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St. Petersburg Times (St. Petersburg, Florida)

“Court no help on unequal pay”

Published June 1, 2007

Missing from the Supreme Court’s sex discrimination ruling on Tuesday was a recognition of the reality of the workplace. A slim 5-to-4 majority essentially slammed the door on future Title VII pay discrimination claims by making the window of time in which to bring those claims unreasonably narrow. Now it is up to Congress to reverse the damage.

The case was brought by Lilly Ledbetter, who had been a supervisor at Goodyear Tire and Rubber’s plant in Gadsden, Ala., for 19 years. By the time Ledbetter retired in 1998, she was the only woman working as an area manager and her pay discrepancy relative to male area managers, some with less seniority than she had, was between 15 and 40 percent.

The company claimed the disparity was due to her poor performance. But a jury thought otherwise. One supervisor admitted on the stand that Ledbetter had received a “Top Performance Award” in 1996. And testimony was elicited from two women, former plant managers, who described pervasive gender discrimination. One was paid less than the men she supervised.

The jury ruled for Ledbetter. But her victory was short-lived. A federal appellate court reversed on the basis that she had not filed a sex discrimination complaint within 180 days of the unlawful employment practice, as Title VII of the 1964 Civil Rights Act requires. The Supreme Court, in upholding the appellate court, said that because she didn’t file a complaint within six months of any discriminatory decisions relative to her raises or pay level she was barred from bringing suit.

Justice Samuel Alito, who replaced Justice Sandra Day O’Connor on the court, wrote the majority opinion. A passionate dissent was written by Justice Ruth Bader Ginsburg, the court’s lone female jurist, who spent much of her prior career as a litigator on women’s rights cases.

Ginsburg drew the obvious distinction between one’s ability to respond to a discriminatory firing, promotion or hiring denial, and one’s predicament when a discriminatory pay discrepancy occurs. In one case, the act is instantly knowable and can be acted upon. But when unequal pay is at issue, the victim might not know that she is being slighted, since salary information is often kept secret.

To shield employers from liability for discriminatory pay practices if they can keep victims in the dark for 180 days is to reward unlawful behavior. It’s a very cramped reading of a protective statute.

Also, because the impact of pay disparities is cumulative, as raises are often granted as a percentage of pay, a harm that might not seem like a federal case at first can become one when the differences are compounded through years of unequal treatment.

This is why the Equal Employment Opportunity Commission and most appellate courts treated every unequal paycheck as a new violation. The 180-day time frame began anew with every paycheck that was infected by sex discrimination.

But the high court discarded this longstanding understanding of pay equity claims under Title VII, and with that any real possibility that employees will be able to redress salary wrongs committed against them.

At the close of her dissent, Ginsburg noted that the “ball is in Congress’ court,” inviting lawmakers to correct the court’s “parsimonious reading of Title VII.” The Democratic leadership should do just that.

The Philadelphia Inquirer

The Philadelphia Inquirer (Pennsylvania)

“Missing the point about equal pay”

Published June 5, 2007

The U.S. Supreme Court made an egregious error when it ruled against a woman who filed suit after years of being paid less than her male peers. Fortunately, Congress can repair the damage, and it should do so quickly.

In a 5-4 decision last week, the court said Lilly Ledbetter had waited too long to file a gender discrimination complaint. The decision upheld an appeals court ruling that overturned a district court’s award of more than \$3 million in back pay and damages.

Ledbetter was a supervisor at a Goodyear plant in Gadsden, Ala., for nearly 20 years. For much of that time, unbeknownst to her, she got smaller raises than her male coworkers – including some less senior to her.

By the end of 1997, shortly before she retired, Ledbetter was earning only \$3,727 per month while her lowest paid male colleague was being paid \$4,286 for doing the same job.

Such wage disparity is too common in America. The court should have come out clearly on the side of women and others who are discriminated against at work due to their gender, age, ethnicity or physical condition.

Instead, Justice Samuel Alito, writing for the majority, cited Title VII of the 1964 Civil Rights Act, which gives an accuser 180 days from the initial act of discrimination to file a complaint.

Congress’ intent, the majority ruled – citing a precedent related to a wrongful-dismissal claim – was to make sure complaints of workplace bias are resolved quickly so that companies are not forced to defend themselves against tardy claims.

The opinion is at odds with previous decisions of the federal Equal Employment Opportunity Commission, which had not applied the 180-day rule so rigidly.

Both the EEOC and some lower courts took the more reasonable position that it can take much longer than 180 days for a person to find out her wages don’t match what coworkers are being paid.

As Justice Ruth Bader Ginsburg noted, writing for the dissenters, “pay disparities often occur . . . in small increments” and “cause to suspect that discrimination is at work develops only over time.”

The court's blind adherence to the 180-day rule ignores the realities of today and when the Civil Rights Act first became law.

Could it really be – as the court majority implies in divining Congress' original intent – that lawmakers during the height of the civil rights movement were more concerned about when to start and stop the clock on the 180-day rule than about remedying unfair treatment?

Congress should now make its intention perfectly clear. Several senators plan to introduce a bill to remove or clarify the 180-day rule. There should be no tardiness in passing the legislation.

While businesses are within their rights to seek protection from frivolous or tardy claims, that should not be at the expense of women like Ledbetter or others who should have received equal pay for equal work.

Montgomery Advertiser

montgomeryadvertiser.com

Montgomery Advertiser (Alabama)

“Supreme Court guts equal pay law”

Published June 13, 2007

Alabama native Lilly Ledbetter is a key figure in a lawsuit that the U.S. Supreme Court recently used to gut the nation’s pay discrimination laws. She made a strong case Tuesday before a congressional committee that unless Congress intervenes, lawsuits over equal pay for equal work may be a thing of the past.

