

News from our Employment & Labor Group

Lilly Ledbetter Fair Pay Act of 2009

On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009 (the “Act”) into law. The Act extends the statute of limitations applicable to claims of compensation discrimination brought under Title VII of the Civil Rights Acts of 1964 (“Title VII”), the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act of 1973.

Background

The Act is named after Lilly Ledbetter, who sued her former employer Goodyear Tire and Rubber Company for gender-based pay discrimination after she learned that, although her initial compensation was comparable to that of male managers, over time she was receiving less pay each month than her male counterparts. Ledbetter succeeded on her Title VII pay discrimination claim at trial, but the United States Court of Appeals for the Eleventh Circuit reversed, holding that a Title VII pay discrimination claim cannot be based on a pay decision that occurs outside the statute of limitations even if the effect of the decision—each paycheck reflecting the discriminatory pay—occurs within the statute of limitations. The United States Supreme Court granted a writ of certiorari to review the matter and, in 2007, held in *Ledbetter v. Goodyear Tire & Rubber Co.* that the time to file a compensation discrimination claim begins to run from the date of the discriminatory pay-setting decision.

The Lilly Ledbetter Fair Pay Act of 2009

The Act overturns the United States Supreme Court’s decision in *Ledbetter*, stating that an individual’s limitations period is restarted each time an individual receives discriminatory compensation, regardless of when the discriminatory pay-setting decision was made. The Act is retroactive to May 28, 2007, making it applicable to all claims of discriminatory compensation pending on or after that date.

Under the Act, the amount of lost income an individual can recover for discriminatory compensation is limited to backpay for two years prior to the filing of the discrimination claim. Because of this two-year limitations period, employers will not be liable under the Act for more than two years of backpay for any individual plaintiff.

Cautionary note to employers

Employers could see an increase in compensation discrimination claims given the Act’s broadening of the statute of limitations on such claims. In addition, since employees and possibly other individuals allegedly affected by discriminatory compensation decisions can bring claims years after the decisions were made, it may be more difficult for employers to locate evidence relevant to proving that the employment decisions causing disparate compensation were legitimate.

Proactive steps for employers

There are a number of steps employers can take now to limit their liability under the Act. For example, employers can:

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- ▶ Review and revise their compensation policies and procedures.
 - ▶ Ensure that compensation decisions are based upon non-discriminatory criteria.
 - ▶ Ensure that compensation decisions are well documented and that the documentation is retained.
 - ▶ Review and analyze compensation data and consider bridging the gap if there are any unexplainable disparities in compensation for individuals in a protected class.

If you would like to discuss these issues further and/or have questions about this *Alert*, please contact one of the attorneys listed above. ■