

New Employment Law Lowers the Bar for Wage Discrimination Claims

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The definition of an “unlawful employment practice” that constitutes pay discrimination has been expanded, and, consequently, the possible damages that could be awarded to a successful plaintiff have been increased. On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act, making it the first major legislation enacted under the Obama administration. The Act amends federal anti-discrimination law to, in effect, reverse a U.S. Supreme Court decision holding that the time limit for filing claims of unlawful discrimination based on pay differences begins to run when the initial discriminatory pay decision is made. *Ledbetter v. Goodyear Tire and Rubber Co.*, 550 U.S. 618 (2007).

Because this time limit is relatively short—either 180 or 300 days, depending upon the jurisdiction—employees who did not become aware of a discriminatory pay difference until later in their employment were effectively barred from bringing a claim for damages.

To address this concern, the Ledbetter Act provides that an unlawful employment practice occurs each time an employee is affected by a discriminatory compensation decision. As a result, the time limit for filing a claim begins anew every time an employee receives a paycheck that is affected by the initial discriminatory compensation decision, even if the allegedly discriminatory decision happened many years prior. Employees who successfully prove such discrimination may be entitled to damages that include back pay for up to two years preceding the filing of the discrimination charge, as well as punitive damages, attorneys fees and reinstatement.

Although the *Ledbetter* case involved a claim of sex-based discrimination, the Act applies this new standard to all types of pay-related discrimination claims brought under Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act. Thus, this new standard applies to claims based upon age, color, disability, national origin, race, religion, and sex.

Significantly, the Act is not limited to future claims. Rather, it takes effect as if enacted on May 28, 2007, and, therefore, applies to all claims pending on or after that date.

Proactive employers should reexamine their current pay rates and salary structures to ensure compliance with the relevant statutes, and would be well advised to document the factual bases for individual pay rates. Finally, employers should expect an increase in pay discrimination claims and lawsuits as a result of the Act.

This client alert is for general information purposes and should not be regarded as legal advice.