



LEDBETTER

Lilly Ledbetter Fair Pay Act Resets the Clock for Determining Unlawful Employment Practices

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Employers are advised to review their pay practices to ensure they are being administered in a non-discriminatory fashion

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009 (the “Act”), which resets the 180-day statute of limitations period for filing lawsuits based on claims of unequal pay each time an employer issues a discriminatory paycheck.

Congress created the Act in response to the United States Supreme Court’s 5-4 decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, which held that a person must file a claim of unequal pay within 180 days of the date the employer first issued an unequal paycheck, even if the worker was unaware of any pay disparities. The Supreme Court’s decision was widely criticized, as employees’ lawsuits would essentially be barred if they failed to discover their employers’ discriminatory pay practices within the 180-day statute of limitations period.

In creating the Act, Congress stated that the Supreme Court’s decision “significantly impairs statutory protections against discrimination in compensation . . . by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions . . .” As a result, the Act nullifies the Supreme Court’s *Ledbetter* decision.

The Act specifically provides that an unlawful employment practice occurs when an employer adopts a discriminatory compensation decision or practice, when an employer subjects an individual to a discriminatory compensation decision or practice, or when an individual is affected by an employer’s application of a discriminatory compensation decision or practice, which includes each time an employer pays unequal wages, benefits, or other compensation.

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One critical aspect of the Act is that it takes effect as if enacted on May 28, 2007, and applies retroactively to all claims of discrimination in compensation that are pending on or after that date. Like before, the Act provides that an employee may recover back pay for up to two years prior to initiating litigation.

The Act amends several key anti-discrimination laws passed by Congress, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the American With Disabilities Act of 1990 and the Rehabilitation Act of 1973. The Act, therefore, not only affects employees' claims of unequal pay based on gender, but also applies to claims of unequal pay based on race, religion, national origin, disability or age.

The passing of this legislation is a reminder to all employers to review their pay practices to ensure they are being administered in a non-discriminatory fashion.

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Our Employment Counseling & Litigation Practice was established to advise and represent clients on a wide range of employment-related issues; issues that can result from complex and often confusing federal and state statutes. The practice comprises attorneys who practice in the diverse areas of employment law.

As the numbers of employment-related claims have surged over the past several years, Brown Rudnick has emerged as a leader in providing counsel to employers now facing more complex legal challenges. Some of the issues include compensation, discrimination laws, drug testing, hiring rules, layoffs and plant closings, maternity leave, family medical leave, sexual harassment, wrongful discharge and privacy issues.

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