



Client Alert

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Congress Expands Employer Liability For Discriminatory Pay Practices

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009 (the "Ledbetter Act"). The Ledbetter Act amends Title VII of the Civil Rights Act of 1964 to make clear that an unlawful employment practice occurs "when a discriminatory compensation decision . . . is adopted, when an individual becomes subject to a discriminatory compensation decision . . ., or when an individual is affected by application of a discriminatory compensation decision . . ., including *each time* wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision." 42 U.S.C. § 2000e-5(e), as amended (emphasis added). The compensation provisions of the Americans with Disabilities Act of 1990 (the "ADA"), the Age Discrimination in Employment Act of 1967 (the "ADEA"), and the Rehabilitation Act of 1973 were similarly amended. Significantly, the Act's effective date was made retroactive to May 28, 2007.

The Ledbetter Act was a direct response to the United States Supreme Court's controversial decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), which was handed down on May 29, 2007. In that case, the Court ruled that, despite a jury verdict in her favor, Lilly Ledbetter could not recover for sex-based pay discrimination because her claim was administratively barred, in that it was not presented to the Equal Employment Opportunity Commission ("EEOC") within the 180-day period afforded by Title VII (or within 300 days in jurisdictions that prohibit similar discrimination under state or local law). Specifically, the Court held that Ms. Ledbetter failed to assert her rights after the *first act* of discrimination which had set her rate of pay lower than that given to males for the same work, even though her pay was adversely affected over the 18 years of her employment. By the Ledbetter Act, Congress overturned this ruling, providing that each new paycheck or other application of a discriminatory compensation decision "re-sets the clock" for filing a charge of discrimination with the EEOC. This is true even if the later paychecks or the later applications of a discriminatory compensation decision are not based on any present intent to discriminate against the employee.

How Do These Developments Impact Your Business?

With the passage of the Ledbetter Act, an individual alleging that he or she has been subjected to discriminatory compensation practices may file an

EEOC charge within 180 days (or within 300 days in jurisdictions that have a local or state law prohibiting the same form of compensation discrimination) of any of the following:

- When a discriminatory compensation decision or other discriminatory practice affecting compensation is adopted;
- When the individual becomes subject to a discriminatory compensation decision or other discriminatory practice affecting compensation; or
- When the individual's compensation is affected by the application of a discriminatory compensation decision or other discriminatory practice, *including each time the individual receives compensation that is based in whole or part on such compensation decision or other practice.*

Additionally, the Ledbetter Act permits any "aggrieved person" – as opposed to any "aggrieved employee" – to obtain relief. This language has caused many commentators to speculate that non-employees, such as spouses of deceased employees, may be allowed to sue for compensation discrimination resulting from an employment decision occurring outside of the EEOC charging period. At the very least, it seems certain that the Ledbetter Act will lead to an increase in the number of individuals making claims based on compensation practices that are allegedly discriminatory.

Looking Ahead

The Ledbetter Act could impact any business that continues to employ compensation practices based on past discrimination, whether on account of an employee's race, color, religion, sex, national origin, age, or disability. Today, employers could be held liable for the discriminatory practices of even the distant past. Therefore, it is imperative that employers be alert to this change in the law and closely scrutinize both their current and institutionalized pay practices to ensure that they comply with all federal and state discrimination laws.

If you have additional questions regarding the Lilly Ledbetter Fair Pay Act of 2009, how it may affect your business, or how to minimize the risk of liability, please contact one of the members of the AGG Employment Law Team.

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