

Labor & Employment

Fair Pay Act Broadens Statute of Limitations

On January 29, 2009, President Obama signed his first piece of legislation into law. The new law, The Lilly Ledbetter Fair Pay Act of 2009 reverses the Supreme Court of the United States' decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 St. Ct. 2162 (2007), which held that the charge-filing deadline on Title VII compensation discrimination claims begins to run on the date the first allegedly discriminatory pay decision was made.

Background of Ledbetter

In *Ledbetter*, Ms. Ledbetter alleged that after several years she uncovered her that male counterparts were being paid more than her for performing the same job. The Supreme Court ruled that Ms. Ledbetter could not sue Goodyear because she had not

filed a discrimination charge with the EEOC within 180 days of her first alleged discriminatory paycheck.

The Act

The Act permits employees to file a discrimination charge with the EEOC within 180 days (300 days for Oklahoma employees) of their most recent paycheck, not their first discriminatory paycheck, as *Ledbetter* held. Therefore, a discriminatory action now occurs each time the employee receives a paycheck and the charge-filing limitation period starts anew.

The Act is retroactive to May 28, 2007, the day before the *Ledbetter* decision, and applies to compensation discrimination claims brought under Title VII of the Civil Rights Act of 1964, the Age

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Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973.

Implication for Employers

Because employees now have more time in which to file charges of pay discrimination, employers will likely see an increase in litigation. In order to minimize the risks of liability, employers should review their compensation practices to ensure they are applied consistently and fairly to all employees.

Employers Beware: Don't Let Emotions Get the Best of You when Making a Firing Decision

A federal trial court in New York held that an attorney who was fired from a law firm after she complained about sex discrimination could sue for retaliation. Let's see how the court came to this decision in [Collins v. Cohen Pontani Lieberman & Pavane](#).

Firing follows e-mail exchange

Two years after a litigation associate was hired, a partner in the firm told her that he "could not talk to her" and was "uncomfortable" with her. Three months later, the firm's then-managing partner told the associate that she would never become a partner in the firm because she made the partners "uncomfortable," and they prided themselves on being "collegial" and like a "family."

Three years later, the associate complained in an e-mail to the partners that "all the women litigators in this firm, regardless of their level of experience or talent, have been relegated to non-partnership-track support roles, thus limiting their career development as well as their ability to undertake substantive trial work."

The following day, the partner who had complained that he couldn't talk to the associate e-mailed her his concern that she had bypassed the firm's procedure for docketing papers and had failed to obtain partner approval on various prebills. The next day, the associate replied that she had "good reasons" for bypassing the office procedures because the firm's paralegals had failed to follow them. The associate sent two more e-mails that day, one to the partner who had complained and one to the paralegals (with copy to him), complaining that the paralegals had failed to follow procedures with respect to her case. Later that day, the firm fired the associate.

Retaliation alleged

The associate sued, alleging retaliation for complaining about workplace discrimination. The firm asked the court to rule for it without a trial, and the court denied the motion.

The court found that the associate could establish a prima facie retaliation case. First, the court explained that her e-mail complaining about the firm's treatment of women litigators was protected activity because it constituted a report and protest of workplace discrimination.

Next, the court found that firing

her two days after she complained about discrimination constituted strong circumstantial evidence of retaliation. Even more evidence was the fact that the partner who had complained to her testified in his deposition that he thought her e-mail complaining about discrimination was "obnoxious," that it "angered" him, that it was "just a ranting of somebody who is looking to set you up for litigation," and that she was "trying to piss everybody off."

Inconsistent explanations

This shifted the burden to the firm to assert a legitimate nonretaliatory firing reason. The firm argued that it fired her in response to her e-mails explaining her "good reasons" for bypassing office procedures. The firm characterized these e-mails as insulting and unprofessional and stated they were the "final straw" in its firing decision.

This shifted the burden back to the associate to show that the firm's proffered explanation was a pretext — a motive alleged to cloak the real firing reason. Questioning the firm's nonretaliatory explanation for the firing, the court found that contemporaneous e-mails regarding her firing sent by the firm's partners were inconsistent with their later deposition testimony.

In addition, both the partner who

had complained that he couldn't talk to the associate and another partner testified that, until she sent her e-mail complaining about failure to follow office procedures, they hadn't wanted to fire her. But the court found e-mail evidence showing that both partners had already decided to fire her two hours before she sent her e-mail.