After a 19-year career with Goodyear Tire and Rubber Co. in Gadsden, Ledbetter was making \$6,500 less than her lowest paid male counterpart. But the Supreme Court ruled she waited too long to sue.

The 5-4 decision points out that a federal civil rights law sets a 180-day deadline for employees to claim they are being paid less because of their race, sex, religion or national origin. But lower courts have in the past recognized that claimants often don’t know about pay differentials until long after the initial decision was made.

In her dissent, Justice Ruth Bader Ginsburg called the Supreme Court decision a “parsimonious reading” of the law.

But Justice Samuel Alito wrote for the majority: “This short deadline reflects Congress’ strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation.”

However, that won’t be the result of this ruling. Instead, some employers will recognize that if they can only keep a lid on pay differentials for six months, they will be home free.

In the real world, employees only know what they are making and usually not what their peers are making. It almost always take time – much longer than six months – for discriminatory pay patterns to emerge.

“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,” said Karen J. Mathis, president of the American Bar Association.

At issue is when the 180-day clock starts ticking – when a worker learns of the discriminatory pay, or when the worker’s pay is set.

Ginsburg said of the ruling: “In our view, this court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination.” She pointed out that Ledbetter faced the choice of suing early and probably losing, or waiting until a pattern was clear and then be told she sued too late.

On the majority side in the decision were Chief Justice John Roberts and justices Alito, Anthony Kennedy, Antonin Scalia and Clarence Thomas. Dissenting were Ginsburg, Stephen Breyer, David Souter and John Paul Stevens.

It is now clearly up to Congress to clarify the law and to find some reasonable middle ground on this dispute. While long delays in filing pay discrimination lawsuits in some instances do make it harder for companies to defend themselves, the Supreme Court’s strict reading of the 180-day rule essentially nullifies the nation’s equal pay laws.

We urge Alabama’s congressional delegation to take the lead in adopting new laws that fairly balance the interests of employees and employers.



The Dalles Chronicle

Serving Oregon's Wasco, Sherman, & Hood River counties, and Klickitat County, Washington

The Dalles Chronicle (Oregon)

“A bad call by the court”

Published June 7, 2007

You can get away with discrimination if you wait long enough. That's the message sent by the United States Supreme Court last week in the case of Ledbetter v. Goodyear Tire & Rubber Co.

Lilly Ledbetter was a supervisor at a Goodyear plant in Gadsden, Ala., for nearly 20 years. For much of that time, unbeknownst to her, she got smaller raises than her male coworkers — including some less senior to her.

By the end of 1997, shortly before she retired, Ledbetter was the only female of 16 area managers. She discovered she was earning only \$3,727 per month while her lowest paid male colleague was being paid \$4,286 for doing the same job.

At that point, she filed a sex discrimination lawsuit.

A Birmingham jury in federal district court examined Ledbetter's claim and awarded her \$3 million. But the federal trial judge gave her one more pay cut, reducing the award from \$3 million to \$360,000.

Then the U.S. Court of Appeals for the 11th Circuit took away the \$360,000 and reversed the jury's decision.

That reversal was upheld by a 5-4 margin in the Supreme Court. Title VII of the Civil Rights Act of 1964 requires employees to file within 180 days of “the alleged unlawful employment practice.”

The court calculated the deadline from the day Ms. Ledbetter received her last discriminatory raise.

Bizarrely, the majority insisted it did not matter that Goodyear was still paying her far less than her male counterparts when she filed her complaint.

The only important thing was the 180-day rule, the high court said.

The opinion is at odds with previous decisions of the federal Equal Employment Opportunity Commission, which had not applied the 180-day rule so rigidly.

Both the EEOC and some lower courts took the more reasonable position that it can take much longer than 180 days for a person to find out her wages don't match what coworkers are being paid.

As Justice Ruth Bader Ginsburg, writing for the dissenters, noted “pay disparities often occur . . . in small increments” and “cause to suspect that discrimination is at work develops only over time.”

Justice Ginsburg said Ledbetter faced an impossible choice: sue early and probably lose a half-baked case, or wait until the evidence is strong enough to win and be told she sued too late.

“The Bush administration,” one Alabama newspaper editorialized, “always on the watch to protect large companies from lone female managers, broke with its own federal agency and took the side of the tiremaker.”

The ruling showed that at least five justices were totally out of touch with life in the real-world workplace.

In private business (unlike federal judgeships, for instance) employees generally do not know enough about what their co-workers earn — or how pay decisions are made — to file a complaint precisely when discrimination occurs. At Goodyear, as at many companies, salaries were confidential.

The message to employers: You can maintain a discrimination in pay forever without consequence, once you get past the 180 days.

And the most depressing thing about the decision is that Justice Clarence Thomas, himself a member of a minority, and a former head of the EEOC, voted with the majority in support of Goodyear. Past experience suggests his opinion and treatment of women has not always been gallant, but it should have been fair, at least.

Congress should now make its intention perfectly clear. Several senators plan to introduce a bill to remove or clarify the 180-day rule. There should be no tardiness in passing the legislation.

While businesses are within their rights to seek protection from frivolous or tardy claims, that should not be at the expense of women like Ledbetter or others who should have received equal pay for equal work.

THE BLADE

Toledo Blade (Ohio)

“Unequal pay, unequal justice”

Published June 5, 2007

THE U.S. Supreme Court may have effectively sanctioned past cases of pay discrimination against women. The decision, in a case called *Ledbetter vs. Goodyear Tire and Rubber*, severely limits the ability of workers to sue for pay disparity.

