

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DR. BENNIE GREEN,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-07-1115
	§	
THE TEXAS A&M UNIVERSITY SYSTEM AND	§	
TEXAS A&M UNIVERSITY-KINGSVILLE,	§	
<i>Defendants.</i>	§	

MEMORANDUM AND RECOMMENDATION

This Title VII pay discrimination case is before the court on Texas A&M Kingsville’s motion for partial summary judgment based on the Supreme Court’s recent decision in *Ledbetter v. Goodyear Tire and Rubber Co.*, 127 S. Ct. 2162 (2007). (Dkt. 14).¹ The court recommends that Texas A&M Kingsville’s motion be granted.

Dr. Green, an African-American male, alleges that Texas A&M Kingsville has violated Title VII by paying him less than white colleagues based on discriminatory conduct dating back to August 2003. Relying on *Ledbetter*, Texas A&M Kingsville seeks partial summary judgment limiting Green’s case to discrete pay-setting decisions that occurred between May 26, 2005 and March 22, 2006.

An employee in Texas must file a Title VII discrimination claim within 300 days of the challenged discriminatory act. 42 U.S.C. 2000e-5(e)(1); *Griffin v. City of Dallas*, 26 F.3d 610, 612 (5th Cir. 1994) (explaining that Texas is a dual-filing state, thus the 300-day period

¹ The district court has referred this case to this magistrate judge for pretrial management. (Dkt. 6).

of § 2000e-5(e)(1) applies). Any claim based on bad conduct that occurred prior to that date is time-barred. *Frank v. Xerox Corp.*, 347 F.3d 130, 136 (5th Cir. 2003).

In *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), the Supreme Court considered under what circumstances, if any, a plaintiff may file suit based on events that fall outside the 300-day period. The *Morgan* court distinguished between claims (1) challenging “discrete discriminatory or retaliatory acts,” and (2) alleging a hostile work environment.² *Id.* at 105. “Each discrete discriminatory act starts a new clock for filing charges alleging that act.” *Id.* at 113. Pre-limitation acts, where relevant, can be used as background evidence in support of a timely claim, but cannot themselves form the basis for liability. *Id.*

The Supreme Court in *Ledbetter v. Goodyear Tire and Rubber Co.*, 127 S. Ct. 2162 (2007), applied the standards it established in *Morgan*, among other precedents, to a disparate treatment pay claim. The Court held that a pay-setting decision is a discrete act, and thus the period for filing a charge of discrimination with the EEOC begins when that act occurs. 127 S. Ct. at 2165. The court rejected Ledbetter’s arguments that a discrete discriminatory act occurred with each paycheck, and that the on-going disparate pay was actionable because it “gave present effect to discriminatory conduct outside of [the limitations] period.” *Id.* at 2170. The *Ledbetter* Court distinguished *Bazemore v. Friday*, 478 U.S. 385 (1986), where a public employer had adopted a facially discriminatory pay structure, paying black

² For hostile work environment claims, “consideration of the entire scope of [the] claim, including behavior alleged outside the statutory time period, is permissible for the purposes of assessing liability, so long as an act contributing to that hostile work environment takes place within the statutory time period.” *Id.* at 105.

employees on a lower scale based on race. *Bazemore* “stands for the proposition that an employer violates Title VII and triggers a new EEOC charging period whenever the employer issues paychecks using a discriminatory pay structure. But a new Title VII violation does not occur and a new charging period is not triggered when an employer issues paychecks pursuant to a system that is ‘facially nondiscriminatory and neutrally applied.’” 127 S. Ct. at 2174. Like the plaintiff in *Ledbetter*, Dr. Green has not alleged a facially discriminatory pay structure.

Dr. Green filed his EEOC charge on March 22, 2006. Dr. Green made only one complaint in his EEOC charge: that he had been “denied equal wages to those of white colleagues for work that is similar in terms of effort, skill, and responsibility.”³ The date that falls 300 days prior to March 22, 2006 is May 26, 2005. Therefore, Dr. Green may base his lawsuit only on discriminatory pay-setting decisions by Texas A&M Kingsville that have occurred since May 26, 2005.

The court recommends that Texas A&M Kingsville’s motion for partial summary judgment (Dkt. 14) be granted.⁴

³ See March 22, 2006 Charge of Discrimination, Ex. 1 to plaintiff’s response. Dr. Green’s EEOC charge and his complaint state that over the years he had been denied due process rights in the evaluation process and his tenure was delayed because of his race. Dr. Green appears to allege these facts as background, not as independent acts of discrimination. There is no indication in the complaint that these allegedly discriminatory acts occurred within the 300 limitations period or that Dr. Green intends to base his claim for recovery on such acts.

⁴ Bills have been introduced in Congress to amend title VII of the Civil Rights Act of 1964 to eliminate the impact of *Ledbetter* on discriminatory pay claims under the Act pending on or after May 28, 2007. S 1843 110th Cong. (July 20, 2007); HR 283 110th Cong. (July 20, (continued...)

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. PRO. 72.

Signed at Houston, Texas on September 11, 2007.



Stephen Wm Smith
United States Magistrate Judge

⁴ (...continued)
2007). The court will reconsider this ruling in the event such legislation is enacted during pendency of this suit.