



## Legal Alert: President to Sign Lilly Ledbetter Fair Pay Act

1/28/2009

President Obama is scheduled to sign the Lilly Ledbetter Fair Pay Act on January 29, 2009. The House of Representatives approved the legislation, which had previously passed in the Senate, on January 27. The Fair Pay Act, S. 181, alters the deadline or "statute of limitations" for pay discrimination claims brought under Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973. It also overrules the U. S. Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Company, Inc.*, 550 U.S. 618 (2007). Congress believed the Court, in *Ledbetter*, unduly restricted the time period for bringing pay discrimination claims. The new law will allow employees to bring claims that would have been too stale under the Court's ruling.

Under the new law, an unlawful employment practice occurs (1) when the discriminatory pay decision is made; (2) when "an individual" becomes subject to the discriminatory pay decision; or (3) when "an individual is affected by the discriminatory compensation decision or other practice." Thus, the deadline for filing a claim starts anew each time an employee receives wages, benefits, or other compensation tainted by the discriminatory pay decision, and may go back as far as two years from the date a charge was filed with the EEOC.

The law is retroactive to May 28, 2007, the date of the *Ledbetter* decision, which means that it will apply to all claims of pay discrimination pending on or after that date.

### ***Expansive Language***

The law states that an unlawful employment practice occurs when "an individual" is affected by a discriminatory compensation decision or other practice. This language could be interpreted expansively to permit pay discrimination charges to be filed by individuals other than employees, so long as those individuals claim they have been affected by the discriminatory decision. The House rejected proposed amendments that would have clarified that the law applies only to employees.

Additionally, the new law is not limited to discriminatory wage or salary payments; it also applies to payments made under benefit plans, such as pension plans. Thus, employees long since retired, but who receive pension payments, may bring claims years after their pension plan went into effect.

### **Employers' Bottom Line**

The expansion of the statute of limitations may require employers to reconsider the length of time they retain compensation and benefits records. Employers may also want to consider reviewing their compensation and benefits practices, under the direction of counsel, to ensure that these practices are implemented in a nondiscriminatory manner.

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.