Train Agent’s Lilly Ledbetter Argument in ADA Demotion Claim Left on Platform

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A plaintiff may not salvage her untimely ADA demotion claim by alleging that the statute of limitations began anew with each paycheck pursuant to the Lilly Ledbetter Fair Pay Act, according to the Second Circuit Court of Appeals. *Davis v. Bombardier Transportation Holdings (USA) Inc.* (Second Circuit, July 25, 2015).

The Lilly Ledbetter Fair Pay Act was passed by Congress to reverse the Supreme Court’s 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, which was a compensation discrimination case. The Supreme Court rejected the plaintiff’s contention that even though a challenge to the discriminatory compensation policy was untimely, each paycheck was a separate act of discrimination.

In Davis, the plaintiff’s employer operates the train that connects New York City and JFK Airport. The plaintiff had been an Air Train Agent (ATA) II, which had all of the duties of an ATA I and the additional responsibility of operating the train manually during emergencies. An ATA II was paid seventy-five cents more than an ATA I. Following her return to work after eye surgery, her employer demoted her to an ATA I position.

The plaintiff filed a charge with the EEOC, alleging that her demotion violated the ADA. The district court granted summary judgment to the employer because the charge was filed more than 300 days after the demotion. On appeal, the plaintiff argued that because she was paid less as an ATA I, the statute of limitations began anew with each paycheck under the Ledbetter law.

In rejecting the Ledbetter argument, the Second Circuit noted that the Ledbetter Act “does not encompass a claim of a discriminatory demotion decision that results in lower wages where...the plaintiff has not offered any proof that the compensation itself was set in a discriminatory manner.”

A critical issue in a Ledbetter claim is whether an employee had reason to know, and assess, an employer’s action, according to the court. An employee might not learn that someone else is being paid more for some time. However, an employee who is demoted knows immediately of the demotion and the reduced compensation and can assess then whether the employer’s explanation was legitimate or a pretext for unlawful discrimination.

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