

LEDBETTER ACT EXTENDS LIMITS ON FILING DISPARATE WAGE CLAIMS

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009 ("Ledbetter Act"), which extends the time that women and other protected class members may assert claims of wage discrimination, regardless of the date of the first act of discrimination. Under the Ledbetter Act, each new discriminatory paycheck will now be deemed a separate unlawful employment practice, thereby extending the statute of limitations for filing a claim of discrimination for another 180 days. It takes effect as of May 28, 2007 and applies to all claims of discrimination in compensation pending on or after that date.

The Ledbetter Act has been widely touted as a victory in the campaign to achieve equal pay for women. Last year, the Census Bureau estimated that women still only receive about 78 cents for every dollar paid to men in equivalent jobs. In addition to amending Title VII of the Civil Rights Act of 1964, the Ledbetter Act made similar changes in the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act of 1973. Thus, the Ledbetter Act covers claims of discrimination in compensation based not only on sex, but also on race, color, religion, national origin, age or disability. Significantly, the act did not change current law limiting back pay awards for successful claimants to the two years preceding the filing of their claims.

This legislation reverses a May 2007 United States Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, that held a person must file a claim of discrimination within 180 days of the employer's first act of disparate treatment in order to recover damages. Lilly Ledbetter had worked for Goodyear for almost 19 years before she became aware that she was not paid the same wage as similarly situated male workers. She sued under Title VII and the jury awarded her backpay and interest. The Supreme Court rejected her entire claim as untimely, concluding that the disparate pay she received had been the result of discriminatory decisions preceding the limitations period. Even though the Court did not deny she had suffered discrimination which had impacted her compensation, it refused to hold that each subsequent paycheck based on the earlier discriminatory decisions was a separate violation of the law.

In passing the Ledbetter Act, Congress found that the *Ledbetter* decision significantly impaired longstanding statutory protections against discrimination in compensation. For example, after the Supreme Court had issued the *Ledbetter* decision, judges in more than 300 reported decisions relied upon it to deny claims in cases involving not only Title VII but also other anti-discrimination legislation. As a result, the decision was widely challenged as facilitating continued discriminatory pay practices by employers. Also, the reduced deadline for filing claims was deemed to be unrealistic since most workers are unaware of, or prohibited from talking about, their co-workers' salaries.



Other related pending legislation which bears watching is a bill called the Paycheck Fairness Act, recently passed by the House of Representatives, which was originally paired with the Ledbetter Act. If enacted, this bill will strengthen remedies available to successful claimants under the existing Equal Pay Act, will require employers to prove that wage disparities are job-related and consistent with business needs rather than the product of discriminatory motives, and will protect employees who discuss salary information from retaliation. At this time, the Senate has delayed decision on this bill.

Essentially, the Ledbetter Act provides a rolling, renewable statute of limitations for claims of disparate pay based on discrimination. Previously, employers could be fairly confident that an employee's disparate wage claim would be limited to the preceding six month period. As a result of the Ledbetter Act, virtually the employee's entire employment history will now be open to scrutiny to determine if any claimed discriminatory practices have impacted on current salary.

This *Labor & Employment Law Alert* was written by **M. Karen Thompson**, a Member of the firm.

If you have any questions regarding this alert or any other labor and employment related issue, please feel free to contact Karen or anyone in the Labor & Employment Group.

EMPLOYEE FREE CHOICE ACT: WHERE IT STANDS AND WHAT IT MEANS TO EMPLOYERS

With Democrats controlling the White House and Congress, it is expected that the Employee Free Choice Act ("Act") will be passed in 2009. This Act will make union organization easier and will alter the landscape of labor relations. This free seminar will help employers understand the potential ramifications of this legislation and the preparation needed should it pass. **Pat Collins**, Chair of the Labor & Employment Group, and **David Cassidy** will identify specific employment policies and practices that employers should have in place to address this legislation and what to do in anticipation of the Act becoming law.

This seminar will be held on Monday, February 23, & Tuesday, February 24, 2009, at the offices of Norris McLaughlin & Marcus, 721 Route 202-206, Bridgewater, New Jersey. Registration and continental breakfast will begin at 8:30 a.m. with the program starting at 9:00 a.m., followed by a Q&A session.

We are offering these seminars free of charge; however, space is limited. Please contact **Cassie Coldreck** at 908-252-4172 or by email at ccoldreck@nmmlaw.com for more information.

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