

President Signs Law Easing Pay Discrimination Suits For Plaintiffs

On January 29, 2008, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009 amid great fanfare. This act overturned the controversial Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), which had held that the statute of limitations for filing a pay discrimination charge with the Equal Employment Opportunity Commission (EEOC) begins to run when the employer makes the allegedly discriminatory decision about the employee's compensation. The Court had rejected the "paycheck rule," by which the clock restarts each time that an employer issues a paycheck based upon the allegedly discriminatory compensation decision. The practical consequence of the Court's holding was that an employee only had one chance to discover the illegal pay disparity over the course of his or her employment, whereas the "paycheck rule" had renewed this chance on each pay day.

The legislation signed on January 29, 2008 essentially reinstated the "paycheck rule," effective retroactively as of May 28, 2007 (the day before the *Ledbetter* decision). Specifically, the Lilly Ledbetter Fair Pay Act announces that an "unlawful employment practice" occurs: (1) when a discriminatory compensation decision or other practice is adopted; (2) when an individual becomes subject to a discriminatory compensation decision or other practice; or (3) when an individual is affected by application of a discriminatory compensation decision or other practice.* The Act applies this rule to claims under Title VII (race, color, religion, sex, or national origin), the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act. While the Act is far-reaching in scope, it does limit the recovery of back pay to two years preceding the filing of a charge.

The new law exposes employers to the possibility that employees will challenge compensation decisions made by managers many years ago. As such, employers should begin keeping records of such decisions for as long as practicable and should maintain contact information for former managers. Otherwise, employers may find it difficult to prove the legality of past compensation decisions. In addition, now is an ideal time for employers to review their compensation policies and to remind managers of which criteria may be legally used in determining compensation.

If you have any questions regarding this E-Flash or would like additional information about the Lilly Ledbetter Fair Pay Act, please contact Post & Schell, P.C. Labor and Employment Attorneys Jim Johnston (215-587-1099), Andrew Allison (215-587-1161), Sid Steinberg (215-587-1140), Vince Candiello (717-612-6024) or Bill Flannery (717-612-6022).

* During debate of the bill, an amendment was proposed to clarify the meaning of "other practice" to make certain that the bill did not go beyond pay discrimination. Other amendments targeted the phrases "becomes subject to" and "is affected by" based upon the concern that individuals other than an employee or former employee might have standing to sue. All of these proposed amendments failed. The courts will have to deal with these questions.

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