

EMPLOYMENT LAW UPDATE

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Juan C. Araneda

Jennifer A. Becker

David Borovsky

Robert J. Buccieri

Chip Cox

Kim O. Dincel

Kathleen Ewins

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

Jessica R. MacGregor

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Douglas J. Melton

Glen R. Olson

Jordan Rojas

Steven M. Sharafian

Ann L. Strayer

John B. Sullivan

Jennifer W. Suzuki

Jeanette Traverso

Beth Trittipio

Karen L. Uno

Seth E. Watkins

Gerald G. Weisbach, FAIA

Kevin Whittaker

Irene K. Yesowitch

Federal Law

The Ninth Circuit holds that the Pregnancy Discrimination Act of 1979 was not applicable retroactively so as to permit retiring employees to claim service credit for periods of pre-statute pregnancy leaves from work.

Hulteen v. AT&T Corp. (9th Cir., Mar. 8, 2006) 06 C.D.O.S. 1999

By Jason A. Geller and Jordan Rojas

Noreen Hulteen, Eleanora Collet, Linda Porter and Elizabeth Snyder were long-time employees of AT&T who each took pregnancy leaves between 1968 and 1976. They were not awarded service credit for the entire period of their absences, whereas employees on other temporary disability leaves received full service credit for their absences. AT&T used employees' service credits to determine benefits for which employees may qualify, including the amount of pension payments, eligibility for early retirement, qualification for voluntary termination packages, job bidding, shift preferences and seniority for layoffs.

After adoption of the Pregnancy Disability Act ("PDA") in 1979, AT&T began providing service credit for pregnancy leaves on the same basis as leaves taken for other temporary disabilities, but no adjustment was made to the service credit calculations of employees who had taken a pregnancy leave before the adoption of the PDA.

Plaintiffs filed suit against AT&T on their own behalf and on behalf of a class similarly situated. The district court

found that AT&T's failure to give employees full service credit for their pre-PDA leaves constituted a post-PDA benefits determination and violated the PDA.

The Ninth Circuit reversed, holding that the result reached by the district court gives the PDA impermissible retroactive effect.

In the absence of a clear expression of intent by Congress that a particular legislative enactment is to apply to events that occurred before the effective date of the legislation, the default rule is *no retroactive application*.

A statute has retroactive effect when the new provision attaches new legal consequences to conduct that occurred prior to the statute's enactment. There is nothing in the text of the PDA to indicate a clear congressional intent that the provisions of the statute are to be applied in such a way.

Even if retroactive application of a new statute would vindicate its purpose more fully, that is insufficient to rebut the

presumption against retroactivity. If pre-PDA leaves are now entitled to full credit even though the prior denial of credit was lawful at the time, the PDA would be deemed to have retroactive effect.

The proper focus is upon the time of the *discriminatory acts*, not upon the time at which the *consequences* of the acts became most painful. The court dismissed plaintiffs' claims for failure to state a claim on which relief can be granted because the PDA cannot be applied retroactively either to invalidate the original accounting scheme for pregnancy leaves or to create a current violation of Title VII.