

Employment Alert: Obama Signs Ledbetter Act; Congress Continues to Debate Paycheck Fairness Act

1/29/2009

Today, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009.¹ The Ledbetter Act is a Congressional response to a 2007 Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co.*, which significantly limited the ability of plaintiffs to recover back pay in certain circumstances.² *Ledbetter* arose when, after 19 years of employment with Goodyear Tire & Rubber, Ms. Ledbetter learned that she had been earning substantially less than her male counterparts. She sued, asserting a disparate pay claim under Title VII of the Civil Rights Act of 1964. The Supreme Court held that the statute-of-limitations period began to run on the day compensation is first set, not on the day of the most recent paycheck as the plaintiff had argued. As a result, the Supreme Court found that the 180-day statute of limitations applicable to Title VII claims barred Ms. Ledbetter's claim in full.

The Ledbetter Act overturns the Supreme Court's decision. Specifically, the Ledbetter Act amends Title VII and the Age Discrimination in Employment Act and modifies the application of the Americans with Disabilities Act and the Rehabilitation Act, to the effect that each time "wages, benefits or other compensation" are paid, the statute of limitations starts anew. Although the Ledbetter Act, by its terms, applies only to the specifically enumerated federal laws, the standards developed through case law as a result of the Ledbetter Act will likely apply to other laws as well.

The Ledbetter Act will dramatically increase the likelihood that employers will be sued for pay discrimination because even pay practices and pay scales established long ago will now be subject to attack on discrimination grounds because, under the Ledbetter Act, each paycheck issued constitutes a new instance of discrimination restarting the running of the statute of limitations under the applicable federal statutes. Employers may find these claims difficult to defend, given that decision makers may have left and relevant documents may have been discarded.

And, the news for employers may get worse still. Another bill related to wages, known as the Paycheck Fairness Act, is currently pending in the Senate.³ If enacted, this law would amend the portion of the Fair Labor Standards Act of 1938 (FLSA) known as the Equal Pay Act to make the consequences of gender-based wage discrimination the same as the consequences for other forms of discrimination.⁴ Specifically, the bill would:

- provide for enhanced penalties for gender-based pay discrimination through the availability of compensatory and punitive damages;

- limit the defense of wage differentials to *bona fide* factors other than gender; and

- add a non-retaliation provision to the FLSA that would, among other things, prohibit retaliation for inquiring about, discussing, or disclosing wages.

Both the Ledbetter Act and the Paycheck Fairness Act will impact employers, likely leading to more lawsuits and greater potential liability. Employers should stay tuned to developments and should work with counsel to understand the impact of these new laws on wage-related obligations.

Endnotes

¹ H.R. Res. 87, 111th Cong. (2009) (originally passed in the House as H.R. 11, 111th Cong. (2009) and in the Senate as S.B. 181, 111th Cong. (2009)).

² 550 U.S. 618 (2007).

³ S.B. 182, 111th Cong. (2009) (passed in the House as H.R. 12, 111th Cong. (2009)).

⁴ Jim Abrams, *House Approves Bill to Fight Wage Discrimination*, Associated Press, Jan. 9, 2009.

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