
[Alerts and Updates]

New Law Changes the Calculation of the Statute of Limitations in Pay Discrimination Cases

January 30, 2009

The Lilly Ledbetter Fair Pay Act of 2009 (the "Act") was signed into U.S. law on January 29, 2009, by President Obama. The Act effectively overrules a 2007 ruling by the U.S. Supreme Court, *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), which held that a person must file a claim of discrimination within 180 days of a company's initial decision (300 days if in a state agency deferral state such as New York) to pay an employee in a discriminatory manner. In essence, the Act provides that the 180-day (300-day) statute of limitations for pay discrimination resets with each new discriminatory paycheck.

Under the Act, a discriminatory compensation decision or other practice that is unlawful occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, regardless of how long the practice has been in effect. The Act amends Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 to declare that an unlawful employment practice occurs when (1) a discriminatory compensation decision or other practice is adopted, (2) an individual becomes subject to the decision or practice, or (3) an individual is affected by application of the decision or practice, including each time wages, benefits or other compensation is paid, resulting in whole or in part from such a decision or other practice. The Act also allows an employee to obtain relief, including recovery of back pay, for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to practices that occurred outside the time for filing a charge.

The Act takes effect as if enacted on May 28, 2007, and applies to all claims of discrimination in compensation under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, Title I and Section 503 of the American with Disabilities Act of 1990 and Sections 501 and 504 of the Rehabilitation Act of 1973, that are pending on or after that date.

What This Means for Employers

Because the Act is effective retroactive to May 28, 2007, it is recommended that employers immediately review their pay policies in force as of that date to ensure that no protected class of workers is paid disproportionately to another for the performance of equal or comparable work. Employers should review any discriminatory wage claims asserted in pending litigation. Employers may also want to consult with counsel before revising any existing compensation policies to both ensure compliance with the Act and that any confidential deliberations in this regard remain privileged. Since the limitations period is extended to commence from each pay period, employers should revise their retention policies to indefinitely maintain records about the reasons and justifications for all compensation decisions.

For Further Information

If you have any questions regarding this Alert or would like more information regarding the issues presented above, please contact any member of the Employment & Immigration Practice Group or the attorney in the firm with whom you are regularly in contact.