the US Supreme Court
  - The case was argued on November 27, 2006 and decided May 29, 2007.
  - Ledbetter's primary argument was that during the course of her employment several supervisors had given her poor evaluations because of her sex, that as a result of these evaluations her pay was not increased as much as it would have been if she had been evaluated fairly, and that these past pay decisions continued to affect the amount of her pay throughout her employment.

# The History of Lilly Ledbetter

- FACTS:
  - Lilly Ledbetter (Ledbetter) worked for the Goodyear Tire and Rubber Company (Goodyear) in Gadsden, Alabama.
  - Ledbetter had worked in the Goodyear plant from 1979 until 1998.

# The History of Lilly Ledbetter

- FACTS:
  - Despite continued employment with Goodyear, Ledbetter submitted a questionnaire to the EEOC March 1998 alleging certain acts of sex discrimination.
  - During much of her employment, salaried employees at the plant were given or denied raises based on their supervisors' evaluation of their performance.

# The History of Lilly Ledbetter

- FACTS:
  - In July of 1998, Ledbetter filed a formal EEOC charge.
  - After taking early retirement in November 1998, Ledbetter commenced an action, in which she asserted, among other claims, a Title VII pay discrimination claim and a claim under the Equal Pay Act of 1963 (EPA).

# The History of Lilly Ledbetter

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# The History of Lilly Ledbetter

- FACTS:
  - The Goodyear Gadsden Plant was divided into several discrete units, “business centers,” each of which was responsible for a stage of the tire production.
  - Each business center had a “Business Center Manager” (BCM).

# The History of Lilly Ledbetter

- <u>FACTS:</u>
  - Beginning in the early 1980s, managerial employees' salaries at the Gadsden plant were determined primarily based on a system of annual merit-based raises.
  - Generally, in the early months of each year, each BCM was charged with recommending salary increases for the salaried employees under his or her supervision, including the Area Managers.

# The History of Lilly Ledbetter

- FACTS:
  - BCM recommendations were based primarily on each employee's performance in relation to that of other salaried employees in the business center during the previous year (the "performance year").
  - Business-center-wide performance rankings were calculated based on individual "performance appraisals" that had been completed for, and reviewed with, each employee at the end of the performance year or early in the year following.

# The History of Lilly Ledbetter

- FACTS:
  - The BCM’s recommendation were subject to approval of higher management.
  - Usually several higher management personnel would sign a form approving the recommendation.

# The History of Lilly Ledbetter

- FACTS:
  - Using the performance rankings along with certain Goodyear guidelines on the size and frequency of merit-based raises, the BCM would complete a merit increase plan, a worksheet detailing the merit increases the BCM recommended for that year.
  - These plans included, for each salaried employee, his or her performance ranking, present salary, and salary range; the date of his or her last increase; the recommended increase for the coming year (in dollars and as a percentage increase over present salary); and the date that the increase would become effective.

# The History of Lilly Ledbetter

- <u>FACTS:</u>
  - These plans were then submitted to higher level management for approval.
  - This system resulted in each salaried employee at the Gadsden plant having his/her salary reviewed at least once annually by plant management.

# The History of Lilly Ledbetter

- FACTS:
  - Ledbetter was hired on February 5th, 1979 as a supervisor at the age or 40. The supervisor position is equal to an Area Manager Position in the plant in today's hierarchy.
  - Ledbetter worked under several different BCMs in different business centers at the Gadsden plant.
  - Ledbetter was included in two general layoffs.

# The History of Lilly Ledbetter

- FACTS:
  - From 1992 until 1996 Ledbetter worked with the same three area managers. Their BCM was Mike Tucker.
  - Tucker consistently ranked Ledbetter at or near the bottom of her co-workers.
  - 1995, Ledbetter received a 4% “Individual performance award” and a 3.85% “top performance award” which was reserved for the highest level of individual and contribution to the organization.

# The History of Lilly Ledbetter

- <u>FACTS:</u>
  - Due to the 1995 raise, Ledbetter was not eligible for a raise in 1996.
  - In some years, Tucker awarded Ledbetter the largest percentage increase of her group; however, the raise also resulted in the smallest monetary gain due to salary differences with her co-workers.
  - In 1996, Tucker ranked Ledbetter 23rd out of 24 salaried employees and 15th out of 16 area managers.

