

New Jersey Supreme Court Weighs In on the United States Supreme Court's 2007 Opinion In *Ledbetter v. Goodyear Tire & Rubber Co.*

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In the recent decision in *Alexander, et al. v. Seton Hall University, et al.*, the New Jersey Supreme Court held that each payment of discriminatory wages in violation of the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 et seq., constitutes "an actionable wrong" and the two-year statute of limitations applicable to claims under the LAD runs from each such wrongful payment. In reaching this holding, Justice LaVecchia, writing for a majority of the Court, rejected the lower courts' reliance on the 2007 decision of the United States Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Company*.

In *Ledbetter*, the United States Supreme Court held that the statute of limitations for wage discrimination claims under federal employment discrimination laws begins to run from the date on which the discriminatory pay decision is made, thereby precluding a plaintiff from recovering any back pay if the pay decision in question is not challenged until after the limitations period has expired. In response to that decision, Congress adopted the Lilly Ledbetter Fair Pay Act of 2009 ("FPA"), which amended federal law and declared that an unlawful act occurs each time disparate wages are paid even though each of those payments stem from a prior discriminatory decision made outside the statute of limitations. The FPA additionally placed a two year limitation on the amount of back pay that could be recovered.

The plaintiffs in *Alexander* were three female, tenured professors employed by Seton Hall University for at least 20 years. The plaintiffs filed suit under the LAD, claiming that they received unequal wages as compared to younger male employees. The trial court granted the defendants' motion to dismiss based on the statute of limitations and, in affirming, the Appellate Division relied on the *Ledbetter* decision, pointed out that New Jersey had not enacted a state-law equivalent to the FPA, and held that the plaintiffs' claims were time barred because all disparate wages paid to the plaintiffs, including those paid in the two year period immediately preceding the commencement of the action, were the result of discrete pay setting decisions that occurred well outside of the two year statute of limitations.

On appeal, the Supreme Court reversed, held that the LAD already encompassed the principles of the FPA, and held that each allegedly discriminatory paycheck was a "renewed separable and actionable wrong" from which the two year statute of limitations began to run anew. This holding permits the plaintiffs to recover back pay, but limits it to the two years immediately preceding the litigation.

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Impact: The upshot of the *Alexander* decision is that the timeliness of wage discrimination claims under the LAD depends not on when the challenged pay decision was made but on when salary payments following the pay decision were received. If received within two years prior to the filing of an LAD suit, claims based on those payments will be timely. In other words, a plaintiff is limited to recovering back pay for the two years immediately preceding the commencement of an LAD action claiming wage discrimination. Wage discrimination claims filed under the LAD or federal law will be treated the same for purposes of the statute of limitations and will result in the same amount of permissible back pay (up to two years) to a wronged plaintiff.

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