

“What keeps you up at night?”

Saul Ewing
Higher Education
Practice Group:

James A. Keller
Chair

Court applies Lilly Ledbetter Fair Pay Act of 2009 to save Title VII claim

By Amy C. Foerster

As discussed in an earlier [Alert](#), President Obama signed the Lilly Ledbetter Fair Pay Act of 2009 into law on January 29, 2009. The Act extends the time period during which an employee or former employee can file charges of discrimination under Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act by allowing each paycheck received by the employee to start the filing period anew, regardless of when the initial allegedly discriminatory compensation decision was made. The United States District Court for the Southern District of Mississippi recently applied the Ledbetter Act to “save” what previously would have been an untimely Title VII claim.

The plaintiff in *Gentry v. Jackson State University*, 2009 WL 1097818 (S.D. Miss. April 17, 2009), claimed she was discriminated against based on her gender in violation of Title VII when she was denied tenure and a related salary increase. (Click [here](#) to read the *Gentry* opinion.) Although Dr. Gentry was denied tenure in 2004, she did not file her charges with the EEOC until 2006. The University argued that it was entitled to summary judgment because the filing was well beyond the 180 days permitted for the timely filing of a charge of discrimination under Title VII. The court disagreed.

The *Gentry* court acknowledged that the Ledbetter Act applies to discrimination in *compensation*, and that ongoing effects of uncharged discrimination cannot breathe life into untimely cases involving acts other than pay. In the case of Dr. Gentry, however, the court noted that the discrete discriminatory act – that is, tenure denial – resulted in the denial of a salary increase and hence was a compensation decision. Dr. Gentry remained on staff at the University after the tenure denial, with each paycheck she subsequently received being impacted by that decision and starting the limitations period anew. The court determined, therefore, that it could not grant summary judgment on the limitations issue, because Dr. Gentry filed her notice of charges within 180 days of receiving a paycheck. Interestingly, had Dr. Gentry been terminated in connection with her tenure denial, her claim would have been untimely.

“What keeps you up at night?”

Although it reflects only one court’s application of the Ledbetter Act, the *Gentry* opinion underscores the breadth of the law’s impact. As referenced in our earlier alert, however, Dr. Gentry’s damages in this instance would still be limited to two years of back wages, regardless of when the initial compensatory decision was made.

As *Gentry* demonstrates, we may be seeing more and more plaintiffs reviving claims that until January 29th were long dead. We’ll continue to keep you posted as the lower courts deal with this new law.

This Alert was prepared by Amy C. Foerster, an Associate in the Firm’s Higher Education Practice Group. Amy can be reached at afoerster@saul.com or 717.257.7573. This publication has been prepared by the Higher Education Practice Group for information purposes only.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute “Attorney Advertising.”

© 2009 Saul Ewing LLP, a Delaware Limited Liability Partnership.
ALL RIGHTS RESERVED.