Lilly Ledbetter the Law of the Land

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On January 29, 2009, President Obama got off to an employee-friendly start by signing into law his first major legislation, the Lilly Ledbetter Fair Pay Act. The Act is designed to legislatively overturn or "fix" a controversial 2007 United States Supreme Court decision that limited the time in which an employee could bring a claim for pay discrimination.

The Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co., Inc.,* involved Lilly Ledbetter, a former supervisor at a Goodyear Tire plant in Alabama. After almost twenty years on the job, Ledbetter discovered, via an anonymous note, that male counterparts were being paid more for doing the same work. Ledbetter filed a charge of discrimination regarding the pay differential and then sued her employer under Title VII. The Supreme Court ruled that Ledbetter's claim was untimely because the unlawful employment action at issue in a pay discrimination claim is the employer's decision regarding the pay differential, not the subsequent issuance of paychecks reflecting that differential. The Court found that even if the employee was unaware of the employer's unlawful employment practice of setting the discriminatory pay, the claim would be time barred if the employee did not file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") within 180 days (or 300 days if the charge is also covered by a state or local anti-discrimination law) of the adverse pay setting decision, not by the later issuance of paychecks that incorporated the effects of the discriminatory decision. The Court emphasized the distinction between past acts of disparate pay, which occur only when employers make the pay setting decisions, and the present effects of those acts, which occur when the employees receive their paychecks. The Court rejected the "paycheck accrual" rule which had been recognized by the EEOC and many circuit courts, that each paycheck impacted by a past adverse pay setting decision is considered a separate act of discrimination that would trigger a new EEOC filing deadline. As Ledbetter's charge was filed more than 180 days after the adverse pay decision, her suit was dismissed.

The Lilly Ledbetter Fair Pay Act amends Title VII, the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act ("ADA") and the Rehabilitation Act to state that an unlawful employment practice occurs regarding disparate pay when:

1.

2. A discriminatory compensation decision or other practice is made or adopted;

3.

4. An individual becomes subject to a discriminatory compensation decision or other practice; or

5.

6. When an individual is affected by application of a discriminatory compensation decision or other 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 new law reestablishes the "paycheck accrual" rule as the appropriate method for filing a charge of discrimination with the EEOC and, according to some human resources policy associations opposed to the Act, effectively eliminates the statute of limitations for most claims of disparate pay discrimination. In other words, as long as employees file their EEOC charges within 180 days of receiving the last discriminatory paycheck, their charges will be considered timely. The Act also provides that its effective date is retroactive to May 28, 2007, the day before the Supreme Court's decision in the *Ledbetter* case and would apply to all disparate pay claims pending on or after that date. Therefore, employees who are victims of pay discrimination would be entitled to up to two years of backpay, as already provided by the various Acts.

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