

## **LEGAL AND LEGISLATIVE UPDATE: SEPTEMBER 2007** **KEVIN M. GOLD, ESQUIRE, LEGISLATIVE DIRECTOR**

### **TITLE VII AND PAY DISCRIMINATION CLAIMS**

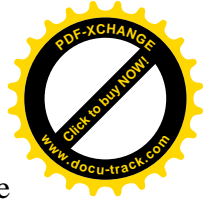
Recently, in Ledbetter v. Goodyear Tire and Rubber Company, the U.S. Supreme Court held, in a 5-4 decision, that the time limits normally associated with filing claims under Title VII also apply to pay discrimination lawsuits. By making this determination, the Court declined to create a special rule to allow tardy Equal Pay Act claims to proceed under Title VII. The general timeframe for a Title VII claim is 180 days, except in states, like Pennsylvania, with an equal employment agency, which extends that time period in which to file to 300 days.

In response, Congress quickly introduced legislation to reverse the decision. Among other things, the “Lilly Ledbetter Fair Pay Act” would amend a number of employment discrimination laws to state that a discriminatory pay practice occurs each time a discriminatory paycheck is issued. Moreover, the legislation would be retroactive to May 28, 2007, the day before the Ledbetter decision and apply to claims pending either on or before that date.

Most employers, and SHRM, are opposed to the legislation that would greatly expand the scope of current employment law. The law would amend Title VII to state that an employee could file a charge within 180 days of receiving compensation, thus creating a situation in which any paycheck (such as an annuity or retirement check) would start a new 180 day (or, in Pennsylvania, 300 day) filing period. Among other things, this would increase the burden on employers to retain payroll documentation much longer than most employers currently retain such materials.

### **DOL ISSUES REPORT ON FMLA CONCERNS**

Prior issues of the Legal and Legislative Update have focused on the recent efforts by the Department of Labor to obtain public input on the effectiveness of the Family and Medical Leave Act. In response to over 15,000 comments, the DOL issued a detailed Report this summer that concluded that, although the public generally likes the law, employers have a number of problems with it.



The Report summarized the public comments from interested parties to determine whether changes to the law and regulations are necessary. From an employer perspective, the Report highlighted several areas where the FMLA is causing significant concern. These areas include intermittent leave and concerns about productivity and costs, particularly as they relate to time sensitive industries, such as transportation, health care and manufacturing. In addition, many employers expressed concern regarding the regulatory definition of what qualifies as a serious health condition as being too vague and want the rules to be clear about the ability to talk with an employee's health care provider regarding medical conditions to verify that they are legitimate.

The DOL has not proposed any immediate changes and concluded that, for the most part, the law has been working well. However, the DOL did recognize a key theme in the comments concerning people with chronic conditions that are taking unscheduled intermittent leave. Ironically, while employers have expressed concern with the statute as it is written, other advocacy groups and legislative initiatives are focusing on an expansion of the FMLA to cover more workers and to provide paid time off. Stay tuned to see what, if any, changes happen to the FMLA in the coming months.

For more specific guidance on these issues, you may reach Mr. Gold at (717) 237-6702 or by email at [kgold@rhoads-sinon.com](mailto:kgold@rhoads-sinon.com).