



HR CORNER

FEES & BURGESS, P. C.



Volume 5, Issue 4

April 2009

New Pay Disparity Case Creates Additional Controversies

Fees & Burgess, P.C., Emphasizes:

While employers adjust to new requirements in the Lily Ledbetter Fair Pay Act of 2009 (Ledbetter Act), another similar Supreme Court case awaits a decision. The case, AT&T Corp. v. Hulteen, was heard by the Supreme Court on December 10, 2008. It involves pay disparities for women who took maternity leave at AT&T between 1968 and 1976. AT&T utilizes a “service credit” system to track an employee’s seniority and term of employment with the company. An employee’s tenure with the company will determine pension benefits upon retirement, among other things. When plaintiffs took maternity leave in the listed time period, AT&T treated maternity leave as a personal leave of absence rather than as a disability leave. Because of this, plaintiffs received only thirty days of service credit regardless of the length of the maternity leave, whereas other employees on disability leave received service credit for the duration of their leave of absence. As a result of this reduced service credit, plaintiffs, who have retired or are preparing to retire, face lower pension benefits than they would otherwise be entitled.

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AT&T is similar to Ledbetter v. Goodyear Tire & Rubber Co., Inc., which inspired the Ledbetter Act. As in Ledbetter, the main issue in AT&T is whether plaintiffs have a proper cause of action for current pay disparities caused by discriminatory actions that occurred many (almost forty) years ago. However, there are several distinctions between the maternity leave in AT&T and the pay discrimination in Ledbetter. At the time the initial discriminatory pay decision was made in Ledbetter, the Equal Pay Act was in effect and the pay decision was covered by Equal Pay laws. The Pregnancy Discrimination Act (PDA), which prohibits discrimination on the basis of pregnancy or childbirth, was not passed until 1979. As such, when the initial service credit decision was made related to plaintiffs’ maternity leave in AT&T, the decision was not expressly covered by any law and was not specifically illegal. Another difference between the two cases relates to the accrual of each plaintiff’s cause of action. While Ledbetter was “injured” by every subsequent paycheck after the initial discriminatory pay decision, and thus theoretically could have a cause of action with every paycheck, plaintiffs in AT&T did not suffer damages until their pension benefits were calculated at retirement.

Defendants argued to the Court that it should not allow the PDA to apply retroactively to actions taken prior to its enactment. In addition, AT&T argued that the limitation period to challenge these actions expired many years ago.

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Plaintiffs argued that AT&T cannot rely on decisions it made pre-PDA to calculate pensions after the PDA became effective. In addition, despite the PDA, Title VII of the Civil Rights Act already prohibited discrimination based on sex, and it included this type of discrimination against women taking maternity leave. Finally, plaintiffs suggested that despite the initial decision related to the maternity leave service credits, plaintiffs, only recently, have been affected by these decisions at retirement when AT&T set their pension benefits based on their total service credits. As such, they should still be allowed to bring a claim.

The Court's decision in Ledbetter may affect its decision in AT&T. In Ledbetter, the Court determined that plaintiff should have filed her claim after the initial pay decision. It held that the separate paychecks which resulted from the original pay decision did not give rise to independent causes of action even though the paychecks were affected by the initial pay decision. While the Ledbetter Act effectively overturned the Ledbetter result, the Court's analysis is still applicable. The Ledbetter ruling may be interpreted broadly or narrowly by the Court, and its own interpretation of the Ledbetter decision will likely affect how the Court reacts to the similar limitation period issue in AT&T.

At this time, the Court has not announced a decision in AT&T. Employers should pay careful attention to the Supreme Court's ruling in this case.

AT&T Corp. v. Hulteen, 498 F.3d 1001 (9th Cir. 2007), appeal docketed, No. 07-543 (U.S. 2008)
Ledbetter v. Goodyear Tire & Rubber Co., Inc., 550 U.S. 618 (2007).





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Calendar of Events

Fees & Burgess, P.C., is proud to present, or participate in the presentation of, the following upcoming seminars:

April 4, 2009 – Las Vegas, Nevada

Contract Management and Business Arrangements : Risk Allocation in Critical Areas of the Contract, presented as part of *EMS Training II:Part C of the IPC EMS program Manager Training and Certification Program*.

April 6-7, 2009—Long Beach, California —2009 NCMA World Congress

Contracting under the UCC: A Basic Primer to Articles 1, 2, and 2A, certification study sessions for Certified Commercial Contracts Manager (CCCM) Fast Track program in conjunction with 2009 NCMA World Congress.

April 22, 2009—Huntsville, AL

Enhanced Liabilities for Employers in 2009 and How to Minimize Reduction in Force Risk, sponsored by Fees & Burgess, P.C.

April 29, 2009—Huntsville, AL

Indemnity and Limitation of Liability Clauses, sponsored by Fees & Burgess, P.C.

June 10, 2009—Decatur, AL

Conducting Effective Investigations in the Workplace, presented to the Decatur chapter of Society for Human Resource Management

June 11, 2009 – National Contract Management Association Audio Seminar Series

Uniform Commercial Code

June 12, 2009 – Boston, Massachusetts

Contract Management and Business Arrangements: Risk Allocation in Critical Areas of the Contract, presented as part of *EMS Training II:Part C of the IPC EMS program Manager Training and Certification Program*

September, 2009 – Birmingham, Alabama

Wage & Hour Master Class, presented for, and sponsored by M. Lee Smith Publishing, Inc. Date to be determined.

September 24-25, 2009 – Chicago, Illinois

Contract Management and Business Arrangements: Risk Allocation in Critical Areas of the Contract, presented as part of *EMS Training II:Part C of the IPC EMS program Manager Training and Certification Program*

For more information on these and other seminars, please go to <http://www.feesburgess.com/category/events-seminars/> or contact Donna Stoddart at dstoddart@feesburgess.com.

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FEES & BURGESS, P.C.

SEMINAR SERIES



Enhanced Liabilities for Employers in 2009 and How to Continue to Minimize Reduction in Force Risk

This program will focus on issues associated with downsizing and reductions in force, including:

- planning /employee selection /related documentation
- severance policies
- use of enforceable releases
- WARN Act / FOREWARN Act proposals
- recovering and protecting company information / property
- security issues
- implementation with dignity
- what claims cannot be waived
- potential new claims under Ledbetter Fair Pay Act and other new legislation

DOWNSIZE

April 22, 2009

8:00 a.m.—9:30 a.m.

Registration begins at 7:30 a.m.

\$15.00 per person.

Continental breakfast is included

Location:

Holiday Inn-Research Park
5903 University Drive
Huntsville, Alabama 35806

Presenters are Jeffrey L. Roth
and Leah M. Green



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Enhanced Liabilities for Employers in 2009 and How to Continue to Minimize Reduction in Force Risk

Date: April 22, 2009

Time: 8:00 a.m.—9:30 a.m.*

*Registration begins at 7:30 a.m. Continental breakfast provided.

\$15 per person

Location:

Holiday Inn-Research Park
5903 University Drive
Huntsville, Alabama 35806
(In front of Madison Square Mall)



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Send your registration form and payment to the attention of Donna Stoddart at:

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SPEAKERS

Fees & Burgess, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program contact Donna Stoddart at dstoddart@feesburgess.com

NEWSLETTERS

Fees & Burgess, P.C., also publishes *F&B Quarterly Bytes*, focusing on multiple practice areas; and *F&B SCM Memo*, focusing on the supply chain management industry. To receive any of these e-newsletters, please e-mail Donna Stoddart at dstoddart@feesburgess.com with your contact information.

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