By a 5-4 majority, the court upheld a federal law setting a 180-day deadline for employees to claim they are being paid less because of gender, race, religion, or national origin. It was a narrow ruling based on a technical definition of the law, and it underscores how out of touch five justices – including both Bush appointees – are with real-life issues that most people face.

The high court basically removed the teeth from the federal Equal Opportunity Employment Commission when it said that the only woman supervisor among 16 men at the Goodyear Tire plant in Gadsden, Ala., waited too long to file her lawsuit.

Lilly Ledbetter worked 19 years at the plant. She earned \$45,000 a year, \$6,500 less than the lowest-paid male supervisor. But because she waited to file suit until her retirement in 1998, the high court essentially said, “tough luck, lady.”

Justice Clarence Thomas once again failed to shed his reputation of indifference to those less fortunate. This is a man who for eight years was chairman of the EEOC and the main enforcer of workers’ rights in the statute central to the Ledbetter case.

Left unanswered by this unsatisfactory ruling is one obvious question:

How are workers supposed to know when they are not getting the same pay for the same work?

The court’s decision puts the burden on employees to know if they are being had. But in most workplaces, employees are often unlikely to know what others earn unless salaries are set by an announced schedule and classification.

The court’s insistence on a time line to file suit is neither sensible nor fair. The EEOC’s long-standing interpretation of the 180-day statute didn’t keep it from backing Ms. Ledbetter. Instead, the agency actively supported her case.

Although she was awarded \$3 million in back pay and compensatory and punitive damages by the Federal District Court in Birmingham, Ala., the trial judge reduced that to \$360,000.

Then the 11th Circuit Court of Appeals in Atlanta completely did away with the verdict on the basis that Ms. Ledbetter couldn't prove she was intentionally discriminated against in the six months before filing her complaint.

The Supreme Court upheld that ruling. Now, she's left with nothing, and the ruling paves the way for systematic discrimination by businesses that choose to do so.

So troubled was Justice Ruth Bader Ginsburg by the ruling that she took the unusual step of reading her dissent from the bench. The decision, she said, does not take into consideration a female or minority who is "trying to succeed in a nontraditional environment" yet wants to avoid "making waves."

Obviously, Ms. Ledbetter knew that filing a lawsuit while working would be risky, so she waited.

This is a ruling that will remind Americans how much they lost, and how much things changed, when Samuel Alito, who wrote the majority opinion, replaced Sandra Day O'Connor last year.

THE DENVER POST

w e a r e c o l o r a d o

The Denver Post (Colorado)

“Court bias deadline too tight”

Published June 3, 2007

Imagine you're the only female supervisor in a factory dominated by men. You work there for 19 years, getting incremental pay raises. But then, at the end of your career, you realize that the lowest- paid male manager is making a whole lot more money than you are for doing the same job - about \$6,500 a year more.

If you're Lilly Ledbetter, a supervisor at the Goodyear Tire and Rubber plant in Gadsden, Ala., you pursue a federal claim and prove to a jury that you were a victim of sex discrimination.

Last week, the U.S. Supreme Court pushed aside her victory, ruling that she didn't file her claim in a timely manner. But this was no ordinary argument about filing deadlines.

The court's conservative majority constructed an argument that so narrowly defines discriminatory acts as to make it near impossible for people like Ledbetter to succeed.

The court said each time Ledbetter's bosses gave her a discriminatory smaller raise, she was supposed to file a charge with the U.S. Equal Employment Opportunity Commission within 180 days.

First of all, how would she know? It's not as if information about raises is posted on the break-room bulletin board. Second, what seems like a small difference at the time can mushroom over years to be a significant disparity.

As dissenting Justice Ruth Bader Ginsburg said, with such a decision the court doesn't comprehend or doesn't care about the insidious way in which women can be victims of pay discrimination.

Ginsburg read a dissent from the bench, a rare move in the court's world, but one that suggests a strong objection to the majority opinion, held by justices Samuel Alito, Anthony Kennedy, Antonin Scalia, Clarence Thomas and Chief Justice John Roberts.

In her dissent, Ginsburg was joined by justices John Paul Stevens, David Souter and Stephen Breyer. Together, they pointedly urged Congress to correct the court's "parsimonious reading" of Title VII of the Civil Rights Act.

Congressional Democrats, including U.S. Sens. Hillary Clinton, D-N.Y., and Edward Kennedy, D-Mass., lost no time in announcing they favored legislation that would give workers more time to build their cases.

It is incumbent upon them to devise a careful revision that would allow people like Lilly Ledbetter a reasonable road to redress.

The Dallas Morning News

The Dallas Morning News (Texas)

“A Matter of Justice”

Published June 5, 2007

Let's say you've worked for a company 20 years, drawn a salary but later realize your paycheck was noticeably less than your peers. Understandably, you are steamed. Had enough, you file suit.

This was no fictional tale for Lilly Ledbetter. This is what happened to her after working as a supervisor at a Goodyear Tire plant. Ms. Ledbetter held the same management rank as 16 men, but her pay was less than theirs as a result of unequal raises. In fact, equivalent managers with less seniority had better salaries.

She had hints of the differences early on, but didn't realize them until years later, at which time she took her case to court. After several twists and turns, the Supreme Court ruled against Ms. Ledbetter last week.

Speaking for the majority, new Justice Samuel Alito applied a strict interpretation of the 1964 Civil Rights Act, based on the rule that employees must file their grievances within 180 days of the discrimination.

