



Bucking Tradition, N.J. Appellate Court Sides with Employer in Crucial Wage Discrimination Case

Client Advisories

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You may remember our alert in January of this year when President Obama signed the Lilly Ledbetter Fair Pay Act of 2009 ("Fair Pay Act"). The Fair Pay Act reversed a U.S. Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co.*, which limited the time period in which an employee could sue for discrimination damages based on wages. The Fair Pay Act provides that the statute of limitations does not run from the first act of discrimination, but restarts every time an employee receives a discriminatory paycheck.

In a surprising turn from our state's usual liberal employment mindset, on December 7, 2009, the New Jersey Appellate Division decided *Alexander v. Seton Hall University*, and in doing so, dismissed a claim for discrimination in pay and benefits under the New Jersey Law Against Discrimination ("LAD") because the discriminatory act occurred more than two years prior to the filing of the lawsuit, thus making it outside the LAD's two-year statute of limitations.

The *Alexander* court chose not to follow the Fair Pay Act's reasoning, and held that since the discriminatory act in question occurred more than two years prior to the filing of the plaintiffs' lawsuit, the case was not timely filed. The court's decision was based on the logic of the *Ledbetter* ruling, and held that three professors who sued for wage discrimination based on their gender waited too long to file their case. The court held that no discrete acts of discrimination took place within the two years before the suit was filed. In so holding, New Jersey's Appellate Court noted that it was up to the Legislature to amend the LAD if it thought such claims should be covered under a "continuous trigger" theory.

And how, you ask, might this case affect you as a New Jersey employer? It could mean that employees who want to sue for wage discrimination based on gender may now opt to go to federal court instead of state court, since New Jersey's state courts are not going to follow the Fair Pay Act. So, while you still can be sued for alleged long-past wage discrimination based on gender, you can only be sued in federal court under federal law. This may be beneficial, because federal law includes caps or limits on the amount an employee can recover for certain

damages. In addition, federal courts operate under stricter discovery rules, and federal judges appear to be more willing to grant summary judgment on questionable claims. If, however, the Legislature decides to amend the LAD, New Jersey employers could be faced with their own version of the Fair Pay Act. And, this is only an appeals court decision; it remains to be seen whether the more liberal New Jersey Supreme Court will get involved in this case and issue a contrary ruling, which would trump this decision.

But until then, this round goes to the employer.

If you have any questions regarding the *Alexander* case, Fair Pay Act, and/or other employment laws that may impact your business, please contact a member of Archer's Labor and Employment Department at 856-795-2121.

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