



## Justices Rule for Employer in Maternity Leave Case

Insights

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On May 18, 2009, the Supreme Court upheld AT&T's method of calculating pension benefits for women who, prior to the April 1979 effective date of the Pregnancy Discrimination Act (PDA), took pregnancy-related leave and did not receive full service credit for the period of their leaves. *AT&T Corp. v. Hulteen*.

The Court held that AT&T's seniority policy did not violate Title VII of the Civil Rights Act of 1964, despite the Respondents' argument that calculating their pensions under a formula which accorded less service credit for pre-PDA pregnancy-related leave than other disability leaves gave present effect to past discrimination.

### Background

AT&T maintains a seniority-driven pension plan, calling employees' length of service Net Credited Service (NCS). An employee is assigned an NCS date, which is used to calculate such benefits as the vacation entitlement and pensions. In general, the earlier the NCS date, the more benefits to which the employee is entitled. The date is adjusted to reflect any breaks in service and leave periods or absences for which less than full service credit is given. The employee's NCS date is adjusted forward, reflecting less seniority, for periods of uncredited leave such as the plaintiffs in *Hulteen* took before the effective date of the PDA.

Prior to August 7, 1977, AT&T considered pregnancy-related leave to be "personal leave," not "disability leave," and female employees taking such leave were provided NCS credit for only the first 30 days of leave they took; they did not accrue seniority for any leave beyond 30 days. On the other hand, employees who missed work because of a non-pregnancy-related temporary disability were subject to no such limits; they received full service credit for the period of their leave. After the PDA became effective on April 29, 1979, AT&T received its NCS system and no longer distinguished between maternity leave and other disability leave. As the PDA required, AT&T began to treat maternity leave the same as all other paid disability leaves.

The Respondents in this case were women who took pregnancy leave prior to the PDA, between 1968 and 1976. They did not accrue full service credit for their pregnancy-related leaves – one Respondent, for example, had 210 days of uncredited pregnancy leave at the time of her retirement from AT&T in 1994. This ultimately resulted in their receiving (or being eligible for) lower pensions than if full service credit had been given. The women alleged that because AT&T, after passage of the PDA, did not adjust their service records to give them full NCS credit for the period of their

the PDA, did not adjust their service records to give them full ROS credit for the period of their pregnancy-related leaves, their retirement benefits had been discriminatorily reduced in violation of Title VII. They argued that AT&T's calculations of their pensions, at least in part, on the basis of their pre-PDA loss of full service credit while on pregnancy leaves, gave unlawful present effect to past discrimination.

### **The Supreme Court Decision**

In a 7-2 decision, the Supreme Court reversed a decision in the women's favor by the 9th Circuit, holding that AT&T's seniority system was not in violation of Title VII. The Court emphasized that under the main Supreme Court ruling which the PDA was designed to overturn, AT&T's policy of granting less service credit for pregnancy leave was completely lawful prior to that Act's passage. And, the PDA did not require AT&T to grant retroactive service credit to those women who took pregnancy-related leave under its prior, lawful policy.

Because AT&T's pension plan determined pension payments according to a bona fide seniority system, the plan was protected from challenges under Title VII §703(h). The Court rejected the Respondents' attempt to avail themselves of the Lilly Ledbetter Fair Pay Act of 2009. They argued that it applied to this case, and they had been "affected by application of a discriminatory compensation decision or other practice" within the meaning of that Act. The Court held that the pre-PDA pregnancy leave service credit calculation was not a discriminatory compensation decision, since it was lawful when originally made and there was no evidence of an intent to discriminate when the credit calculation was implemented. Therefore the Fair Pay Act had no application.

Justices Ginsburg and Breyer dissented.

### **Conclusion**

The Supreme Court's ruling protects employers from the unpredictability and unforeseen financial consequences that can result from retroactive application of a statute such as Title VII. The Supreme Court's ruling emphasized that because bona fide seniority systems provide for predictable financial consequences and protect both employers' and employees' reliance interests, they will not be disturbed where there is no evidence the seniority system provisions were based on an intention to discriminate.

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