

Your Monthly Legal Update – June 2009

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WHAT IS THE RECENT SUPREME COURT DECISION ALL ABOUT? THE AT&T CASE WITHOUT THE HYPE

The ruling in *AT&T v. Hulteen*, came down from the United States Supreme Court on May 18, 2009. This ruling was a win for AT&T as the Court decided that those women who took maternity leave decades ago, before discrimination based upon pregnancy was declared to be illegal, could not collect damages for loss of pension monies that occurred prior to the passing of the Pregnancy Discrimination Act. It is interesting that this decision actually reversed the Ninth U.S. Circuit Court of Appeal's ruling that found the opposite.

The facts surrounding the claims summarize the old system of basing pension calculations purely on seniority systems that relied on employees' years of service and thus when someone took a maternity leave, that time out of work had less value for these calculations and payments. As a matter of fact, this system gave less credit for maternity leaves than for general medical leaves. Again, this was prior to the Pregnancy Discrimination Act (PDA) being enacted. Systems like these regarding pay and benefits are what lead to the enactment of the PDA. It was not until 1978 that Congress added the PDA to Title VII of the Civil Rights Act of 1964. Thus from 1978 forward it became illegal to discriminate against women on the grounds of pregnancy, including the treatment of any benefit plan as it related to pregnancy and other forms of medical leaves.

After the passage of the PDA in 1978, AT&T, like many other employers, changed their disability plan calculations for retirement and other policies, upon the Act becoming effective and moving forward. Moving forward, AT&T applied service credit for retirement plans the same for pregnancy as other medical leave conditions. However, no retroactive pay adjustments were made because the law did not mandate retroactive adjustments. This is a key fact in this analysis.

The four Plaintiffs in this case who sued AT&T took their pregnancy leaves prior to the PDA being passed and therefore had more time subtracted from their service credit for retirement benefits than those that had medical leaves unrelated to pregnancy. They argued that the impact of this discrimination had an ongoing damaging impact in that they were being paid less benefits because of their prior pregnancy leaves in violation of the PDA. The Ninth Circuit ruled that the four employees' pregnancy leave time should be included in pension determinations but the Supreme Court disagreed. The Supreme Court opined that an employer does not necessarily violate the PDA by paying benefits in part based upon a system that was enforced pre-PDA even if that system had an ongoing adverse impact. The Supreme Court noted that Congress never mandated any retroactive application of the PDA. Therefore the prior practices of discriminating against pregnancy leaves could continue to have a detrimental impact into the present so long as the illegal penalties stopped once the PDA was enforceable.

The recent Supreme Court decision involving Lilly Ledbetter became the subject of Congressional action recently to overturn that decision moving forward but did not provide Lilly Ledbetter retroactive damages.