Given Mr. Alito's penchant for strict readings of laws, it's no surprise he came down that way. But Justice Ruth Bader Ginsburg had a more realistic reading of the realities many workers face.

Most workers have no idea about a firm's salaries, she said from the bench. Since companies are often hush-hush, especially about incremental raises, it's ludicrous to assume Lilly Ledbetter should have known something was up within six months of suffering an injustice.

We wish Justice Alito and his four majority colleagues also would have followed the Equal Employment Opportunity Commission's take on how the rule works. It has operated off the belief that the 180-day period gets reset every time an employee receives a paycheck that contains the initial discrimination.

It's up to Congress to set this right so that workers are less hemmed in. Sen. Hillary Clinton promises legislation to do just that.

We hope Texas Sens. Kay Hutchison and John Cornyn support her. No one should get a lesser paycheck simply because of gender or any other quality that has nothing to do with performance.



Knoxville News Sentinel (Tennessee)

“Pay gap challenge”

Published June 7, 2007

Congress was quite clear when it confirmed the two justices who swing the balance of the Supreme Court that it did not want them to legislate from the bench. Last week, by a 5-4 decision, the court passed up an opportunity to do so.

Lily Ledbetter was a supervisor at a Goodyear plant in Alabama, and after 19 years with the company, she was making \$45,000 a year, \$6,500 less than the lowest-paid male supervisor. Shortly before retiring, she sued under Title VII of the 1964 Civil Rights Act, alleging sex discrimination.

She was awarded \$3.8 million in back pay and damages at the trial level, later reduced to \$360,000, but the appeals court overturned the verdict. Its reasoning: The law requires that a discrimination lawsuit be filed within 180 days after the alleged illegal employment practice took place.

And Justice Samuel Alito, writing for the majority, agreed, saying the court was applying the statute "as written." And he's right. That's what the law says.

The majority dealt with the letter of the law, not what is fair or just. That was left to Justice Ruth Bader Ginsburg writing for the dissenters: "In our view, this court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination."

This is a clear invitation for Congress to act, to reaffirm the law "as written" or to give workers like Ledbetter a more equitable shot at compensation. A group of Democratic lawmakers plans to introduce such legislation, according to Newsweek.

Lawmakers have acted before to rectify inequities in the civil-rights laws spotlighted by the justices. As Ginsburg concluded, "Once again, the ball is in Congress' court."

ST. LOUIS POST-DISPATCH

St. Louis Post-Dispatch (Missouri)

“Narrow and insidious”

Published May 31, 2007

Three lessons to be learned from the U.S. Supreme Court's decision this week in *Ledbetter v. Goodyear*:

1. If you think your employer is discriminating against you by paying you less than your fellow employees for similar duties, don't wait -- file a claim right away.
2. Do whatever you can to find out how much your colleagues doing the same job are being paid.
3. President Bush wasn't kidding when he said Justice Samuel J. Alito Jr. would be a strict constructionist.

It was Justice Alito who wrote the 5-4 majority decision, announced Tuesday, that said Goodyear Tire and Rubber Co. wasn't guilty of violating Section VII of the 1964 Civil Rights Act even though for years it had paid Lilly Ledbetter as much as 40 percent less than male colleagues doing the same supervisory job. Justice Alito said the language of Section VII was clear: People who feel they've been discriminated against have only 180 days from the first "discrete act" of discrimination to file a complaint.

It took Ledbetter years to discover that her male colleagues had been getting bigger raises than she had, a fact she blamed on her refusal to accede to her boss's sexual demands. Workers at Goodyear's Gadsden, Ala., factory, like workers in most places, have no idea what their colleagues are paid. By 1998, when Ledbetter discovered she'd been left behind, she was being paid \$3,727 a month, \$559 a month less than the lowest paid man doing comparable work.

So she sued. In similar cases, the Equal Opportunity Employment Commission consistently had ruled that every unequal paycheck was, in effect, a new act of discrimination that reset the 180-day deadline for filing a discrimination suit. The high court's majority rejected that argument, saying that the first discrete act of discrimination took place 20 years ago, and the deadline for complaints had long since passed. Any other reading of the statute, Justice Alito wrote, is a "policy argument" not borne out in the language of the law.

This is the sort of strict legal philosophy Bush endorsed in 2005 in naming then-Judge Alito to succeed the retiring Justice Sandra Day O'Connor. It's impossible to know how

Justice O'Connor would have voted in Ledbetter, but the court's first woman justice might well have been more sympathetic to Lilly Ledbetter's plight. The court's only other woman justice certainly was.

Ruth Bader Ginsburg, reading her dissent from the bench, said the court's majority "does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination." Women employees, she said, often try to avoid "making waves," so a small discrepancy in pay can, over time, grow into a large problem. Besides, she said, it was unrealistic to believe that employees can determine within 180 days that they're not being treated fairly.

This too-narrow decision may affect other causes of alleged discrimination as well. Employees who believe they're being treated differently because of their race, ethnicity, religion or causes must abide by the same 180-day deadline, even though such treatment often becomes apparent only over time.

It would be nice to think that employers won't use this ruling as a loophole to discriminate in the future or to perpetuate discriminatory policies rooted in the past. In a perfect world, that wouldn't happen. In the real world, six months must tell the tale.

Los Angeles Times

Los Angeles Times (California)

“Life vs. the law”

Published May 31, 2007

RARELY DOES the Supreme Court do more damage to its stature than when it ignores facts in order to achieve legal results. That tendency was on display this week as the court's increasingly familiar conservative bloc attempted to bend life as most know it into one the court would prefer.

