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When Is It too Late to Claim Discrimination?

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One of the most confusing areas of employment law is determining when employees must file claims about discriminatory treatment. Two very recent cases, one pending in the US Supreme Court, one decided by the Massachusetts Supreme Judicial Court highlight the many sources of potential problems that plague this very important area of the law.

The United States Supreme Court is currently considering a case that may provide guidance about the time limits for making Federal employment discrimination claims. The Federal employment discrimination law, commonly known as

Title VII, states that an employee must file a claim with the Equal Employment Opportunity Commission ("EEOC") or a State agency, such as the Massachusetts Commission Against Discrimination ("MCAD"), within "one hundred and eighty days after the alleged unlawful employment practice occurred."

In the case currently before the Supreme Court, *Ledbetter v. Goodyear Tire & Rubber Co.*, the employee, Lily Ledbetter had worked for Goodyear at a plant in Florida for a number of years and eventually brought a discrimination

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Employee or Independent Contractor?

The legal distinction between an employee and an independent contractor may seem like a subject suitable only for a law school exam, but it has real-life significance for both employers and employees.

Considering just federal taxes, for example, if a worker is an employee, the employer must withhold income tax and the employee's part of Social Security and Medicare taxes. The employer also is responsible for paying Social Security, Medicare, and unemployment taxes on wages. An employee can deduct unreimbursed business expenses if the employee itemizes de-

ductions and the expenses are more than 2% of the adjusted gross income.

If the worker has independent contractor status, however, there is no withholding, and the contractor is responsible for paying the income tax and self-employment tax. In that situation, it also may be necessary to make estimated tax payments during the year. An independent contractor can deduct business expenses, but on a different schedule of the tax return than is used by an employee.

So how do you tell the difference between an

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claim alleging that because she was female she had received a lower salary than similarly situated male employees. The inequality had gone on for many years by the time Ledbetter brought her claim. The jury found discrimination and awarded substantial damages to Ledbetter, including punitive damages.

On appeal, Goodyear argued that Ledbetter's claim was too late, because, even though she was paid less than similarly situated male employees right up to the date of her claim, she had not shown that any *decision about her pay which was motivated by discrimination* had been made within one hundred eighty days of her EEOC complaint. The Court of Appeals for the Eleventh Circuit agreed with Goodyear and threw out the jury verdict and entered judgment for Goodyear. By accepting Goodyear's argument, the Eleventh Circuit interpreted the "unlawful employment practice" to be the actual decision to pay Ledbetter less because she was a woman.

In the Supreme Court, Ledbetter argued that every time she received a paycheck with a lower amount than similarly situated male employees Goodyear committed an "unlawful employment practice." Therefore, if this argument were accepted, Ledbetter's EEOC complaint was timely because she filed it within one hundred eighty days of her last paycheck.

If the Court sides with Goodyear, it would send a message to the lower Federal Courts that the procedures required of employees to bring Title VII discrimination claims are to be interpreted very strictly, and that the Court would in the future be likely to throw out other claims where employees failed to strictly and literally comply with the procedures set forth in Title VII. If the Court were to side with Ledbetter, a very different message would be sent. By upholding Ledbetter's claim the Court would be telling the lower Federal Courts to focus more on the nature and impact of differential treatment proved, and less on issues like the proving the exact time when an actual, conscious decision to discriminate was made, and whether that came within the one hundred eighty day period before a complaint was filed.

While the Supreme Court's decision in the *Ledbetter* case will be highly important as a signal to the Federal Courts, it will not spell the end of the confusion that often reigns in employment law for two important reasons.

First, many of the difficulties arise from the overlapping and often duplicative nature of Federal and State discrimination laws. Any decision of the Supreme Court will be binding on *all* courts, both State and Federal who are called upon to interpret and apply Title VII, the *Federal* employment discrimination law. On the other hand, the decision will have little impact on State courts in their interpretation and application of *State* employment laws.

Second, there are many laws, both Federal and State which are potentially applicable to claims that also fall under Title VII. In Massachusetts, General Law Chapter 151B is the most comprehensive employment discrimination law and in many ways parallels the scope of Title VII at the Federal level. In addition to Chapter 151B, however, there are a number of other laws that cover specific types of discrimination which all could also come under the umbrella of Chapter 151B. These laws include: the Massachusetts Equal Pay Act or MEPA, the Massachusetts Civil Rights Act, the Massachusetts Equal Rights Act, Chapter 214 § 1C which outlaws workplace sexual harassment, and certain sections of the workers' compensation law which make it unlawful to retaliate against an employee who has filed a workers' compensation claim.

Much of the work done by the courts in the employment law area involves the effort to interpret and apply the overlapping and often conflicting provisions of these laws. In the *Silvestris* case, a recent decision of the Massachusetts Supreme Judicial Court, illustrates some of these complexities.

The employees in the *Silvestris* case, like Ledbetter, had brought suit because they had been paid less than similarly situated men performing the same work. Like Ledbetter, the *Silvestris* employees had received lower pay than comparably situated men for a number of years. Unlike Ledbetter, however, the *Silvestris* employees had not brought their claims under Title VII, even though they could have brought Title VII claims

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