"Supreme Court Decisions Rouse Debate"

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Tuesday, June 12, 2007 --- With a trifecta of high-profile rulings for employers, the Supreme Courts is under a barrage of criticism for being hostile to workers. But lawyers say the picture isn't quite that simple.

In just the last month, the court has handed down rulings favoring employers in three separate cases. But the string of victories for employers is less an indication of employee hostility and more a move by the country's highest court towards more conservative interpretations of the law, experts say.

In the most controversial ruling, handed down on May 29, the Supreme Court concluded that Title VII pay discrimination claims are subject to a six-month statute of limitations after deciding, 5 to 4, that Lily Ledbetter's claims that Goodyear Tire and Rubber Co. paid her less than her male counterparts were untimely.

Justice Samuel A. Alito, Jr., joined by Chief Justice John G. Roberts, Jr. and Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas, ruled that pay discrimination is subject to a federal law that requires an EEOC charge to be filed within 180 days after an alleged unlawful employment practice occurred.

Alito said the filing deadline protects employers from defending claims from employment decisions that are long past and "current effects alone cannot breathe life into prior, uncharged discrimination."

Then on Monday, the High Court delivered another two unanimous rulings against employees.

In Long Island Care at Home v. Evelyn Coke, it sided with Coke's employer and overturned an appeals court's finding that she, as a third-party home care worker, was covered under the wage-and-hour provisions of the Fair Labor Standards Act.

The court upheld a district judge's ruling that the 1975 amendments to the FLSA were not intended for home health care providers employed under third-party contracts.

In Beck v. Pace International Union, the Supreme Court ruled in favor of bankrupt paper mill company Crown Vantage, finding that it was under no obligation to consider its union's offer to merge its pension plans as an alternative to terminating the plans.

The union had filed suit against Crown Vantage in bankruptcy court, accusing the company of breaching its fiduciary duties under the Employment Retirement Income Security Act because it did not conduct an appropriate inquiry into the merger proposal.

"That's three interesting decisions...and I can see how if you look at them, at first blush, they might signal a trend," said Steven Swirsky, a partner at Epstein Becker & Green PC who had previously served as a Field Attorney with the National Labor Relations Board.

"But when you parse through them more closely, you'll find that they really turn out to be questions of deferral to administrative agencies," he said.

"My perception is that the more conservative justices are looking to play the role of strict constructionists and are strictly interpreting what statutes have already been written instead of trying to create new laws," said Tom Servodidio, the chair of Duane Morris LLP's employment practice.

For instance, in Beck v. Pace International Union, the High Court found that Crown Vantage, which had been approached by a labor union pension fund to merge the company's 17 defined-benefit pension plans into the union fund, was not required under federal law to consider the merger proposal.

At the time of the labor union's offer, Crown Vantage had already made a decision to terminate its pension plans and was deliberating over whether to put the money toward purchasing annuities for plan participants and beneficiaries. This kind of transaction would have helped the company recover a $5 million surplus and pay off its creditors.

"There was a $5 million surplus in the plan, and under ERISA laws, it would have gone back to the plan sponsor," explained Peter Goodman, a partner in the New York office of Andrews Kurth LLP with extensive experience in bankruptcy and ERISA cases.

Then, in a "somewhat novel argument," the unions asked the company to merge their pension into a multi-employer pension plan and let the union keep the surplus, going in the face of years of bankruptcy business practices, Goodman said.

"A big issue was whether a merger was a permissible form of termination [for pensions.] When the district and appeals court agreed [with the union], that sent shock waves through the benefits community," he said.

"The purpose of a termination is to cease liabilities and a merger doesn't do that. If they had been allowed to terminate the plan through a merger, then the employer could continue to be liable, the Pension Benefit Guarantee Corp. would continue to be liable and so on."

The Supreme Court's decision, then, was not a blow against the unions but a reiteration of older interpretations of ERISA law, Goodman said.

"The union came up with a novel argument that got the support of three earlier courts and tried to overturn a business practice that had been on the table for many years," Goodman said.

"A merger would have put the pension plan into an uncertain position-after all, a great number of employee plans are significantly underfunded," added Swirsky.

"Any time you have a pension plan that is being terminated, and every employee in the company is walking away with their full share of the payout...I don't see how that could be bad for employees."

As for the Supreme Court's ruling in Long Island Care At Home v. Evelyn Coke, the court was simply recognizing the authority of Congress and agencies such as the Department of Labor in the legislative process, lawyers said.

Coke, a 73-year-old home care attendant from Queens, N.Y., first filed her complaint against Long Island Care in the U.S. District Court for the Eastern District of New York in April 2002, claiming the agency was in breach of the FLSA.