# The History of Lilly Ledbetter

- <u>FACTS:</u>
  - Ledbetter was transferred from one business center to another in March 1996 because of “sub-standard performance.”
  - Ledbetter worked under several different BCMs in different business centers at the Gadsden plant.
  - Ledbetter did not receive another salary increase through December 1997 and was informed several times she may be laid off.

# The History of Lilly Ledbetter

- FACTS:
  - In 1997, Ledbetter voluntarily applied for and transferred to a different position, at the recommendation of a BCM - Jones.
  - In 1997, Ledbetter was reviewed by Kelly Owens (male) who again ranked Ledbetter 23rd out of 24 salaried employees and 15th out of 16 area managers.  A male was ranked below her.
  - Ledbetter was again denied a raise for 1998, just as she had for 1996 and 1997.

# The History of Lilly Ledbetter

- FACTS:
  - On March 25, 1998, Ledbetter filed a questionnaire with the EEOC, alleging that she had been forced into the Technology Engineer position and was being subjected to disparate treatment in her new department on account of her sex.

# The History of Lilly Ledbetter

- <u>FACTS:</u>
  - In July 1998, Ledbetter filed a formal charge of discrimination with the EEOC alleging, in addition to her earlier complaints, that she had received a discriminatorily low salary as an Area Manager because of her sex.
  - In August 1998, Goodyear announced that it was going to downsize the Gadsden plant and that those who were likely be laid off would have the option of choosing early retirement. Ledbetter applied, was accepted, and retired effective November 1, 1998.

# The History of Lilly Ledbetter

- FACTS:
  - Ledbetter filed suit in the USDC Northern District of Alabama  on November 24, 1999.
  - Four claims were submitted to the jury:
    - a claim that Ledbetter had been the victim of gender-disparate pay as an Area Manager, in violation of Title VII, and
    - three claims, brought under Title VII and the Age Discrimination in Employment Act ("ADEA"), relating to her transfer to the Final Finish area as a Technology Engineer.
      - Essentially that the transfer had been involuntarily forced upon her because of her sex or her age, or in retaliation for her having made complaints of sex discrimination.

# The History of Lilly Ledbetter

- FACTS:
  - Ledbetter ranked 23rd of 24 Area Managers for both the raw performance scores and in the weighted scores used for business center wide rankings.
  - Ledbetter, the male that ranked below her, nor the 2 males above received raises.
  - Comparator – Male paid same salary in April 1979 as Ledbetter. In 1996, same employee had a base salary of $59,028 while Ledbetter's base salary was $44,724.

# The History of Lilly Ledbetter

- FACTS:
  - the jury found for Goodyear on the transfer-related claims
  - However, the jury returned a verdict in favor of Ledbetter on the Title VII pay claim, finding, in a special verdict, that it was "more likely than not that Defendant paid Plaintiff an unequal salary because of her sex."
  - The jury recommended $ 223,776 in back pay, awarded $ 4,662 for mental anguish, and awarded $ 3,285,979 in punitive damages.

# The History of Lilly Ledbetter

- FACTS:
  - After the verdict, Goodyear renewed its motion for judgment as a matter of law on Ledbetter's disparate pay claim and, alternatively, moved the court to grant it a new trial.
  - Goodyear contended, as it had throughout the litigation, that Ledbetter's pay claim -- or, more accurately, the way she had been permitted to prove her pay claim -- was barred by Title VII's requirement that the conduct complained of in a Title VII action **must** have been the focus of an EEOC charge filed within 180 days of the occurrence of the conduct.

# The History of Lilly Ledbetter

- FACTS:
  - The Trial Court denied the motion, but reduced the verdict to a total of $360,000.00 plus attorneys fees and costs.
  - Goodyear Appealed to the 11th COA.

# The History of Lilly Ledbetter

- The US Supreme Court
  - Ledbetter argued to the US Supreme Court that the paychecks that she received during the charging period and the 1998 raise denial each violated Title VII and triggered a new EEOC charging period.

# The History of Lilly Ledbetter

- The US Supreme Court
  - Decision: Title VII of Civil Rights Act of 1964 action asserting ongoing effects of lower paychecks due to alleged past, uncharged sex discrimination held untimely, because later effects of past discrimination did not restart clock for filing Equal Employment Opportunity Commission charge.

