



Updates

Employment & Discrimination Law

Employer Liability for Pay Discrimination Expanded by President Obama

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President Obama's first bill signed into law significantly expanded employer liability for pay discrimination claims. The Lilly Ledbetter Fair Pay Act 2009 ("Ledbetter Act") effectively makes it easier for employees to bring pay discrimination claims against their employers.

Lilly Ledbetter was a former employee of Goodyear Tire & Rubber Company. After almost 20 years of employment, she discovered that she had been paid substantially less than her male colleagues and she filed a complaint of pay discrimination. In 2007, the United States Supreme Court dismissed Ms. Ledbetter's claim as untimely because the act of discrimination had occurred many years earlier. The Court stated that it would be unfair to penalize an employer for a discriminatory act that had occurred years earlier, even though the effect of that discrimination continued to the present time.

Following the Supreme Court's decision, Congress drafted the Ledbetter Act, but it did not have enough

support from Senate Republicans or President Bush to become law. The new Democratic majority in Congress approved the legislation and President Obama chose to make the Act his first piece of legislation, signing it into law on January 29, 2009.

The Ledbetter Act effectively amends several pieces of legislation, including Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Rehabilitation Act. The amendment provides that a separate unlawful employment act occurs each time discriminatory compensation is paid. Therefore, a new claim arises each time a paycheck is issued by an employer, even though the discriminatory decision (i.e., the decision to pay a woman less than a male counterpart for equal work) occurred years earlier.

In addition, the amendment extends an employer's liability for back pay up to two years preceding the filing of a pay discrimination claim. An employee may also introduce evidence of

an unlawful employment act that occurred years earlier, even though the act of discrimination is outside the time frame for filing the charge of pay discrimination.

Finally, the Act applies retroactively to May 27, 2007. Consequently, so long as a claim of pay discrimination was filed by May 27, 2007, the new amendment will apply to the claim and protect the complaint from dismissal for being untimely. In a press release shortly following the announcement of the new law, the Equal Employment Opportunity Commissions applauded the amendment and promised to enhance enforcement of its pay discrimination claims.

The Ledbetter Act sends a clear message to employers. Act now to correct any disparities in employer pay practices. Another message should also be clear. Be ready for new legislation that will continue to heighten the protection of employees in the workplace.