

Labor Law Bulletin

FAIR PAY ACT EXTENDS EMPLOYER LIABILITY FOR COMPENSATION CLAIMS

Reversing a 2007 U.S. Supreme Court decision, President Obama signed a law today extending the time for employment discrimination claimants to file charges of pay discrimination.

In *Ledbetter v. Goodyear Tire & Rubber Co.* the Supreme Court held that Lilly Ledbetter, a long-term Goodyear employee, could not bring a gender-based pay claim when the pay disparity she complained of had begun, according to her, 20 years earlier but was continuing to affect her. Relying on a long series of prior decisions, the Supreme Court stated that the 300-day charge filing period under Title VII begins to run when the employee knows or should have known about the alleged discriminatory act. According to the Court, the fact that the pay disparity between her and similarly situated male employees continued with each paycheck she received did not mean that each paycheck was a new and separate discriminatory act. Because she did not file a timely charge with respect to the decades earlier pay decisions, she could not sue over the current effect of those decisions on her pay.

Congress and the President changed that result when the Lilly Ledbetter Fair Pay Act became law on January 29, 2009. Under the Ledbetter Act, an employer commits a violation “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.” Thus an employee claiming discriminatory compensation treatment can bring a Title VII charge within 300 days from the last time she is paid even if the alleged unlawful pay treatment began years earlier and the employee knew about it then. A major ambiguity in the Act is the meaning of “other practice.” Performance ratings under performance-based compensation systems and job classification systems may be deemed “other practices” because they directly affect an employee’s compensation. Less clear is whether promotion, transfer, or other decisions that affect compensation are “other practices” that will enable an employee to sue for pay discrimination even though those decisions were made years ago.

The Ledbetter Act is not limited to pay discrimination on the basis of sex. It applies to all prohibited discrimination under Title VII (race, color, religion, national origin and sex), the Americans with Disabilities Act (“ADA”), the Age Discrimination in Employment Act (“ADEA”) and the Rehabilitation Act. The Act does not affect the current law limiting back pay liability under Title VII and ADA to two years before the filing of a charge. However, the Act is retroactive to claims of pay discrimination pending on or after May 28, 2007, the day before the Supreme Court decided the *Ledbetter* case.

Passage of the Ledbetter Act and its attendant publicity will doubtless result in more pay discrimination claims, including class actions. Although the Act does not change the substantive standards for proving compensation claims, employers will face claims based on decisions made long ago that employees contend have a present impact.

If you have any questions, please do not hesitate to contact any Vedder Price attorney with whom you have worked.

Annual Employment Law Seminar

Save the Date

May 6, 2009

8:00 a.m.

Standard Club, Chicago, Illinois

May 7, 2009

8:00 a.m.

Hotel Sofitel, Rosemont, Illinois

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