


## **PRESIDENT OBAMA SIGNS LILLY LEDBETTER FAIR PAY ACT INTO LAW**

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 In January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009. It is the first piece of legislation passed by both houses of Congress under President Obama's term. President Obama's signing comes as no surprise. The President's action in signing the Ledbetter Act is consistent with his election campaign promise to support this legislation. Obama declared that "[i]n signing this bill today, I intend to send a clear message: That making our economy work means making sure it works for everyone. That there are no second class citizens in our workplaces, and that it's not just unfair and illegal - but bad for business - to pay someone less because of their gender, age, race, ethnicity, religion, or disability." Many believe that the selection of the Ledbetter Act as the first law enacted under the Obama administration is a harbinger of things to come.

The Ledbetter Act is a direct response to the United States Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007). In that case, the Supreme Court, in a 5-4 split decision, held that employees cannot bring Title VII disparate pay claims alleging discrimination occurring outside the 180/300 day statute of limitations period, even when a paycheck is received during that same period. The case began in 1998 when Ms. Ledbetter, now 70, filed a discrimination claim with the EEOC alleging that her employer had unlawfully discriminated against her on the basis of sex in violation of Title VII by paying her less than her male co-workers. She waited years after the alleged discriminatory decisions were made to challenge the Company's action. The Supreme Court decision was very controversial, and the dissent by Justice Ginsburg called upon Congress to reverse the decision. Congressional leaders, including then-Senator Obama, vowed to overturn *Ledbetter*.

The Lilly Ledbetter Fair Pay Act changes the rules for calculating the statute of limitations 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. The Act provides that a statute of limitations clock re-starts each time an employee receives a paycheck. The new law effectively eases the statute of limitations for compensation-implicated personnel actions under Title VII, as well as under other federal employment discrimination statutes. It codifies that the time clock for filing a Charge with the EEOC for compensation-related discrimination restarts each time an employee receives a paycheck that manifests the discrimination. In other words, under the Act, so long as workers file a Charge within 180/300 days of receiving a discriminatory

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paycheck, their Charge is timely, notwithstanding how long ago in time the discriminatory decision was made. In effect, under the Act, an employee's claim of reduced pay can be kept alive years or even decades later by either the receipt of a paycheck with the effects of the decisions still present in it, or the first payment of a retiree benefit calculated based on pay that was less as a result of a discriminatory employment decision.

The Act appears to make other significant changes as well. It potentially expands the class of individuals with standing to assert a claim of pay discrimination to include those who are "affected by" the alleged discrimination. Read literally, that could include the families and relatives of the worker who was allegedly discriminated against, and perhaps even more broadly the employee's supervisors.

With the passage of the Ledbetter Act, employers face greater exposure from lawsuit, including class action lawsuits alleging disparate pay practices. The practical effects of the Ledbetter Act include that it allows plaintiffs to sue over employment decisions made long ago, which potentially increases the size and scope of damage recoveries in both single-plaintiff and class action lawsuits. As a result, it is important for employers to review their current record keeping practices with respect to employment decisions. It will be more critical than ever before to have documentation on current employees that goes back indefinitely throughout their employment documenting the legitimate non-discriminatory reasons for employment decisions that have a long lasting impact on their pay. Also, employers will want to consider their current processes for documentation of decisions to ensure the decisions have confirming records that can be used to defend the Company long after a supervisor or manager responsible for the decision is no longer available to provide testimony.

It is likely that the Ledbetter Act is the first of a number of laws under the Obama administration that will be considered to expand available remedies, statutes of limitation, and other procedural rules under federal non-discriminatory in employment laws.

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