

With pay discrimination, each paycheck is a new filing opportunity.

Pay Discrimination Suits: The Door Widens

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THE LILLY Ledbetter Fair Pay Act of 2009, the first legislation President Obama signed into law, has a retroactive effective date of May

28, 2007. It applies to all claims of discriminatory compensation pending on or after that date.

The act supersedes the Supreme Court's controversial 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co. Inc.*, which narrowly construed the time period for filing pay discrimination claims. That decision rejected the longstanding position of the Equal Employment Opportunity Commission (EEOC) that each paycheck delivering discriminatory compensation is a wrong actionable under federal equal employment opportunity laws—regardless of when the discrimination began.

A big problem with the Supreme Court's approach, according to civil rights advocates, is a worker may not know a decision was based on unlawful discrimination until it's too late to sue. That's what happened to Ledbetter.

For 19 years, she was the only female supervisor at a Goodyear tire plant in Alabama. A few months before she retired in 1998, she learned she was paid significantly less than her male colleagues. She alleged this had happened over many years, without her realization, because of decisions based on sex discrimination violating Title VII of the Civil Rights Act of 1964. When her case went to trial, a jury awarded her \$3 million. However, the Supreme Court ruled she waited too long before commencing her case.

The Lilly Ledbetter Fair Pay Act restores the EEOC's position. It's now federal law that an individual subjected to compensation discrimination under Title VII, the Age Discrimination in Employment Act (ADEA), or the Americans With Disabilities Act (ADA) may file an EEOC charge within 180 days (or 300 days in some jurisdictions) of any of these events:

- ▶ **When** a discriminatory compensation decision or other discriminatory practice affecting compensation is adopted;
- ▶ **When** the individual becomes subject to such decisions or practices; 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 based on such a decision or practice.

Critics of the new act say it will open the proverbial litigation floodgates. Supporters believe it's an important means of enforcing the right to equal pay for equal work.

According to a 2008 U.S. Bureau of Labor Statistics report:

- ▶ **Women working full time** in the U.S. during 2007 had median earn-

ings of about 80 cents for every dollar men earned.

- ▶ **Women working full time** in management, business, and financial operations occupations had median weekly earnings of \$908 in 2007, more than women earned in any other major occupational category.

- ▶ **Median weekly earnings** of female tellers (\$457) were about the same as their male counterparts (\$455).

- ▶ **Women with minor children**, regardless of marital status, earned 69% (\$605) of the median weekly earnings of men (\$874).

Title VII, ADEA, and ADA prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

The federal Equal Pay Act of 1963 requires that men and women receive equal pay for substantially equal work in the same establishment, even if the jobs aren't identical. The focus is on whether the jobs require substantially equal skill, effort, and responsibility under similar working conditions, summarized as:

- ▶ **Skill**—experience, ability, education, and training required;
- ▶ **Effort**—amount of physical or mental exertion; and
- ▶ **Responsibility**—degree of accountability.

Pay differentials are permitted when based on lawful factors such as seniority, merit, quantity, or quality of production.

Acting EEOC Chairman Stuart J. Ishimaru says the EEOC intends to enhance enforcement in the area of pay discrimination and increase public outreach and education. ☉

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