



The Lilly Ledbetter Fair Pay Act Revives Pay Discrimination Claims

On January 29, 2009, President Barack Obama signed into law the Lilly Ledbetter Fair Pay Act. The Act amends four federal laws by redefining the events that trigger the charge-filing and limitations periods for cases alleging discrimination in compensation. The most important consequence of the Act is that the time limit for initiating a pay discrimination claim will regenerate with each allegedly discriminatory paycheck the employee receives.

The Ledbetter Act was enacted to overturn the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), in which the Court held that the period for filing a claim based on discriminatory compensation began on the date that the discriminatory pay decision was made. The filing period did not begin anew each time the employee received a discriminatory paycheck. Therefore, the employee had either 180 or 300 days from the pay decision, depending on whether the state has an employment discrimination agency, to file a discrimination charge with the Equal Employment Commission or his claim was time-barred. *Ledbetter* prevented an employee from challenging discriminatory pay outside of the short window of time following the payment decision.

Congress found that the *Ledbetter* decision "significantly impair[ed] statutory protections against discrimination in compensation [established by Congress] . . . and undermine[d] those statutory protections by unduly restricting the time period in which victims of discrimination can challenge and

recover for discriminatory compensation decisions or other practices. . . ." Therefore, through the Act, Congress set out to **expand** the period for challenging such decisions.

The Act declares that the period for filing a charge of discriminatory compensation under Title VII of the Civil Rights Act of 1964 ("Title VII") (the broad federal anti-discrimination statute), the Americans with Disabilities Act of 1990 ("ADA"), the Age Discrimination in Employment Act of 1967 ("ADEA"), or the Rehabilitation Act of 1973 ("Rehabilitation Act") begins when any of the following events occur: (1) a "discriminatory compensation decision or other practice is *adopted*"; (2) "an individual *becomes subject to* a discriminatory compensation decision or other practice"; or (3) "an individual is *affected by application of* a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid." Simply put, this means that the period for filing a claim of discrimination in compensation is resurrected each time an employer issues a discriminatory paycheck.

Regarding compensation, the Act clarified that an employee who succeeds in his claim for discrimination in compensation under Title VII, the ADEA, or the Rehabilitation Act may recover back pay for up to two years preceding the filing of a charge if the discrimination in compensation that took place outside of the filing period was "similar or related to" the discrimination that occurred during

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the charge-filing period. Also, it is important to note that by its terms, the Ledbetter Act takes effect as if it was enacted on May 28, 2007, and it applies to all claims of discrimination in compensation pending on or after that date.

The Ledbetter Act will have a huge impact on employers and is predicted to spawn a dramatic increase in claims of discrimination in compensation. Prior to the Act, the *Ledbetter* decision insulated an employer from being forced to defend lawsuits challenging pay decisions made years beforehand. Under the new legislation, the limitations period for bringing a claim of discrimination in compensation will start afresh each time the employer issues an allegedly discriminatory paycheck. Essentially, as long as the employee remains employed, the time limit for challenging discriminatory pay will never expire.

As a result of the Act, an employer must be prepared to defend pay decisions made years ago. Employers can expect to face claims of discrimination in

compensation based on gender, race, disability, age, and other protected classes, as the Act applies the nearly limitless filing period to claims of pay discrimination under Title VII, the ADA, ADEA, and Rehabilitation Act. Commentators have urged employers to examine their record retention policies in order to ensure that documentation needed to defend claims regarding discrimination in compensation is not destroyed over time. Also, employers should review current pay practices, as an employee has the ability to challenge an allegedly discriminatory pay decision, irrespective of when the decision was made.



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