



Ledbetter Fair Pay Act Becomes Law; Extends Period In Which Employees Can Allege Discriminatory Compensation

January 30, 2009

Employees have far more time and leeway to sue their employers for discriminatory compensation policies under a law that President Obama signed Thursday, effectively overriding the U.S. Supreme Court, which had drastically narrowed the window for such litigation. The Lilly Ledbetter Fair Pay Act of 2009, which relaxes the statute of limitations on such claims, applies retroactively and restores the law to where it was prior to the Court's decision in May 2007.

Before the Court ruled in *Ledbetter v. Goodyear Tire & Rubber Co.*, employees could bring an action within 180 days of any paycheck that, they alleged, represented discriminatory wage policies. The Court toppled that by holding that aggrieved employees had only 180 days from employers' original discriminatory decisions, as evidenced by a paycheck that reflected that discrimination. Now, under the bill that just became law, each paycheck starts a new 180-day statute-of-limitations clock.

Old Ways: The Law Under *Ledbetter*

The Supreme Court issued its opinion in *Ledbetter* on May 29, 2007. It held that employees who wanted to sue because they believed they had been paid less than their co-workers due to their sex, religion, race or national origin had to file a complaint with the U.S. Equal Employment Opportunity Commission ("EEOC") within 180 days of a company's establishing the discriminatory compensation. In *Ledbetter*, the Court expressly rejected the argument that each paycheck represented a violation of the law, and it imposed the stricter statute of limitations, even when the pay disparity was discovered years later.

New Ways: The Law Under the Fair Pay Act

The Fair Pay Act amends Title VII of the Civil Rights Act and the Age Discrimination in Employment Act, and modifies the Americans with Disabilities Act and the Rehabilitation Act. It clarifies that an unlawful employment practice occurs, with respect to discrimination in compensation, in any of the following instances:

- (1) When a discriminatory compensation decision or other practice is adopted;
- (2) When an individual becomes subject to a discriminatory compensation decision or other practice; or
- (3) When an individual is affected by application of a discriminatory compensation decision or other practice, including each time compensation is paid, resulting in whole or in part from such a decision or other practice.

HERRICK

New York Office

2 Park Avenue
New York, New York 10016

Phone: (212) 592-1400

Fax: (212) 592-1500

Princeton Office

210 Carnegie Center
Princeton, New Jersey 08540

Phone: (609) 452-3800

Fax: (609) 520-9095

Newark Office

One Gateway Center
Newark, New Jersey 07102

Phone: (973) 274-2000

Fax: (973) 274-2500

Attorney Advertising

Under the new law, plaintiffs can bring wage-discrimination claims based on sex, race, color, national origin, religion or disability years after the alleged discriminatory compensation decision was initially made. The Fair Pay Act reinstates the “paycheck rule,” which resets the statute of limitations for filing a wage discrimination claim with the EEOC each time the employee receives a paycheck. Moreover, based on the language of the new law, it appears that anyone adversely “affected by” the alleged discriminatory compensation decision or other discriminatory practice -- not just the aggrieved employee -- will be able to sue the employer. The law is silent on exactly who that might be, but it is conceivable that it could include family members or anyone who depends on employees’ income.

Under the Fair Pay Act, an employee’s back-pay recovery remains limited to the period starting two years before complaining of discrimination, no matter how long the discrimination is alleged to have occurred. Additionally, the Title VII monetary caps on damages, which are based on the size of the employer, remain in place under the new law.

What This Means To You

We anticipate that there will be a significant rise in wage-discrimination claims that would have been otherwise time-barred. Claims that would otherwise not have been recognized will now be viable.

What You Can Do To Prepare

In anticipation of the increase in wage-discrimination claims, consider taking the following proactive steps:

- Be sure that management is advised of all decisions regarding employee compensation.
- Make certain that decisions regarding employee compensation can be justified based on legitimate and non-discriminatory business factors.
- Conduct periodic internal “pay-equity audits” to be sure that there are no problematic compensation trends with respect to gender, race, religion or national origin.

For more information on this issue or other employment matters, please contact **Mara B. Levin** at mlevin@herrick.com or (212) 592-1458 or **Carol Goodman** at cgoodman@herrick.com or (212) 592-1465.

Copyright © 2009 Herrick, Feinstein LLP. Employment Alert is published by Herrick, Feinstein LLP for information purposes only. Nothing contained herein is intended to serve as legal advice or counsel or as an opinion of the firm.