



Client Law Update

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PRESIDENT OBAMA SIGNS THE LILLY LEDBETTER FAIR PAY ACT

Deadlines For Pay Discrimination Complaints Are Now Extended

On January 29, 2009, just nine days after President Obama's inauguration, he signed into law, the Lilly Ledbetter Fair Pay Act of 2009. This Act overturned the Supreme Court's 2007 decision in Ledbetter v. Goodyear Tire & Rubber Co., Inc., 550 U.S. 618, 127 S. Ct. 2162 (2007). Ledbetter worked at the Goodyear plant in Alabama from 1979 to 1998. For most of those years, she worked as an area manager. Initially, Ledbetter's salary was similar to the salaries of men performing substantially the same work. Over time, she began to earn significantly less than her male counterparts with equal or less seniority. By the end of 1997, she was the only woman working as an area manager and was paid \$3,727 per month. The lowest paid male area manager received \$4,286 per month and the highest paid male area manager received \$5,236 per month. In 1998, she filed a lawsuit against Goodyear for pay discrimination. The Supreme Court ruled that Ledbetter was required to bring her claim for pay discrimination within 180 days of the act of discrimination or it becomes barred. The act of discrimination was defined by the Court as the date of the actual decision by the employer to pay her less than her male counterparts.

Impact of the Ledbetter Fair Pay Act

The filing deadlines for pay discrimination complaints are now extended. The Act provides: "For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from a decision or other practice." In other words, every paycheck an employee receives creates a new statute of limitations. The Ledbetter Act applies to all claims of discrimination in compensation under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act. The Act is retroactive effective May 28, 2007 and allows the aggrieved party to recover up to two years of back pay prior to the filing of a complaint based on pay discrimination.

Recommendations for Employers

- Examine your performance review process to ensure evaluations and compensation is based on job performance and not protected characteristics.
- Use objective criteria to make pay determinations.
- Revise your employee handbooks to clarify how pay raises and bonuses are determined.
- Regularly audit your employees' pay to ensure that it is based on legitimate business factors and not discriminatory grounds.
- Due to the extension of the statute of limitations, revisit your company's document retention policies to ensure that records will be available to assist in the defense of any lawsuits.

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