



Employment Law Alert

A Labor & Employment Department Publication

February 2009

This Employment Law Alert is intended to provide general information for clients or interested individuals and should not be relied upon as legal advice. Please consult an attorney for specific advice.

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President Obama Signs The Ledbetter Fair Pay Act Into Law

On January 29, 2009, the Lilly Ledbetter Fair Pay Restoration Act (Ledbetter Act) was the first bill signed into law by President Obama. This law will likely lead to an increase in pay discrimination lawsuits against employers.

The Ledbetter Act amends Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act of 1973 to allow an employee to file a charge of discrimination in pay within 180 or 300 days of the date when the employee is affected by a discriminatory wage decision or practice. For purposes of the Ledbetter Act, an unlawful employment practice occurs 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 are paid, resulting in whole or in part from such a decision or other practice. Additionally, the Ledbetter Act is retroactive to May 28, 2007 so it will apply to pay discrimination claims filed on or after that date.

The Ledbetter Act overturned a 2007 United States Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), in which the Court held that the time limit for filing a pay discrimination charge based on gender with the United States Equal Employment Opportunity Commission begins running when the employer makes a discriminatory decision about an employee's compensation. The Supreme Court rejected the so-called "paycheck rule," which allowed the statute of limitations to begin running anew each time an employee received a paycheck affected by the discriminatory decision.

The Ledbetter Act reinstated the paycheck rule and effectively eviscerated the statute of limitations for wage discrimination claims because employees are, arguably, affected by a discriminatory wage decision each time they receive a paycheck. For example, if a pay decision was made for a particular female employee ten years ago that caused her to be paid less than her male counterparts throughout her employment, each paycheck she receives will start a new statute of limitations. This means that the female employee may file a charge of discrimination many years later when she learns of the discrepancy in pay.

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Also, please mark your calendars for our upcoming seminars:

Employment Relations:

Cleveland

Thursday, April 2, 2009
Choice of morning or afternoon session will be given.
The Shoreby Club

Columbus

Monday, May 4, 2009
8:30 a.m. - 12 p.m.
The Hilton Columbus
at Easton Town Center

Employer Class Action Summit:

Monday, May 4, 2009
1:00 p.m. - 4:30 p.m.

For more information or to reserve a seat, please contact Erin Hawk at ehawk@porterwright.com or 614-227-1983.

Although the Ledbetter Act does not alter the current two-year limit for potential back pay recovery, the Act, in effect, requires employers to retain records relating to any pay decisions for a much longer period of time. Additionally, employers will now be required to defend previously time-barred decisions although the records relating to those decisions have likely been destroyed and the individuals involved in the decision have long since left the company.

The Ledbetter Act is sure to result in increased litigation over pay issues and, as a result, there are numerous precautions employers can take to prepare for fallout from the Ledbetter Act. Such precautions may include:

- Reviewing all compensation-related policies and procedures with counsel to minimize the likelihood of pay discrimination.
- Reviewing record-retention policies to maintain all compensation-related records for a sufficient length of time.
- Making sure to document sufficiently the legitimate, non-discriminatory reasons for compensation-related decisions.

Given the language of the Act, the courts will need to provide further guidance as to the effect of the retroactive date of May 28, 2007 and to whether the definition of “an unlawful employment practice” could potentially reach ten-year-old promotion decisions that created a paycheck differential.

Because the Ledbetter Act may significantly impair the ability of employers to defend claims about old pay decisions in federal court, especially for those employers who have forgotten or have not retained documentation as to why a given pay decision was made in the first place, it is essential that employers review current procedures to ensure compliance with this new law.