Finally, the court noted that a jury could find that the complaining partner's hostility at his deposition established the real firing reason.

The lesson

Even law firms can find themselves defending a discrimination lawsuit if they fail to follow appropriate procedures. Here, the partners apparently fired the plaintiff in an angry emotional reaction to her e-mail. Sometimes an underlying complaint lacks merit, but a valid claim of retaliation is created by an emotional reaction to the complaint.

Sidebar:
Various legitimate, nondiscriminatory reasons for firing don't equate to inconsistent reasons

The court that decided Collins v. Cohen Pontani Lieberman & Pavane cited its previous finding in Aneja v. M.A. Angeliades that a jury issue on the question of pretext may be created when an employer offers

inconsistent and varying explanations for its decision to fire an employee. In Aneja, the New York City Transit Authority fired a project manager for the legitimate nondiscriminatory reasons that:

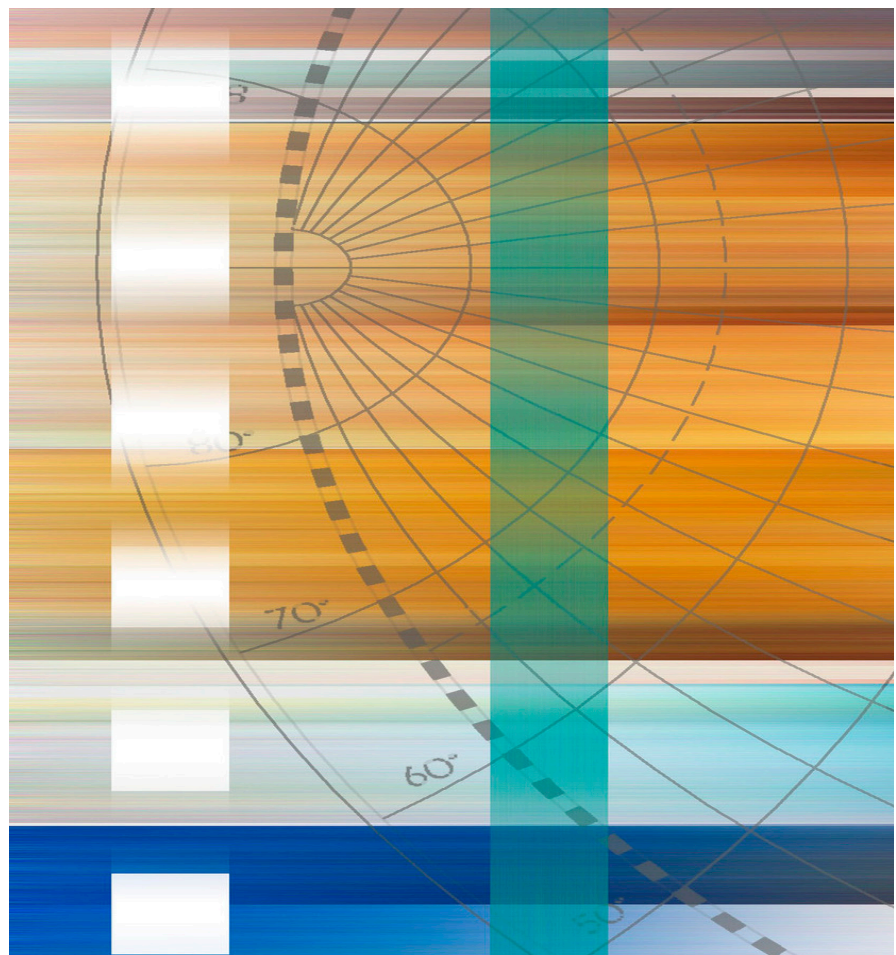
1. He lacked the skills to perform the work he was hired to do,
2. His supervisors complained about his poor performance, and
3. The transit authority lacked appropriate projects for him to perform.

The project manager argued that the employer's firing reasons were

pretextual (an excuse to discriminate against him) because they were inconsistent.

The federal trial court explained that, although a jury issue on the question of pretext may be created when an employer offers inconsistent explanations for its firing decision, the various reasons the employer gave here weren't inconsistent. Rather, they reflected various complaints about his work and the assorted reasons why his services were no longer needed.

Accordingly, the court ruled for the employer without a trial.



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