

Lilly Ledbetter Fair Pay Act Retroactively Reverses Supreme Court Decision

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The U.S. Congress and President Barack Obama moved swiftly in the president's new term to pass the Lilly Ledbetter Fair Pay Act, which makes it easier for employees to pursue claims of wage discrimination. The Act is effective "as if enacted on May 28, 2007" and, thus, will apply to claims of wage discrimination that were brought on or after that date.

In *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), the plaintiff claimed she had been discriminated against by the defendant. Specifically, she alleged that, over the years, several supervisors had given her poor evaluations because of her sex and, as a result, she had earned less than similarly situated males over the course of her career. The U.S. Supreme Court held that the later effects (lower wages each pay) of earlier discriminatory acts (the performance reviews) do not restart the clock for pursuing a claim of discrimination. Thus, the plaintiff's discriminatory wage claim was not timely and, therefore, barred.

Congress was not shy about expressing its disdain for the *Ledbetter* decision. The Act specifically states that the *Ledbetter* decision undermines "statutory protections by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress," and that the limitation "ignores the reality of wage discrimination and is at odds with the robust application of the civil rights laws that Congress intended."

The Supreme Court decision had an adverse effect on an employee's ability to sue for wage discrimination because an employee may not know that there is a discriminatory motive behind an employment decision until years later when it is discovered that others are paid significantly more than the employee.

Under the new law, an employee's right to bring a claim of wage discrimination arises not only when the decision or practice is adopted, but also when the individual becomes subject to or affected by the discriminatory decision or practice *including each time the wages or benefits are paid*. For example, an individual denied a promotion 20 years ago is still affected by the decision each time they receive a pay

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check and will now have the right to pursue a wage discrimination claim based on that 20-year-old decision. Clearly the new law will make it more difficult for employers to defend against wage discrimination claims.

In addition to expanding the period to bring wage discrimination claims, the Act provides that an aggrieved person may introduce evidence of an unlawful employment practice that occurred outside the time for filing a charge of discrimination in order to prove the discrimination claim. Therefore, employers will find it difficult to restrict evidence to employment decisions occurring within the limitations period.

The Lilly Ledbetter Fair Pay Act amends Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act of 1973. The potential impact of this law is to virtually eliminate the statute of limitations for many federal civil rights claims. Now, it is more important than ever to document employment decisions and have well prepared performance reviews.

To read the complete *Ledbetter v. Goodyear Tire & Rubber Co* ruling and Lilly Ledbetter Fair Pay Act, click on the following links: