



Obama Signs Lilly Ledbetter Fair Pay Act

On January 29, 2009, President Obama signed into law the first piece of legislation passed by Congress under his administration, the Lilly Ledbetter Fair Pay Act of 2009. The law, which applies retroactively to May 28, 2007, significantly expands the time to file wage discrimination claims under most federal anti-discrimination laws.

Background

In [Ledbetter v. Goodyear Tire & Rubber Co., Inc.](#), the U.S. Supreme Court considered how long employees have under Title VII of the Civil Rights Act of 1964 to file wage discrimination claims against their employers. On May 29, 2007, a divided Court held that an unlawful employment act occurs when a discriminatory compensation decision is made and the 180-day (300-day in some states) time period for filing a charge with the Equal Employment Opportunity Commission (EEOC) generally runs from the date the employer makes that decision. The ruling expressly rejected the “paycheck rule,” under which the limitations period renews each time the employee receives a paycheck based in part on the challenged compensation decision, regardless of when it was made.

The [Lilly Ledbetter Fair Pay Act](#) has now been enacted to reverse the court’s *Ledbetter* decision.

The Lilly Ledbetter Fair Pay Act

The Lilly Ledbetter Fair Pay Act amends Title VII (which prohibits discrimination based on race, color, religion, sex and national origin) to provide that an unlawful employment practice that triggers the time for filing a pay discrimination claim with the EEOC occurs when –

- a discriminatory compensation decision or other practice is adopted
- an individual becomes subject to a discriminatory compensation decision or practice
- an individual is affected by a discriminatory compensation decision or practice, including each time wages, benefits or other compensation affected by that decision or practice is paid.

By defining each wage payment as an unlawful employment practice, the new law effectively eliminates the 180/300-day limitations period for filing a charge as long as the employee remains employed. It also resets the clock for filing a charge when a post-retirement benefit check is issued or other compensation is paid reflecting a prior allegedly discriminatory pay practice or decision. Thus, it will allow employees to challenge pay-related decisions years after they were made.

BUCK COMMENT. *Because the new law expressly includes benefits and other compensation, the period for filing a charge is expected to be extended for pension, severance or other benefits that may be related to a past discriminatory practice. Further, inactive employees, retirees, former employees, and even certain non-employees (e.g., surviving spouses) who still receive some form of benefits or compensation from the employer may be entitled to protections under this law.*

Effect on Other Federal Anti-Discrimination Laws

Importantly, the new law extends the same rule for filing a charge that alleges pay discrimination under the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Rehabilitation Act of 1973 (which applies to federal contractors). As a result, the new law is likely to cause a significant increase in discrimination claims and broaden the potential scope of employer liability.

BUCK COMMENT. *For example, both the ADA and the Rehabilitation Act would, under certain circumstances, allow an employer to transfer a disabled employee to a lower-paying job as a reasonable accommodation (including a part-time job with loss of benefits). Given the renewable statute of limitations under the new law, an employee would seem to be able to file a charge challenging the employer's accommodation decision for the length of his or her employment and perhaps beyond.*

Retroactive Effective Date and Employer Liability

Significantly, Congress made the new law effective retroactive to May 28, 2007 – the day before the Supreme Court's decision – and applicable to all pay discrimination claims pending on or after that date. Thus, claims made after May 28, 2007 which would have been untimely because of that decision are now viable and claims that were previously dismissed on timeliness grounds may be able to be reasserted.

BUCK COMMENT. *The retroactive application of this law has the potential to substantially increase discrimination charges, particularly by current employees who continue to receive paychecks that may have been affected by past employment decisions, such as a failure to promote or an unfavorable performance evaluation.*

Under the new law, employers are not required to repay employees for long-standing claims. The law limits recovery to up to two years of back pay before the filing of a Title VII pay discrimination charge in addition to other damages available under current law. It does not, however, limit back pay damages for pay claims brought under ADEA or limit recovery for compensatory and punitive damages under other anti-discrimination laws.

BUCK COMMENT. *Congress is considering another pay-related bill, which is likely to be enacted, the Paycheck Fairness Act. This bill would amend the Equal Pay Act of 1963 to allow increased damages for violations and make it easier for employees to bring class action lawsuits.*

Conclusion

The Lilly Ledbetter Fair Pay Act is a short procedural statute with potentially far-reaching implications for employers. To minimize potential liability, employers should review their compensation and benefits practices and policies to ensure that they are being applied consistently. Specific business-related criteria for compensation decisions should be developed and a process put in place to review those decisions.

Employers now face an increased likelihood that they may have to defend policies that were jettisoned long ago or decisions that were made by managers no longer available to explain them, which may prove difficult. Going forward, however, employers should make certain they have adequate records to support decisions that affect compensation (e.g., performance appraisals, promotions, bonuses, layoffs), and an appropriate record retention policy. Buck's consultants are prepared to assist in reviewing current pay practices and recordkeeping policies to minimize exposure to pay-equity claims.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.