

Who is Lilly Ledbetter, and Should My Company Be Worried About Her?

Association of Corporate Counsel, Iowa Chapter
April 16, 2009

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I. *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S.Ct. 2162, 550 U.S. 618, 167 L.Ed.2d 982 (2007)

- A. Retired female manager filed EEOC charge alleging she was paid less than similarly situated male managers.
- B. Claim for discriminatory pay was based upon discrimination that had occurred over a twenty year period.
- C. As a result of the past discrimination, Ledbetter alleges she was given smaller raises than male managers. Over the course of 20 years, the smaller raises resulted in her earning \$500-\$1,500 less per month than similarly situated males.
- D. Alabama jury awarded Ledbetter \$2223,776 in back pay, \$4662 in compensatory damages, and \$2,282,979 in punitive damages.
- D. Title VII of the Civil Rights Act of 1964 requires a charge of discrimination to be filed with 180 days (or 300 days in some circumstances) of the alleged discrimination.

- E. Discriminatory employment actions are generally treated as “discrete acts”, each of which requires an employee to file a separate charge with the EEOC.
- F. Issue before the Court: whether and under what circumstances a plaintiff may bring an action under Title VII alleging illegal pay discrimination when the disparate pay is received during the limitations period, but is the result of intentionally discriminatory pay decisions made outside the limitations period.
- G. Held: to the extent Ledbetter’s claim was based upon discriminatory pay decisions that occurred more than 180 days before she filed an EEOC charge, her claims were time barred.

II. Lilly Ledbetter Fair Pay Restoration Act of 2007

- A. Introduced in the 110th Congress;
- B. Bill died in the Senate

III. Lilly Ledbetter Fair Pay Restoration Act of 2009

- A. Re-introduced in 111th Congress, and passed by both houses.
- B. Signed into law January 29, 2009; the first Act President Obama signed.
- C. Law amended Section 706(e) of the Civil Rights Act of 1964 by adding the following:

“(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, 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 is paid, resulting in whole or in part from such a decision or other practice”

- D. Law also amends comparable provisions of Age Discrimination in Employment Act, Americans with Disabilities Act, and Rehabilitation Act of 1973

IV. Proponent's and Opponent's Views of Ledbetter

A. Proponents' Views

1. Differences in pay are difficult to detect by the affected employee.
2. Pay discrimination rarely is accompanied by circumstances suggestive of bias.
3. If left uncorrected, discriminatory pay decisions worsen over time.
4. If an employee files a charge too soon, without adequate factual or legal foundation, they can be subjected to sanction, including discharge.
5. Discriminatory pay decisions are not "discrete acts" in that they continue to impact the employee each time a paycheck is issued; it is more like a continuing violation, such as in a hostile work environment case.

B. Opponents' Views

1. Opens the door to claims based upon supervisor misconduct that occurred years or decades before the charge was filed. In Ledbetter's case, the supervisor in question died before the case was brought and never testified.
2. The "other practices" language in the law opens the door to any decision that might impact pay, but would not be an adverse employment action in and of itself. Examples include choice of assignments or projects, choice of supervisor or mentors, employment reviews, etc.
3. Revives claims over long ago decisions that previously were barred.

V. Practical Implications

- A. Record Retention Practices
- B. Documentation Concerning Compensation Decisions
- C. Structuring of Compensation Systems
- D. Self-audits of Compensation Systems
- E. Impact on Pensions and Retirement Accounts