

Ledbetter Fair Pay Act Becomes Law

President Obama signed the Lilly Ledbetter Fair Pay Act into law on January 29, 2009. Overturning a 2007 U.S. Supreme Court decision, the new law eases restrictions on employees suing for pay discrimination by changing the calculation of the timeframe within which an employee may file a lawsuit. Prior to the Act, employees had a single 180-day period following an occurrence of a discriminatory pay practice to file suit. Now the time to file restarts each time an employee receives a paycheck affected by the initial decision—in effect, each subsequent paycheck becomes its own violation of pay discrimination laws.

The Act applies retroactively to May 28, 2007, to claims of pay discrimination brought under Title VII, the ADA, the Rehabilitation Act, and the ADEA (age discrimination)—it thus applies to alleged discriminatory pay practices based on all protected categories, including race, gender, age, color, disability, national origin and religion. It also extends protections to include employees who are “affected” by or who “becomes subject” to a discriminatory pay decision, which in addition to wages may encompass health and pension benefits, bonuses, and stock options, though the Act does not allow employees to extend the limitations period beyond the end of the employment relationship by adding on post-retirement pension payments.

As before the Act, Employees are limited to a maximum of two years preceding the filing of a discrimination charge under Title VII for recovery of back pay. However, employers are now subject to compensation claims that would have been time barred before the Act, and will have to defend against claims even where employees may have long since left the Company or where related records have been destroyed, or where the initial decision was made years earlier.

The Act will almost certainly lead to an increase in pay discrimination claims, and possibly to an increase in class-action claims. It is crucial that Employers be prepared, and take immediate steps to protect themselves. Employers are advised to review their compensation and merit increase policies to determine how salaries are set at the time of hire and how pay increases are determined. They should ensure that sufficient documentation is created and maintained to justify any non-discriminatory differences in pay among members of protected classes—such documents include performance reviews, pay scales, disciplinary records, and general compensation policies. Employers are encouraged to seek advice of their legal counsel in reviewing existing policies and records, and in crafting specific policy changes as needed.

****SAVE THE DATE: EMPLOYMENT LAW SEMINAR, APRIL 17, 2009 ****

MCM will be conducting a half day Employment seminar the morning of April 17th. Topics will include the recent changes to the ADA and FMLA, the Ledbetter Act, and new or pending legal developments regarding benefits, mandatory paid sick leave, retaliation, and the “Employee Free Choice Act.” Details to follow.



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