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LEGAL ALERT



Legal Alert: Bill Impacting Pay Discrimination Claims Sent to Senate

1/14/2009

The U.S. House of Representatives has passed legislation that could significantly impact employers, if the legislation becomes law. The Lilly Ledbetter Fair Pay Act is aimed at overturning the U.S. Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, which limited the time frame for bringing pay discrimination claims. The Fair Paycheck Act would enhance remedies for sex-based discrimination and make it easier for plaintiffs to establish an Equal Pay Act (EPA) violation. The two bills have been combined (H.R. 11) and sent to the Senate for consideration. To view the text of the legislation, click [here](#), type H.R. 11 in the search box and select search by bill number.

In *Ledbetter*, the Supreme Court held that the time limits for filing a discrimination charge with the Equal Employment Opportunity Commission start to run when the employer makes a discriminatory decision about the employee's compensation, not each time the employee receives a paycheck affected by discrimination. The Ledbetter Fair Pay Act would overturn this decision by amending Title VII, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Rehabilitation Act to provide that, with regard to pay discrimination claims, an unlawful employment practice occurs when an individual is affected by application of a discriminatory compensation decision, including each time wages, benefits, or other compensation is paid.

The Paycheck Fairness Act would amend the EPA by changing the affirmative defense of a differential based on "any other factor other than sex" to "a bona fide factor other than sex, such as education, training, or experience." The defense would not apply if the employee can show that "an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice."

The Act also would amend the EPA to provide that employees are deemed to work in the same establishment if they work for the same employer at workplaces located in the same county or similar political subdivision of a state. Currently, the term "establishment" as used in the EPA generally is interpreted to mean a distinct physical place of business; wage rates between separate plants, for example, usually are not compared. The Act would change this interpretation.

Additionally, the Act would prohibit retaliation against employees who share pay information with co-workers. Further, the Act would permit compensatory and punitive damages to be awarded in EPA cases and would permit class

action lawsuits under the EPA to be governed by the Federal Rules of Civil Procedure.

As passed by the House, the Act would be retroactive to May 28, 2007. The Act was sent to the Senate on January 12, 2009. It is not clear whether the legislation has enough support in the Senate to pass; however, President-elect Obama has indicated his support for the legislation.

If you have any questions regarding this legislation or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.