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President Obama Signs Lilly Ledbetter Fair Pay Act



Timothy P. Van Dyck
Partner and Co-Chair,
Labor & Employment Group



Robert G. Young
Associate

On January 29, 2009, President Obama signed his first bill into law – the Lilly Ledbetter Fair Pay Act of 2009 (Pub. L. No. 111-2) (the “Ledbetter Act”). The Ledbetter Act reverses the Supreme Court’s decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007) and makes it easier for employees to sue their employers for wage discrimination.

In May 2007, the United States Supreme Court decided that Lilly Ledbetter’s wage discrimination claim against her former employer had not been filed by the statutory deadline, and therefore she could not prevail on her claim. Ledbetter formerly worked for the Goodyear Tire & Rubber Company. She retired after a 19-year tenure with the company, and then she filed a charge of discrimination with the Equal Employment Opportunity Commission alleging, among other things, that during the course of her employment her supervisors rated her performance lower than her male peers because of her sex, and therefore her pay had not increased as it would have if she had been evaluated fairly. Ms. Ledbetter alleged that, as a result, by the end of her employment with Goodyear she was earning significantly less than her male peers.

Although she prevailed on her claims before a jury, the Supreme Court decided that Ms. Ledbetter’s claim was untimely, and therefore would be dismissed, because she did not file a charge with the EEOC within 180 days of the date that Goodyear *initially* made the decision to pay her less than her peers (this administrative filing period is 300 days in most states). Ledbetter argued that each lower paycheck she received constituted a new violation of Title VII, but the Supreme

Court decided that the paychecks were simply a later effect of the prior untimely decision, and therefore could not form the basis for her lawsuit.

Through the Ledbetter Act, the Supreme Court’s decision in *Ledbetter* has been repudiated. In particular, Title VII has been amended to provide that “an unlawful employment practice occurs, with respect to discrimination in compensation . . . when an individual is affected by application of a discriminatory compensation decision or practice, including each time wages, benefits or other compensation is paid.” Pub. L. No. 111-2, § 3 (emphasis added). Several other anti-discrimination statutes, such as the Americans With Disabilities Act, the Rehabilitation Act and the Age Discrimination in Employment Act, have been amended with similar language. Consequently, the doors to the courthouse have been thrown open much wider for potential plaintiffs, as the period in which they may file claims has greatly expanded.

Importantly, the Ledbetter Act is, by its express terms, retroactive. It applies as though it had been enacted on May 28, 2007 (the day before the Supreme Court’s *Ledbetter* decision), and applies to all claims pending on, or filed after, that date.

In light of the Ledbetter Act, employers should review their compensation practices, even those that have been in place for a long time, to determine whether any disparities exist among similarly-situated groups of workers. If such disparities do, in fact, exist, the employer should be able to justify the disparities using objective business criteria, or adjust them to eliminate the disparities.

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Timothy P. Van Dyck, Partner
Robert G. Young, Associate

617.951.2254
617.239.0180

tvandyck@eapdlaw.com
ryoung@eapdlaw.com

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PALMER &
DODGE

111 Huntington Avenue
Boston, MA 02199
Tel 617.239.0100
Fax 617.227.4420
eapdlaw.com