

The [Pregnancy Discrimination Act](#) amendment to [Title VII](#) has again been interpreted by the United States Supreme Court. Yesterday, the Court announced [AT&T v. Hulteen](#)

. The Court ruled that decisions made by an employer that were adverse to pregnant employees and based on pregnancy are not unlawful if made before the Pregnancy Discrimination Act became law.

The [Pregnancy Discrimination Act](#) was passed in 1978. It became effective in 1979. Congress passed the Pregnancy Discrimination Act to overrule a prior Supreme Court decision, [General Electric v. Gilbert](#), 429 U.S. 125 (1976), which had held that disability plans could exclude pregnancy-related disabilities without violating the law against sex discrimination.

Before 1979, AT&T had a pension plan that effectively penalized employees for pregnancy caused absences. The plan did not give pregnant employees as such service credit as other employees who were absent due to non-pregnancy related conditions. Under *Gilbert*, the AT&T penalty against pregnancy leave was not a prohibited form of discrimination. But when Congress changed the law, AT&T changed the pension plan to conform to the new law in 1979.

Hulteen and three other co-workers had been employed by AT&T before the law changed and before AT&T changed its pension plan. When the employees were ready (or in one of the employee's case - about ready) to collect their pension, they filed charges of discrimination in 1998 because their benefits were being reduced as a result of their pregnancy leaves taken before 1979. So the Court had to decide whether an action taken before 1979 that was lawful then, was unlawful now since the decreased benefits were now becoming available and the same action that reduced the benefits would be considered pregnancy discrimination based on today's law.

Not too surprisingly, the Supreme Court ruled that the pension plan does not violate the law against pregnancy discrimination. The essence of the Court's reasoning is that AT&T never engaged in unlawful discrimination at the time it created the plan. So the reduced benefits were not the result of any unlawful discrimination.

Why the Supreme Court thought this case was sufficiently important for the High Court to

decide is unclear. While lower courts of appeals had reached conflicting conclusions when faced with the issue, the facts are increasingly unlikely to be repeated. Accordingly, this decision would not seem likely to have significant or broad impact on employers and employees. Nevertheless, an unsettled point of law is now resolved.

Although the decision will not likely have any significant effect on benefit plans, it illustrates an important point that is too often missed by employers and employees. Discrimination is an important part of running a business. Good business judgment depends on wisely discriminating choices. Not all discrimination is unlawful. Most discrimination is not unlawful. Only when the discrimination is the kind that is based upon a characteristic or action protected by law is the discrimination unlawful.

In this case, pregnancy changed from an unprotected characteristic to a protected one. The discrimination against the unprotected characteristic was not unlawful. More than likely, it was profitable.