The case involved Lilly Ledbetter, a Goodyear tire plant supervisor who discovered that she had been paid less than her male colleagues for much of her long career. Once she discovered this discrepancy, she filed discrimination charges. The Equal Employment Opportunity Commission agreed, finding that each of her paychecks represented a separate act of discrimination; a jury concurred. But the court overturned that conclusion and found that she could recover damages only for checks issued within six months of her claim. Never mind that Ledbetter did not know of the pay discrepancy for years. The court found that she "should have filed an EEOC charge within 180 days after each allegedly discriminatory employment decision was made and communicated to her."

That statement says volumes about the majority in this case. By reading the relevant sections of civil rights law narrowly, the majority concluded that Ledbetter was required to file charges at the time her employer decided to pay her less than men she worked with. It assumed that act of discrimination would be "made and communicated to her." But employers that pay their employees unfairly do not, at least in the world most of us inhabit, communicate those acts of discrimination. And unlike employees who are fired or denied promotions, victims of pay disparity often don't find out about it within 180 days — or ever.

Justice Ruth Bader Ginsburg attempted to call the court's attention to those real-world facts. Pay disparity often starts small and grows over time — in Ginsburg's words, "insidious discrimination building up slowly but steadily." Ordinarily, employees do not know the salaries of their colleagues, so they don't even know to complain.

Fortunately, we have civil rights laws, and Congress already is moving to undo this week's ruling, a statutory interpretation and thus one it can and should correct. Unfortunately, Congress is left to act because the Supreme Court has read the law so rigidly that it has misread life.

The New York Times

The New York Times (New York)

“Injustice 5, Justice 4”

Published May 31, 2007

The Supreme Court struck a blow for discrimination this week by stripping a key civil rights law of much of its potency. The majority opinion, by Justice Samuel Alito, forced an unreasonable reading on the law, and tossed aside longstanding precedents to rule in favor of an Alabama employer that had underpaid a female employee for years. The ruling is the latest indication that a court that once proudly stood up for the disadvantaged is increasingly protective of the powerful.

Lilly Ledbetter, a supervisor at the Goodyear Tire & Rubber Company in Gadsden, Ala., sued her employer for paying her less than its male supervisors. At first, her salary was in line with the men's, but she got smaller raises, which created a significant pay gap. Late in her career, Ms. Ledbetter filed a complaint with the Equal Employment Opportunity Commission. A jury found that Goodyear violated her rights under Title VII of the Civil Rights Act of 1964.

Goodyear argued that she filed her complaint too late and, by a 5-4 margin, the Supreme Court agreed. Title VII requires employees to file within 180 days of "the alleged unlawful employment practice." The court calculated the deadline from the day Ms. Ledbetter received her last discriminatory raise. Bizarrely, the majority insisted it did not matter that Goodyear was still paying her far less than her male counterparts when she filed her complaint.

In dissent, Justice Ruth Bader Ginsburg noted that there were strong precedents supporting Ms. Ledbetter. The Supreme Court ruled in a similar race discrimination case that each paycheck calculated on the basis of past discrimination is unlawful under Title VII. The courts of appeals have overwhelmingly agreed. So did the E.E.O.C., the agency charged with enforcing Title VII.

In addition to interpreting the statute unreasonably and ignoring the relevant precedents, the majority blinded itself to the realities of the workplace. Employees generally do not know enough about what their co-workers earn, or how pay decisions are made, to file a complaint precisely when discrimination occurs. At Goodyear, as at many companies, salaries were confidential. The court's new rules will make it extraordinarily difficult for victims of pay discrimination to sue under Title VII. That is not how Congress intended the law to be enforced, merely how five justices would like it to be.

It is disturbing that Anthony Kennedy, the court's swing justice, cast the deciding vote in favor of gutting a key part of the Civil Rights Act. Fortunately, Congress can amend the law to undo this damaging decision. It should do so without delay.

The San Diego Union-Tribune.

The San Diego Union-Tribune (California)

“High court rules on gender pay, Congress fixes”

Published May 31, 2007

In its decision on gender discrimination in pay, the Supreme Court's majority got it right: Lilly Ledbetter, unfortunately, is out of luck.

Among several laws to choose from, Ledbetter chose to sue her employer under Title VII of the Civil Rights Act of 1964. It allows punitive damages. It also requires that claims of gender discrimination be filed with the Equal Opportunity Employment Commission. So that employers aren't blindsided by decades-old allegations, the claims must be filed within 180 days “after the alleged unlawful employment practice occurred.” Ledbetter missed the deadline by about 10 years.

The EEOC didn't care. For decades, it has accepted claims past the deadline, reasoning that grounds for a compensation suit remain viable as long as the allegedly faulty paychecks keep coming. Nor was the federal district court concerned. The 11th U.S. Circuit Court of Appeals, however, noted that Title VII doesn't differentiate between the filing process for gender discrimination in hiring or firing and discrimination in pay. Since other federal courts have ruled differently, the high court took the case to settle the issue.

How the court settled it so rankled Justice Ruth Bader Ginsburg that she read her dissent from the bench: Unlike hiring and firing, proof in unequal pay cases takes more than 180 days to gather. Since employees don't volunteer their pay, women may not know for years that male colleagues earn more. Women may shy from “making waves,” especially if new on the job. And the decision they make affects not only their paychecks but their pension checks.

Ginsburg is mostly right. Where she went wrong is chastising the court majority for not creating grounds to fix this law's flaws. That ball, as she unhappily concluded, is in Congress' court.



