

**March 19, 2009**

**Employment Alert**

**Lilly Ledbetter Pay Act of 2009**

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act ("Ledbetter Act") into law. This was the first piece of legislation signed by President Obama and will have a significant effect on pay discrimination claims based on all protected categories, including race, gender, age, ethnicity, disability, national origin and religion.

**Background**

The Ledbetter Act was passed by Congress in response to the United States Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), which held that the statute of limitations for filing an equal-pay lawsuit begins to run on the date the decision affecting pay is made, not on the date of an employee's most recent paycheck, as a lower court had ruled. The Supreme Court's decision precluded lawsuits by plaintiffs who alleged ongoing pay discrimination but did not discover the discrimination until much later, sometimes years later.

**Effect of the Ledbetter Act**

Not only does the Ledbetter Act overturn the Supreme Court's 2007 ruling, it amends Title VII, the Americans with Disabilities Act of 1990 ("ADA"), the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1967 ("ADEA"). The new law clarifies that unlawful discrimination occurs when: (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 are paid which are the result of the discriminatory decision or other practice.

Under the new law:

- Employers may face liability for alleged discriminatory decisions or practices that were made or which occurred years earlier if there is a continuing impact on an employee's compensation;
- Any action that affects compensation may trigger a claim, including decisions concerning job evaluations, job classification, and other personnel actions that result in discriminatory wages;
- A new limitations period is triggered every time a paycheck, benefit or other compensation is paid. This likely means that employers may face exposure for unequal allocation of health benefits, paid leave, bonuses, and stock options;

- An employee must file a claim within the statutory filing period after receiving a discriminatory paycheck;
- Recovery of back pay is limited to the two-year period preceding the filing of a discrimination claim;
- Employers may assert the equitable defenses of waiver, estoppel and laches in arguing that an employee's claim should be time barred;
- Employees cannot rely on post-retirement pension payments to stretch the limitations period beyond the end of the employment relationship; and
- The amendments to Title VII, the ADA, the Rehabilitation Act and the ADEA take effect as if enacted on May 28, 2007.

### **To Do**

Employers should review their policies and procedures to ensure compliance with equal pay and non-discrimination laws, should document the reasons for their compensation decisions, and retain documents and supporting data concerning their compensation decisions. Employers with questions about the Lilly Ledbetter Fair Pay Act should contact their legal counsel.

The text of the Ledbetter Act can be found at:

[http://frwebgate.access.gpo.gov/cgibin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h11ih.txt.pdf](http://frwebgate.access.gpo.gov/cgibin/getdoc.cgi?dbname=111_cong_bills&docid=f:h11ih.txt.pdf)

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