

Issues & Overview

Congress Needs To Make Its Intent Clear: Equal Pay For Equal Work

A hallmark of the American system of government is that the U.S. Supreme Court is the ultimate referee on questions of law. Even when Court decisions stir passionate differences, they must be respected and enforced.

Yet it is clear that a recent Supreme Court ruling on pay discrimination cries out for a re-examination by Congress because the practical effect of the Court's ruling is to make Title VII of the 1964 Civil Rights Act almost useless in combating pay discrimination in the workplace.

The court said a Goodyear employee could not sue for equal wages, under Title VII because she had not filed her complaint within the 180-day time limit specified in the Act.

In *Ledbetter v. Goodyear Tire & Rubber Co.*, the pay of Lilly M. Ledbetter fell further and further behind that of male counterparts during a 20-year career at an Alabama tire plant. According to a lower court, the disparity was based on Ledbetter's sex, not her workplace performance.

A pivotal question the Court had to consider was: when does the 180-day clock start ticking? Under the Court's ruling an employee must bring suit within 180 days after his or her pay is set, which in this case was through periodic performance reviews. The Court specifically rejected the view of the Equal Employment Opportunity Commission that each unequal paycheck is a separate, distinct act of intentional discrimination, even though each paycheck carries forward the adverse effect of the discriminatory performance review. No matter how unfair the disparity resulting from the intentional discrimination, there is no way to recover years of lost wages, the Court ruled.

In an eloquent dissent, Justice Ruth Bader Ginsburg ticked off a partial list of why such an approach ignores workplace realities. Just as importantly, she pointed to the next step in this dispute: Congress.

This is appropriate counsel. America's fight against workplace discrimination in the last 50 years is an important piece of social and legislative progress. It is the clear goal of Congress, and of society, to make sure that able workers doing the same work are paid equitably regardless of race, sex, or other demographic trait. That is the true meaning of equal pay for equal work. The value to the employer is determined by the work, not by the characteristics of the worker. If this were not the intent of our laws, what would prevent every worker from being in jeopardy? What would prevent employment decisions from being made for reasons that have nothing to do with performance or value to the employer, but have to do with personal preferences of the individual hiring? The intent of our law is to seek equal pay for equal work.

This noble goal should not be swept away by a particular interpretation of a filing deadline. And as Justice Ginsburg's dissent points out, it is difficult, if not, impossible for an employee to know within six months that pay bias has cheated him or her of a fair paycheck.

Many companies, including Goodrich, keep pay structures secret. Early covert pay discrimination snowballs with time, as an employee's base for future pay raises keeps falling further behind. It often takes years for a discriminatory pattern to become obvious.

The founders of our nation wisely created three branches of government that work interactively. The Supreme Court has handed down its decision based on the majority's interpretation of the law as it is written today. Congress must determine whether the decision in *Ledbetter v. Good Year Tire Company* fulfills the intent of the law.

Congress has passed several pieces of legislation that have a single intent: to halt discrimination and harassment in the workplace. In interpreting Title VII, the Court has identified a serious, even fatal hole. The result is simply not fair.

The next step belongs to Congress, to craft a clearer law that makes its intent unmistakable. This is urgent work that has the potential to affect all American workers.

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