The Orange County Register (California)

“Taking the law as it is vs. as it 'should' be”

Published May 31, 2007

One can understand the frustration that led Justice Ruth Bader Ginsburg to issue her dissent orally, from the bench, Tuesday in the case of *Ledbetter v. Goodyear Tire and Rubber*. But her argument is properly with the law as written rather than with the court's majority opinion. If the law offers an insufficient remedy for an employee who believes she was discriminated against on pay because she is a woman, it is up to Congress, not the high court, to change the law.

Lilly Ledbetter worked 19 years as the only female supervisor in a Goodyear plant in Alabama. After retiring, she found she had gotten lower raises and therefore had been paid less than her male counterparts. She sued under the 1964 Civil Rights Act, alleging illegal pay discrimination based on sex.

However, that law required employees to raise discrimination issues within 180 days of their occurrence. A jury ruled in Ms. Ledbetter's favor, but the appeals court ruled that there was no evidence of discrimination during the six months prior to her filing suit, so she had no case. By a 5-4 vote (Alito, Roberts, Thomas, Scalia and Kennedy vs. Ginsburg, Stevens, Breyer and Souter), the U.S. Supreme Court agreed.

Justice Ginsburg said in her dissent that the majority opinion "overlooks common characteristics of pay discrimination." Given the secrecy about salaries in most companies, she said, a person might not even know about getting a lower raise for 180 days.

Justice Ginsburg may be right about that. Justice Alito, however, wrote for the majority that this was a "policy argument" with "no support in the statute." He was right in law and right in the role of the court.

One might well argue that the six-month time limit in the 1964 statute was unrealistically short, but one can certainly see reasons for some time limit. Without such a limit companies might have to defend against suits alleging discrimination committed 20 or 30 years before, long after records might well have been destroyed. The law obviously did not intend to authorize unlimited lawsuits.

As Roger Pilon, vice president for constitutional studies at the libertarian Cato Institute, told us, "The four justices who dissented in this case give us a textbook example of

judicial activism, namely reading the law as they wish it were written rather than as it was written." We agree.



Ventura County Star (California)

“Letter of law”

Published May 31, 2007

Congress was quite clear when it confirmed the two justices who swing the balance of the Supreme Court that it did not warrant them to legislate from the bench, and this week, by a 5-4 decision, the court passed up an opportunity to do so.

Lilly Ledbetter was a supervisor at a Goodyear plant in Alabama and after 19 years with the company she was making \$45,000 a year, \$6,600 less than the lowest-paid male supervisor. Shortly before retiring, she sued under Title VII of the 1964 Civil Rights Act, alleging sex discrimination.

She was awarded \$3.8 million in back pay and damages at the trial level, later reduced to \$360,000, but the appeals court overturned the verdict. It's reasoning: The law requires that a discrimination lawsuit be filed within 180 days after the alleged illegal employment practice took place.

And Justice Samuel Alito, writing for the majority, agreed, saying the court was applying the statute "as written." And he's right. That's what the law says. He rather clouded that point by writing, "This short deadline reflects Congress' strong preference for the prompt resolution of employment discrimination through voluntary conciliation and cooperation," thus showing a certain naiveté about the clout of a lone worker, especially a female, in a large factory.

The majority dealt with the letter of the law, not what is fair or just. That was left to Justice Ruth Bader Ginsburg, writing for the four dissenters:

"In our view, this court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination."

She noted the difficulty of proving discrimination in such a tight time frame, especially given the secrecy in many workplaces about pay and promotion practices. Meanwhile, Ms. Ledbetter continues to pay the price for that discrimination in a diminished pension. This is a clear invitation for Congress to act, to reaffirm that the law "as written" is what it truly intends or to give workers like Ms. Ledbetter a more equitable shot at compensation.

The lawmakers have acted before to rectify inequities in the civil rights laws spotlighted by the justices. Justice Ginsburg concluded, "Once again, the ball is in Congress' court."



Walla Walla Union Bulletin (Washington)

“Congress must tweak law that bans gender pay discrimination”

Published May 30, 2007

The nation's high court on Tuesday sadly gave an OK to discrimination as it ruled against a woman who, after 19 years at Goodyear Tire & Rubber Co, was making \$6,000 less than the lowest paid man doing the same work.

The Supreme Court's majority in the 5-4 decision seemed to be following the fine print of the law rather than the spirit of the law.

Congress has made it clear that it is illegal and discriminatory to not offer equal pay for equal work because of gender.

But the federal Civil Right Act of 1964, which protects workers from pay discrimination, offers a small window - just 180 days - to complain about pay equity issues.

The court ruled against the woman, Lilly Ledbetter, simply because the discrimination went on for 19 years without a legal complaint from Ledbetter.

“This short deadline reflects Congress's strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation,” Justice Samuel Alito wrote for the majority.

A jury found that Goodyear discriminated against Ledbetter and awarded her \$3.6 million. A judge reduced that award to \$360,000 before a federal court, following the same misguided logic as the high court, overturned the verdict.

But what the courts failed to take into account is that since the discrimination was ongoing a new case of discrimination occurred with each paycheck issued to Ledbetter.

Had Ledbetter left Goodyear and then tried to file suit a year or two later, then the high court's ruling would make sense.

Ledbetter's lawsuit doesn't stem from one specific act. It's far more complex. The discrimination occurred - and grew - over time.

If the statute of limitations must be strictly followed, then an employee who is being discriminated against would, as Ledbetter's lawyer put it, be “condemned to perpetually

unequal pay for equal work unless she recognizes and complains about the discrimination within a few short months after it first begins."

Congress never intended for ongoing discrimination to be legal.

It's time for Congress to step in and fine tune the Civil Right Act of 1964. It must be made clear that pay discrimination that goes on for years or decades is not acceptable and is certainly not legal.

