

LEGAL UPDATES

PUBLISHED: JANUARY 29, 2009

Service

Labor & Employment

Lilly Ledbetter Fair Pay Act Likely to Result in an Increase in Compensation and Benefit Claims

This morning, President Barack Obama signed into law the Lilly Ledbetter Fair Pay Act. The Fair Pay Act is intended to overturn the U.S. Supreme Court's 2007 ruling in *Ledbetter v. Goodyear Tire & Rubber Co.*, which held that the time within which a person claiming to be the victim of discrimination in compensation can file a charge with the Equal Employment Opportunity Commission (EEOC) begins to run when the employer makes a discriminatory decision about the employee's compensation, not each time the effect of that discrimination is felt with each pay check. Under the Fair Pay Act, the time to file starts to run: (1) "when a discriminatory compensation decision or other practice is adopted;" (2) "when an individual becomes subject to a discriminatory compensation decision or other practice;" or (3) "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." This means that each paycheck or benefit payment check will restart the time (300 days in most jurisdictions) that the employee has to preserve his or her claim by filing a charge of employment discrimination with the EEOC. Significantly, the legislation does not increase damages available under the statute, as those remain limited to a period up to two years before the filing of the charge of discrimination under Title VII.*

The Fair Pay Act applies to compensation and benefit claims under Title VII of the Civil Rights Act of 1964 (Race, Color, Sex, National Origin and Religion), the Age Discrimination in Employment Act (persons 40 and over), the Americans with Disabilities Act and the Rehabilitation Act. The legislation will be applied retroactively to all claims of discrimination under these acts

pending on or after May 28, 2007, the date of the Supreme Court's decision in *Ledbetter*.

Employers should carefully examine their compensation and benefit policies and practices to ensure that no impermissible bias exists, especially with the likely passage of the Paycheck Fairness Act, which will amend the Equal Pay Act (requiring equal pay for equal work between men and women) by requiring the employer to prove that wage disparities between men and women are based on bona fide factors other than sex, such as education, training or experience. The Paycheck Fairness Act will also provide for compensatory and punitive damages, remedies that do not exist in the present Equal Pay Act.

Should you have any questions or need additional information, please contact any of the labor & employment attorneys or your regular Husch Blackwell Sanders attorney.

* This back pay period would be three years from the filing of the charge under the Age Discrimination in Employment Act if the discrimination was found to be willful within the meaning of that statute.

Husch Blackwell Sanders LLP regularly publishes updates on industry trends and new developments in the law for our clients and friends. Please contact us if you would like to receive updates and newsletters, or request a printed copy.

Husch Blackwell Sanders encourages you to reprint this material. Please include the statement, "Reprinted with permission from Husch Blackwell Sanders, copyright 2010, www.huschblackwell.com." at the end of any reprints. Please also email info@huschblackwell.com to tell us of your reprint.

This information is intended only to provide general information in summary form on legal and business topics of the day. The contents hereof do not constitute legal advice and should not be relied on as such. Specific legal advice should be sought in particular matters.