# The History of Lilly Ledbetter

- The US Supreme Court
  - Justice Alito noted that “the later effects of past discrimination do not restart the clock for filing an EEOC charge”.
  - Citing numerous US Supreme Court precedent, Justice Alito wrote that Ledbetter’s arguments failed “because they would require the Court in effect to jettison the defining element of the disparate-treatment claim on which her Title VII recovery was based, discriminatory intent.”

# The History of Lilly Ledbetter

- The US Supreme Court
  - Further, the long standing precedent provided clear instructions “that 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 the past discrimination.”

# The History of Lilly Ledbetter

- The US Supreme Court
  - “current effects alone cannot breathe life into prior, uncharged discrimination”, noting that Ledbetter should have filed an charge of discrimination with the EEOC within 180 days after each allegedly discriminatory employment decision was made and communicated to her.

# The History of Lilly Ledbetter

- The US Supreme Court
  - Her argument would also distort Title VII's "integrated, multistep enforcement procedure."
  - the “short EEOC filing deadline reflects Congress' strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation.”

# The Lilly Ledbetter Act of 2009

- What does it do?
  - The Fair Pay Act enacted by President Obama voids this majority opinion.
  - On January 29, 2009, President Obama executed his first piece of legislation of his new administration, “The Lilly Ledbetter Fair Pay Act of 2009”.
  - The speed with which the 111th US Congress proposed and passed this bill is a sign of things to come.

# The Lilly Ledbetter Act of 2009

- Specific Changes
  - The Fair Pay Act amends the Civil Rights Act of 1964 to declare that an unlawful employment practice occurs when:
    - (1) a discriminatory compensation decision or other practice is adopted;
    - (2) an individual becomes subject to the decision or practice; **<u>or</u>**
    - (3) an individual is affected by application of the decision or practice, including each time wages, benefits, or other compensation is paid.

# The Lilly Ledbetter Act of 2009

- Specific Changes
  - The Act also allows liability to accrue, and allows an aggrieved person to obtain relief, including recovery of back pay, for up to two (2) years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to practices that occurred outside the time for filing a charge.
  - Applies the preceding provisions to claims of compensation discrimination under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

# The Lilly Ledbetter Act of 2009

- Specific Changes
  - Moreover, The Act amends the Age Discrimination in Employment Act of 1967(ADEA) to declare that an unlawful practice occurs when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to the decision or other practice, or when a person is affected by the decision or practice, including each time wages, benefits, or other compensation is paid.

# The Lilly Ledbetter Act of 2009

- Specific Changes
  - An important fact to note is the Fair Pay Act is RETROACTIVE.
    - "This Act, and the amendments made by this Act, take effect as if enacted on May 28, 2007 and apply to all claims of discrimination in compensation under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), title I and section 503 of the Americans with Disabilities Act of 1990, and sections 501 and 504 of the Rehabilitation Act of 1973, that are pending on or after that date."

# The Lilly Ledbetter Act of 2009

- Although the Fair Pay Act retains the 180/300 day deadline for filing the charge of discrimination with the EEOC, this deadline renews "each time wages, benefits, or other compensation is paid" if the compensation is based on an allegedly discriminatory decision.

# What does it mean for me?

- Best Policies after the Fair Pay Act
  - Record Keeping
    - It will be extremely difficult to reconstruct the reasons a decision on pay was made
    - Review your record retention policy now
    - Proper documentation will be your shield against suits.
    - How long? Depending on when a “payment” is made to the employee/former employee – a minimum of four (4) years.  Concerns?  Loss of defense and spoliation.

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# What does it mean for me?

- Best Policies after the Fair Pay Act
  - Compensation Plan
    - Document your plan in writing
    - Communicate the plan with the employees
  - Pay Audit
    - By division/manager/area, on a routine basis
  - Be Proactive
    - Consider options that will eliminate possible continuing effects of past compensation discrimination.
    - Document the reasoning for compensation decisions!

# What does it mean for me?

- Best Policies after the Fair Pay Act
  - Limit Discretion/Add Compensation Panel
    - Avoid giving too much authority to one person on compensation decisions.
    - Consider a panel approach with one person from outside that area.
  - Limit the range of compensation hiring manager can offer
  - Possible Statistical analysis