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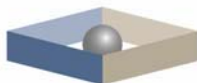
*Legal Insights:*

*President Obama Signs Lilly Ledbetter*

*Fair Pay Act of 2009*

*By*

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On January 29, 2009, President Barack Obama signed the **Lilly Ledbetter Fair Pay Act of 2009** into law expanding the scope of employer liability for alleged pay discrimination. **The Ledbetter Act provides employees with the right to sue for compensation discrimination within 180 days of receiving any paycheck reflecting alleged pay discrimination.** The Act changes prior law holding that the 180 day time period for bringing suit starts with the first such discriminatory paycheck. Under the Ledbetter Act each successive allegedly discriminatory paycheck restarts the clock for filing a compensation discrimination suit. Thus, the Act opens the door to numerous potential lawsuits that had been previously barred because the employee did not bring suit within 180 days of the first allegedly discriminatory pay check.

With the Ledbetter Act, Congress effectively reversed *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007), in which the Supreme Court ruled that Ledbetter's gender discrimination compensation suit against her employer was time barred. The Supreme Court rejected the "paycheck accrual rule" and held that Title VII discriminatory compensation suits must be filed within 180 days of the first "act of discrimination" in which the employer made the discriminatory pay decision. Because Goodyear's decision to pay Ledbetter less than her male co-workers had occurred years prior to her claim, Ledbetter's lawsuit was deemed too late and her jury award of \$300,000 in back pay and damages was overturned.

The Ledbetter Act amends the operative statute of limitation to run from the **last discriminatory paycheck** and not the first discriminatory act. Thus, an employee now can file a timely claim for compensation discrimination even if the discriminatory decision was made years, even decades, before the paycheck. Furthermore, the Ledbetter Act has a **retroactive effective date of May 28, 2007** (the day prior to the *Ledbetter* decision) and applies to all claims pending on or after that date (it will not apply to final judgments). The Act also allows recovery of back-pay for up to two years from the date of filing a lawsuit.

The Ledbetter Act is not limited to gender discrimination claims – it applies to compensation discrimination under Title VII of the Civil Rights Act (based on race, sex, color, national origin and religion), the Age Discrimination in Employment Act (based on age), the American with Disabilities Act (ADA) and the Rehabilitation Act (based on disability).

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Employers may face increased (or renewed) compensation discrimination lawsuits as a result of the Ledbetter Act. Accordingly, employers should consider the following steps to prepare for this possibility and aid in the prevention of and defense of claims:

- **Eliminate compensation discrimination**, even if based on legacy decisions.
- Conduct a **compensation risk assessment**.
- Take care to **justify and document compensation decisions**, particularly with respect to identifying legitimate reasons for compensation disparity.
- Design a **record retention system** of these compensation decisions. These **records should be maintained indefinitely**, as the Ledbetter act effectively eliminates the statute of limitation on such decisions (so long as the employee receives a discriminatory paycheck).
- **Revise the compensation system** to reduce large base pay differences through the use of incentive and/or bonus structures.

Other pending pay discrimination legislation may further change employment law. For example, the Paycheck Fairness Act passed the House and has been read into the Senate twice, and is likely next up for Obama's signature. The Paycheck Fairness Act will amend the Equal Pay Act to allow for uncapped compensatory and punitive damages (Ms. Ledbetter's jury verdict of \$3.8 million had been reduced to \$300,000 based on Title VII statutory caps), further reduce employer defenses, and permit increased class action litigation.

By keeping aware of the changes in employment law and taking affirmative steps to both be in compliance and to document compensation decisions, employers may be able to reduce the chance of lawsuits, and if faced with a lawsuit, significantly increase the likelihood of a successful defense. Scandaglia & Ryan's attorneys are seasoned employment litigators and are ready to assist your company in preventing and defending against employee compensation discrimination claims. For further information, please contact William J. Ryan at (312) 580-2036 or [wryan@scandagaliaryan.com](mailto:wryan@scandagaliaryan.com).