



# Second Circuit Rejects Ledbetter Application to Job Bias Cases

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In a recent case, the U.S. Court of Appeals for the Second Circuit (“Second Circuit”) narrowed the scope of extended time limits offered by the Lilly Ledbetter Pay Fairness Act of 2009 (the “Ledbetter Act”).

By way of brief background, in *Davis v. Bombardier Transportation Holdings (USA)*, Natasha Davis sued her employer alleging that she was the victim of disability discrimination. Bombardier operates Air Train, a computer-driven train that transports commuters between New York City and John F. Kennedy airport in New York. Since 2004, Davis worked for Bombardier as an Agent II, a position that required her to manually operate the Air Train in the event of an emergency. In January 2007, Davis took disability leave to have surgery for diabetic retinopathy and underwent at least six eye surgeries. When Davis returned to work, Bombardier tested her vision and determined that she was unfit to manually operate the Air Train. In September 2007, Davis was reassigned to a position as an Agent I, which resulted in a reduction of her hourly wages by 75 cents.

In September 2008, Davis filed a claim of disability discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”) specifically claiming that the demotion violated her rights under the Americans with Disabilities Act (the “ADA”), which prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. Although the alleged demotion occurred more than 300 days prior to when Davis filed her discrimination claim with the EEOC (and was therefore untimely under the statute of limitations), the EEOC nonetheless issued Davis a “right to sue” letter.

In February 2011, Davis filed suit in the U.S. District Court for the Eastern District of New York, asserting that the Ledbetter Act, which extends the statute of limitations in limited circumstances, applied in this case. Specifically, under the Ledbetter Act, the statute of limitations for filing a claim for discrimination in compensation may start anew every time an employee receives a paycheck allegedly impaired by discrimination. Here, Davis claimed that the Ledbetter Act applied in her case because each time she collected a paycheck that was less than she would have received but for the disability discrimination, the statute of limitations began anew each time she received her check.

The U.S. District Court for the Eastern District of New York (Mauskopf, J.) disagreed and granted Bombardier’s motion for summary judgment. Davis appealed to the Second Circuit.

The Second Circuit rejected Davis’ assertion and affirmed the District Court’s holding that the Ledbetter Act was inapplicable to the case at bar. Contrary to Davis’ claim, the statute of limitations commenced when Davis

received the demotion, not each time she received a reduced paycheck. "We conclude that the Ledbetter Act does not encompass a claim of a discriminatory demotion decision that results in lower wages where, as here, the plaintiff has not offered any proof that the compensation itself was set in a discriminatory manner," wrote Judge Richard Wesley for the unanimous panel. "A plaintiff must plead and prove the elements of a pay-discrimination claim to benefit from the Ledbetter Act's accrual provisions," Wesley said. Wesley also noted the Second Circuit's holding is consistent with rulings in the Third, Tenth and District of Columbia circuits, which also declined to extend Ledbetter to otherwise time-barred age and gender discrimination claims.

This decision is significant because it clarifies and narrows the scope of the Ledbetter Act and a claimant's ability to file a discrimination lawsuit after the statute of limitations is exhausted.

*If you or your institution has any questions or concerns regarding employment related issues, please contact James G. Ryan at [jryan@cullenanddykman.com](mailto:jryan@cullenanddykman.com) or at 516-357-3750.*

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