

Lilly Ledbetter Fair Pay Act

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Not unexpectedly, the Lilly Ledbetter Fair Pay Act cleared Congress on January 27, 2009. It was signed into law by President Barack Obama on January 29, 2009. This law allows individuals and other aggrieved parties to file charges of pay discrimination under many employment discrimination laws including the Age Discrimination in Employment Act (ADEA), the Americans With Disabilities Act (ADA), the Rehabilitation Act as well as Title VII of the 1964 Civil Rights Act that previously would have been time-barred. The law will be retroactive to May 28, 2007, the date before the Supreme Court decision it overturns.

This law overturns the 2007 Supreme Court decision which found Lilly Ledbetter's wage discrimination claim time barred because she did not file a charge with the EEOC within 180 days of the allegedly discriminatory compensation decisions which had been made between 1979 and 1997, even though these decisions continued to impact her current compensation in retirement.

The new law sets forth several times when a discriminatory compensation act can be challenged. Those times include not only when the decision or practice is adopted, as previously, but also when an individual is subject to the decision or practice or when the individual is affected by application of the decision or practice, including each time wages, benefits or other compensation is paid which results in whole or in part from such a decision or other practice. Such affect could continue for the rest of the employee's employment, or even beyond, allowing employees to challenge decisions very remote in time. It also provides an opportunity for a complainant to recover for discriminatory actions both inside and outside the filing period and provides for recovery of back pay for period of up to two years prior to the filing of the charge. It does not specifically address future damages, but that is certainly a possibility where an employee's pay or benefits would be impacted in the future by the challenged action.

The wording of the statute raises significant issues as to whether and to what extent this law, when signed, might expand the class of individuals bringing claims. As the statute reads, this statute could cover claims by family members who were deprived of the benefit of the appropriate salaries.

The net effect of this legislation is to significantly expand time during which pay decisions can be challenged and therefore potential employer liability. It also means that employers should keep relevant records for a significantly longer period of time than they have in the past since this statute expands the time frame in which litigation can be commenced.