Coke alleged she was paid less than the minimum wage and given no overtime compensation for her 20 years of service. The case went back and forth between the district and appellate courts for the next five years before the Supreme Court ruling on Monday.

In its unanimous decision, the High Court ruled that the DOL had the power to fill any "gap" in federal laws left by Congress, implicitly or explicitly, and that the FLSA explicitly left gaps in the scope and definition of its "domestic service employment" and "companionship services" terms.

"When an agency fills such a gap reasonably, and in accordance with other applicable requirements, that result is legally binding," the court stated. "On its face, the third-party regulation seems to fill a statutory gap."

"What is significant in this case was that Congress and the DOL had both already issued specific statutes and regulations that stated what employees were not covered by the FLSA," said Eric Dreiband, a partner at Akin Gump Strauss Hauer & Feld LLP and former general counsel of the EEOC.

"The question was of what Congress intended when it wrote the 1974 amendment to the FLSA stating that home care workers weren't covered...it did not define with precision what it wanted to do with that provision," explained Swirsky. "What the court said here was that it was the DOL's job to determine how to fill that gap."

Servodidio said that in the past, more liberal judges may have taken the opportunity to develop and create new laws from the bench. But with Justice Alito's appointment, the Supreme Court has become much more conservative in its role.

"The Supreme Court gave a very narrow interpretation of what Congress intended in the FLSA amendment. They felt that if Congress meant something different, it would be more appropriate to allow Congress to change it through the legislative process," Servodidio said.

Ultimately, the Pace International Union and Evelyn Coke cases only affected specific statutes, Swirsky noted. But when it came to Ledbetter, which had a broader implication in terms of how discrimination claims could be pursued, the court was split.

Lilly Ledbetter submitted a questionnaire to the Equal Employment Opportunity Commission in March 1998 alleging sex discrimination, and filed a formal charge with the EEOC four months later. After taking early retirement, she sued Goodyear for alleged pay discrimination that occurred throughout the course of her employment, which began in February 1979.

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"Her decision was untimely because Congress had originally enacted a law saying that employees needed to file a claim within 180 days. [Ledbetter]'s charge with the EEOC challenged decisions [her employer had] made as far back as 19 years before," said Dreiband.

"By that time, one of the key witnesses for the employer had already died."

Justice Ruth Bader Ginsburg, in the minority dissenting opinion, said the majority decision was a "cramped interpretation of Title VII, incompatible with the statute's broad remedial purpose," but recognized that it was now up to Congress to "correct this Court's parsimonious reading of Title VII."

Congress has already stepped up to the plate. On Tuesday, Lilly Ledbetter testified before the House Education and Labor Committee to discuss changes to the 180 day time period to filing Title VII claims.

Committee Chair George Miller (D.CA), with the backing of six other senators, said he would introduce new legislation to rectify the Supreme Court's decision and ensure that workers could use old evidence of unequal pay as proof in a discrimination case.

"I think that's what you're seeing is conservative justices not looking for opportunities to change things. They're leaving it to the legislature to legislate the law," Servodidio said.

"Each case should be looked at for the facts and circumstances that were at issue in each case...In my judgment, there is no particular trend at the Supreme Court favoring one side or the other with employers and employees," said Dreiband.

As proof, Dreiband pointed to a Supreme Court ruling last year, decided by the same nine justices, that had strongly favored an employee's testimony over its employers.

In Burlington Northern & Santa Fe Railway Co v. White, the Supreme Court unanimously ruled that the scope of Title VII's anti-retaliation provision extends beyond actions that affect terms and conditions of employment.

Sheila White, the only woman in her department, operated the forklift at the Tennessee Yard of Burlington Northern. After she complained of sexual harassment by her immediate supervisor, she was removed from forklift duty.

She then filed a complaint with the Equal Employment Opportunity Commission, claiming that the reassignment was unlawful gender discrimination and retaliation-and was promptly suspended without pay by Burlington.

Later, Burlington reinstated her and awarded her back pay for the 27 days she had been suspended. The railroad claimed that White no longer had retaliation claims under the law. But the Supreme Court was unanimous in its decision.

"Not only did they rule in favor of White, they even rejected the solicitor general's-a government official-position arguing in favor of Burlington Northern," Dreiband said.

"I do not believe that this court is expressing, in any way, any hostility towards claims from employees," Dreiband said.

"My view is that [the Supreme Court justices] are being strict constructionists to legislative intent. If Congress intends to do something different, then they can change the laws," said Servodidio.

--Additional reporting by Ron Zapata, Christine Caulfield and Erin Coe