The Washington Post

The Washington Post (DC)

“A Matter of Time”

Published May 31, 2007

TITLE VII of the Civil Rights Act of 1964 prohibits employers from discriminating against workers on the basis of race, color, gender, religion or national origin. It also requires that employees raise such claims of discrimination within 180 days "after the alleged unlawful employment practice occurred." On Tuesday, the Supreme Court ruled in a case that involved the question of when, in situations involving allegations of unequal pay, that 180-day clock starts ticking: Must the complaint be raised, as the five-justice majority found, within 180 days of the discriminatory pay decision -- even if the employee doesn't know at the time that she's being paid less than her male counterparts? Or, as four justices argued in a dissent written by Justice Ruth Bader Ginsburg, does the "unlawful employment practice" recur with every paycheck in which a worker is paid less because of her gender?

As a statutory matter, this is a difficult question. As the majority opinion, by Justice Samuel A. Alito Jr., pointed out, Congress, in passing Title VII, took care to put in a strict time limit, and it didn't make an exception for unequal pay. Interpreting the "unlawful employment practice" to be repeated with every paycheck would make it difficult for employers to defend themselves against charges of discrimination that occurred long in the past. For instance, in the case the court decided, one major piece of evidence involved a supervisor who allegedly retaliated against the employee after she spurned his sexual advances; by the time the case came to trial, the supervisor had died

At the same time, as Justice Ginsburg noted, pay discrimination is a different, more hidden phenomenon than bias in hiring or promotion: An employee may not have any reason to suspect that discrimination is at work or that male co-workers are being paid more. If an employee simply dallied before filing a discrimination claim, Justice Ginsburg pointed out, courts would retain the equitable power to dismiss such cases. Allowing more leeway for pay discrimination claims would be in keeping with Title VII's "core purpose" of remedying discrimination in the workplace. Eight federal appeals courts and the Equal Employment Opportunity Commission, the agency entrusted with enforcing Title VII, had adopted Justice Ginsburg's view, compared with one that took the majority position.

Whoever had the better reading of the statute, Justice Ginsburg is clearly right on the policy: It's impossible for every victim of pay discrimination to know and take action within 180 days. Congress should adjust the law accordingly. The sensible approach would be to set filing time limits that take account of the differences between pay differentials and other, more easily discernible forms of discrimination. Employees shouldn't be prevented from complaining about discrimination that they had no way of knowing was taking place; employers shouldn't be at the mercy of tardy claims. Congress should move quickly to strike an appropriate balance between these two legitimate concerns.

CONTRA COSTA TIMES

Contra Costa Times (Florida)

“Court right on bias law”

Published May 30, 2007

TITLE VII OF THE FEDERAL Civil Right Act of 1964 allows workers to file employment discrimination allegations, including pay bias. However, the act places a 180-day deadline for complaining about discriminatory wage decisions so as to reach timely resolutions on such disputes.

On Tuesday, the U.S. Supreme Court upheld the tight deadline on filing discrimination claims. Justice Samuel Alito, writing for the court, said, "This short deadline reflects Congress' strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation."

The case involved a lawsuit by Lilly Ledbetter against Goodyear Tire & Rubber Co., claiming that after 19 years at the company's Gadsden, Ala., plant, she was making \$6,000 a year less than the lowest-paid man doing the same work. Ledbetter claimed the disparity existed for years and was primarily a result of her gender.

Goodyear denied discriminating against Ledbetter, pointing out that she received periodic raises despite being ranked near the bottom of her group of workers.

A jury agreed with Ledbetter, but an appeals court overturned the verdict because she had waited too long to begin her lawsuit.

In the Supreme Court case, Goodyear said the deadline set in the law means nothing if employees can reach back years to claim discrimination. Alito agreed, as did four other justices in a 5-4 ruling in favor of a strict interpretation of the law.

Justice Ruth Bader Ginsburg and three other justices disagreed. "In our view, this court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination," Ginsburg said, reading her dissent from the bench.

That may well be. But it is not the court's responsibility to rewrite the law, only to interpret it and to make sure there are no constitutional violations.

Alito was right to base the decision on the law as written, not as he or anyone else may like it to have been written. If there is room to improve the law, it should be up to Congress, not the courts, to take action to broaden employees' ability to pursue pay discrimination allegations.

In fact, Ginsburg herself alluded to legislative action, saying that Congress could and should correct the court's "parsimonious reading of Title VII."

The Supreme Court's primary responsibility is to determine the constitutionality of laws and actions, not to act as an unelected legislative body. That is a concept too often disregarded by some justices.

The Oregonian

The Oregonian (Oregon)

“A slap to women and minorities”

Published May 30, 2007

Workers tend to know right away when they're unfairly fired, transferred or passed over for a promotion. It can take years, however, to discover unfair pay.

A divided Supreme Court turned its back this week on these underpaid workers, and ignored its own precedent, by undercutting workers' right to sue for pay discrimination under federal civil rights law. The court's decision, which is openly hostile to women and minorities, requires congressional intervention to repair the damage.

Tuesday's 5-4 ruling also makes clear the influence President Bush's judicial appointees have over daily life. Chief Justice John Roberts and Justice Samuel Alito have nudged the court further rightward, as predicted, using this case to roll back citizens' hard-earned civil rights.

Plaintiff Lilly Ledbetter was a supervisor at Goodyear Tire and Rubber in Atlanta from 1979 until her retirement in 1998. Her story will ring familiar to anyone who ever has been underpaid because of their gender, age or skin color.

