On January 29, 2009, President Obama signed his first law: the Lilly Ledbetter Fair Pay Act of 2009. This law effectively reverses the United States Supreme Court’s decision in Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007), and extends the time that employees can file pay discrimination claims.

**Who Is Lilly Ledbetter?**

The Act’s namesake, Lilly Ledbetter, was a 19 year employee at Goodyear’s Gadsden, Alabama plant who, just before she took early retirement, claimed she was paid less because of her sex. (She also claimed Goodyear discriminated against her in job evaluations, job transfer, training, discipline, retaliation and constructive discharge, all of which were disposed of by the district court on summary judgment or rejected by the jury.) In particular, Ledbetter claimed that in years past she received poor performance evaluations because of her sex and, as a result, her pay increases were not as much as if her performance had been fairly evaluated. Because of this alleged past discrimination, by the time she retired Ledbetter was earning significantly less than her male counterparts. The jury found in favor of Ledbetter on her sex discrimination in pay claim.

By the time she got to the Supreme Court, Ledbetter did not claim that any pay decision in the 18 months prior to her EEOC charge was intentional sex discrimination. Instead, she claimed that her lower rate of pay was a cumulative effect of discriminatory pay decisions made many years earlier. Although she filed a Title VII claim, Ledbetter’s EEOC charge was not filed within 180 days of any of the allegedly discriminatory past decisions setting her pay. Instead she argued that the time for filing a claim renewed every time she received a paycheck, so she could raise sex discrimination claims about pay decisions at any point in her 19 year career. Some of those decision makers were no longer alive and the documentation for some decisions no longer existed.

In a 5-4 decision, the Supreme Court held that Ledbetter’s pay discrimination claim was time-barred. The Court explained that the statute of limitations for unlawful pay discrimination begins to run when the initial decision to pay an employee less money is made. In reaching this conclusion, the Court expressly rejected Ledbetter’s contention that each individual paycheck triggers a new charge filing period (i.e., a separate violation of the law).
What Does The Ledbetter Fair Pay Act Provide?

The Lilly Ledbetter Fair Pay Act has reversed the Court’s ruling. For pay discrimination claims under Title VII, the ADA, the ADEA, and the Rehabilitation Act, the 180 day (or 300 days in some states) timeframe for filing a charge of discrimination now is triggered:

1. when an employer adopts a discriminatory compensation decision or other practice;
2. when an individual becomes subject to a discriminatory compensation decision or other practice; or
3. when the application of a discriminatory compensation decision or other practice affects an individual, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

The first two triggers present nothing new. The third trigger, however, significantly extends the time that employees can file pay discrimination charges. The law adopts the paycheck by paycheck approach that the Supreme Court rejected. Now each paycheck triggers a new 180-day (or 300-day) period for filing a pay discrimination charge, even if the initial decision that set the pay rate occurred years ago. Significantly, when the plaintiff relies on a decision that falls outside the 180-day filing period, damages are limited to “recovery of back pay for up to two years preceding the filing of the charge.” The new law applies to all pay discrimination claims filed after May 28, 2007.

Now What?

What does this mean for employers and what should you do to prepare?

- The door is wide open for every charge to include a pay discrimination claim. The EEOC and plaintiff’s lawyers will know that these claims cannot be time-barred so it will probably become part of the boilerplate language in every discrimination complaint. If it was already part of the boilerplate, it will now be a serious claim.

- Given the recent press on this law, current employees are more likely to talk to each other about pay to uncover any pay disparities. Remember that federal labor laws give employees the right to talk about their pay and benefits with each other. Employers don’t have to facilitate the discussions or open your payroll systems to employees. However, if an employee asks how her pay was determined, you should consider explaining your system and make it clear that the company has nothing to hide.

- With the increased emphasis on pay, you should make sure that proper consideration is given to pay issues, both when you hire and any subsequent changes. Be sure that your documentation reflects why someone is paid less. Furthermore, changes in how decisions are made regarding employee pay should be carefully reviewed.

- If you have employees in the same job classification making lower wages than their co-workers, consider whether you need to adjust your pay scales or remedy historical pay disparities. Plaintiffs will still need to establish intentional discrimination but they will be able to review their entire career to find it.

- No decision will be too old to pursue. Accordingly, you should review your documentation of pay decisions to be sure that you can defend decisions regardless of when they were made.

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