

EMPLOYMENT LAW UPDATE

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*Ledbetter Fair Pay Act Signed Into Law by President Obama*

*By Douglas J. Melton*

In May 2007, the United States Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007), rejected the “paycheck accrual rule,” for pay discrimination cases, which stated that each new paycheck could be the basis for a new claim. The Supreme Court ruled, instead, that employees could not bring discrimination claims for disparate pay if the decisions that resulted in the disparate pay occurred outside of the statute of limitations period - even if the employee received a paycheck that was impacted by the discriminatory decision within the statutory time period.

The Ledbetter Fair Pay Act expressly rejects the Supreme Court’s holding and reinstates the paycheck accrual rule. Specifically, the Ledbetter Act amends Title VII to state that “an unlawful employment practice occurs, with respect to discrimination in compensation, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or 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.”

Accordingly, the Ledbetter Act specifies that the statute of limitations begins to run anew when: (1) a discriminatory decision or compensation practice is adopted; (2) an employee becomes subject to that decision or practice; or (3) an employee is affected by that decision or practice.

Underscoring the extent to which the Ledbetter Act is intended to undo the Supreme Court’s decision of the same name, The Ledbetter Act is retroactive to May 28, 2007 - the day before the Supreme Court’s *Ledbetter* decision, and applies to all discrimination claims pending on or after that date. The Ledbetter Act will, therefore, apply to any case in which there is not yet a final judgment, including cases currently on appeal.

Although the Ledbetter Act arguably does nothing more than restore the statute of limitations status quo in pay discrimination cases, it is important to recognize that that in some instances employees may once again bring claims many years after a discriminatory

decision was made. For example, if a female employee began her employment in 1980 at a lower pay rate than her male colleague but thereafter received equal raises, she may still bring a claim today if she is presently paid less as a result of the initial discriminatory decision almost thirty years ago.

The impetus for the bill was gender based discrimination. However, the Ledbetter Act also prohibits pay discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans With Disabilities Act of 1990, and the Rehabilitation Act of 1973.

While the Act unquestionably expands employer liability for pay discrimination claims, it also includes some good news for employers. First, while the Ledbetter Act does extend the statute of limitations by linking it to each new paycheck, it limits the amount of lost income an employee can recover to the two years prior to the filing of a discrimination claim. Second, the Ledbetter Act makes clear that there is no legislative intent to bar existing equitable defenses to stale claims such as the doctrines of laches and waiver.

All Employers should take this opportunity to mitigate the risks associated with pay discrimination lawsuits. At a minimum, employers should review all compensation policies and procedures to identify and eliminate any discriminatory practices and should conduct an audit of job classifications and employee salaries to ensure that disparities in pay rates are justified by legitimate business considerations.

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