At the time of her hire, she was paid about the same as her mostly male counterparts. Over the years, however, she got much smaller raises than the guys. These small decisions accumulated over time, until by the end of her career, she was making about \$45,000 a year. Her male colleagues made between \$51,000 and \$63,000 for the same job.

Ledbetter found this out by chance, as so many workers do, and was rightly steamed. She sued under Title VII of the Civil Rights Act and a jury sided with her: Yes, the evidence indicated that Goodyear paid her less because of her gender. Yes, she had been a good manager. Yes, the company had deliberately shortchanged her for nearly 20 years, something civil-rights laws are supposed to prevent.

The Supreme Court sided 5-4 with Goodyear.

The conservative majority said Ledbetter should've known earlier and sued then. The court concluded that, under federal law, workers can't sue for years of discrimination that add up over time to unfair pay: Instead, they must sue within six months of getting shorted, just as they must sue within six months of an unfair demotion or other discriminatory practice.

In other words, the court made it nearly impossible to sue for unfair pay and win, no matter how blatant the cumulative discrimination may be.

The ruling ignores "the realities of the workplace" and the court's own precedent, as Justice Ruth Bader Ginsburg pointed out in the minority's dissent. It limits legal options for women, who rely on Title VII and the Equal Pay Act for redress. It particularly limits the options of those who are underpaid because of their race, age, disability, religion or national origin.

Congress can limit the damage from this ruling in two ways.

First, Congress should tweak federal law to explicitly allow workers to sue for long patterns of unfair pay. Next, the Senate can block President Bush from appointing new justices who sit so far to the right of common sense and fair play.

Chicago Tribune

Chicago Tribune (Illinois)

“Sterile thinking on pay equity”

June 4, 2007

Under federal law, it's illegal for employers to discriminate on the basis of sex, so Lilly Ledbetter should have had a good claim against Goodyear Tire & Rubber.

When she started at its Gadsden, Ala., plant in 1979, she was paid the same as her male colleagues, but by the time she left in 1998, she was the only woman at her management level and was making less than the lowest-paid man. A federal court found she had been wronged. She was awarded \$360,000. But last week the Supreme Court, by a 5-4 vote, said it didn't matter whether her employer broke the law. The Civil Rights Act of 1964, it noted in an opinion written by Justice Samuel Alito, says any claims must be filed within 180 days of the discriminatory act. The decisions that had the effect of shortchanging her had been made more than six months before she filed her suit. So she was out of luck.

Time limits for civil rights cases make sense, so that companies don't have to defend themselves against charges that should have been raised long ago, instead of postponed until evidence has vanished and memories have faded. The problem here is not the notion of applying the time limit to Ledbetter, but the way the court applied it. It essentially said that the pay discrimination occurs only when a biased decision is made and never mind the repeated later occasions when it is translated into actual compensation.

Ledbetter, by contrast, made the eminently sensible argument that each paycheck she got reflected ongoing discrimination, a view shared by the Equal Employment Opportunity Commission, which supported her suit. In her dissent, Justice Ruth Bader Ginsburg agreed.

"Our precedent suggests, and lower courts have overwhelmingly held, that the unlawful practice is the current payment of salaries infected by gender-based [or race-based] discrimination -- a practice that occurs whenever a paycheck delivers less to a woman than to a similarly situated man," she wrote. Under the court's decision, she said with justified amazement, "knowingly carrying past discrimination forward must be treated as lawful conduct."

The majority's sterile reading of the statute ignores the realities on the ground. A woman who is fired on the basis of sex knows she has been fired. But a woman who suffers pay discrimination may not discover it until years later, because employers often keep pay scales confidential. The consequence of the ruling will be to let a lot of discrimination go unpunished.

Unless, of course, Congress acts to revise the law to reflect the dictates of common sense. Democratic leaders in both houses have already announced their plans to do exactly that. The court's decision was a mistake. Congress should waste no time correcting it.



Long Island Newsday (New York)

“In Congress' court”

Published May 31, 2007

The shelf life of wage discrimination is 180 days. That's what the U.S. Supreme Court said Tuesday in ruling against Lilly Ledbetter who, late in her 20 years as a manager for the Goodyear Tire & Rubber Co., discovered she was paid less than every one of the 15 men at her job level. Too late, the court said, even though she convinced a jury that the only reason for the pay disparity was that she's a woman.

That's a literal reading of civil rights law and is at odds with its intent to punish workplace discrimination. It's up to Congress to correct the court's 5 to 4 majority, Justice Ruth Bader Ginsburg said in dissent, a challenge that Sen. Hillary Rodham Clinton (D-N.Y.) has accepted. She promised legislation to clarify the intent of Congress, which should mean dumping the absurd time limit for complaints.

The Civil Rights Act of 1964 bars suits unless a complaint is filed with the Equal Employment Opportunity Commission within 180 days of a discriminatory act. That's fine when the act is clear, like being fired or denied a promotion. But wage discrimination is subtle. Few people know how much co-workers are paid. And Ledbetter got raises - they were just fewer and smaller than those given to male co-workers, despite her receiving a top performance award one year. So the discrimination wasn't immediately clear. Its impact was cumulative. It grew as the years passed.

Like a hostile work environment, wage discrimination isn't defined by one act, such as the size of a single raise. It's often the sum of many small acts. Ledbetter argued that each time she got a paycheck smaller than that of her male colleagues, the 180-day clock reset - logic accepted by a number of lower courts but now overruled. Unless Congress acts, an employer who intentionally pays a minority worker less than others for the same job is legally untouchable after 180 days, even as the impact of that discrimination endures and grows. That can't be what Congress intended.