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Labor and Employment Law

President Obama Signs The Lilly Ledbetter Fair Pay Act of 2009

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On January 29, 2009, President Barack Obama signed the "Lilly Ledbetter Fair Pay Act" into law, effectively reversing the May 29, 2007 Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Company*. In *Ledbetter*, the Supreme Court held in a 5-4 ruling that an employee is required to bring compensation discrimination claims within 180 days of the initial act of discrimination, even if the employee continues to receive compensation beyond the 180-day statute of limitations that resulted from the initial discriminatory act. In other words, until today, an employee claiming race discrimination in their pay, for example, had only 180 days (or 300 days in states such as Florida) to bring a claim for pay discrimination. The clock started running not with each pay check that reflected the lower amount, but instead from the original decision to pay the person less money due to the employee's race. Now, however, under the new law, each pay check based on a discriminatory pay policy creates a new claim

of pay discrimination.

The Act retroactively amends Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act, and modifies the Americans with Disabilities Act and the Rehabilitation Act, by clarifying that the 180-day statute of limitations for initiating a compensation discrimination claim is extended each time an employer pays wages, provides benefits, or gives other forms of compensation pursuant to a discriminatory decision or practice. What this means as a practical matter is that an employee who claims he or she is receiving less pay due to a discriminatory practice or decision, no matter when that decision was made, may bring a claim if their current pay check reflects an amount tainted by that original discriminatory decision. To facilitate such a claim, the new law provides that liability for a discriminatory compensation practice that occurred outside of the period in which an employee may file a charge of discrimination (i.e., more than 180/300 days before the employee filed a charge with the EEOC) may be imposed if that compensation

practice is alleged to have a current adverse effect on the employee's pay. The Act does retain the current limits on employer liability by restricting back pay awards to two years from the date of filing a charge of discrimination, but an employer may find itself defending a pay practice or pay decision that is a number of years old.

The Act is effective retroactively to May 28, 2007, the day before the Supreme Court decided *Ledbetter*, and applies to all claims of compensation discrimination under Title VII, the ADEA, Title I and section 503 of the ADA, and sections 501 and 504 of the Rehabilitation Act that are pending on or after May 28, 2007. That means all claims currently pending will be subject to the Act expanding an employee's right to bring suit for compensation discrimination. Just how broad this provision will be applied remains to be seen, but employers should re-examine their pay practices immediately and make sure they can articulate the legitimate business reasons for those practices. Employers can expect an increase in legal challenges to their salary decisions as a result of this Act.

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