

## President Obama Signs Into Law the Lilly Ledbetter Fair Pay Act

January 30, 2009

Yesterday, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009, which changes the time period for filing a charge of discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act. Specifically, the law provides that the charge-filing period – 300 days in most states (including Massachusetts) and 180 days in a few others – is triggered each time compensation is paid pursuant to a discriminatory compensation decision or practice, rather than when the discrimination actually occurred.

The law overturns the U.S. Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co.* Lilly Ledbetter had sued her employer for gender discrimination after discovering that she had been receiving less pay than male employees performing the same work. She had alleged that during her almost 20-year employment at Goodyear, she had received poor evaluations because of her sex and, as a result, her pay was not increased as much as it would have been if she had been evaluated fairly. The Supreme Court concluded that her claim was untimely. It explained that the time for filing a charge of discrimination runs from when an employer makes a discriminatory decision about an employee's compensation and not each time the employee receives a paycheck affected by that discrimination. Because Ledbetter had filed her charge long after the allegedly discriminatory performance evaluations, the Supreme Court ruled that Ledbetter's claim was time-barred.

Under the new law, the time period for filing a charge now runs from each paycheck that is the result of a discriminatory decision or practice. This means, as the *Ledbetter* case itself demonstrates, that an employee can challenge a decision which was made years or decades earlier as discriminatory. Further, the law provides that an aggrieved employee may recover back pay for up to two years preceding the filing of the charge.

The Lilly Ledbetter Fair Pay Act is the first of several anticipated new labor and employment laws under the Obama administration. The likely impact of the law is increased litigation. In fact, the Equal Employment Opportunity Commission intends to step up enforcement of pay discrimination claims as a result. Plus, the new law will make it harder for employers to defend against these claims because the underlying decisions may have occurred years before the filing of a charge. The decision-makers may have left the employer, and documents explaining the decision may no longer exist. Compounding these problems is the fact that the law is retroactive to May 28, 2007. Not surprisingly, the plaintiffs' bar is hailing the new law as restoring employees' ability to challenge pay discrimination.

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