

## **Lilly Ledbetter Fair Pay Act of 2009**

### **By Tonya R. Draeger**

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009 (“Lilly Ledbetter Act”), which supersedes the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007). The Lilly Ledbetter Act rejects the holding that the charge-filing deadline on Title VII compensation discrimination claims begins to run on the date of the first allegedly discriminatory pay decision.

The Lilly Ledbetter Act is narrowly focused on undoing the “damage” wrought by the Supreme Court's decision in *Ledbetter*. Among Congress’ findings was that the *Ledbetter* ruling “significantly impairs statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades.”

The new law amends Title VII of the Civil Rights Act of 1964 to provide that the charge-filing periods (300 days in most states and 180 days in states that do not have a fair employment agency) would commence when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to the decision or practice; or (3) an individual is affected by an application of a discriminatory compensation decision or practice (including each occasion in which wages, benefits or other compensation is paid). Thus, the statute of limitations restarts each time that an employee receives a paycheck based on a discriminatory compensation decision.

The Lilly Ledbetter Act amendments apply also to other anti-discrimination laws like the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, which borrow Title VII's statute of limitations period.

In addition, the new law provides that an unlawful employment practice occurs when “a person” is affected by a discriminatory pay decision or other practice. This broad language could sanction pay discrimination charges filed by non-employees, such as the spouses of deceased workers, so long as those individuals claim that they have been affected by the discriminatory practice. The House of Representatives rejected an amendment that clearly would have restricted the law’s application to employees only. It remains to be seen how the EEOC and the courts will interpret this language. In fact, throughout the next year or so, we expect to see numerous regulations and decisions interpreting the Lilly Ledbetter Act.

The law is retroactive to May 28, 2007, the day before the *Ledbetter* decision, and applies to all pay discrimination claims arising on or after that date. Attempts made in the Senate to amend the bill to change the effective date so that the law would apply only to claims arising after its enactment were debated extensively, but failed.

The implications of the retroactive effective date are uncertain. The legislation could cause individuals who had refrained from filing compensation discrimination claims in the 20-month period since *Ledbetter* to proceed with litigation. The legislation could increase potential liability for damages. The legislation may permit plaintiffs whose cases were dismissed on statute of limitations grounds after the Supreme Court’s decision in *Ledbetter* to reassert their claims.

Due to the broadened statute of limitations provided for under the Lilly Ledbetter Act, we expect to see increased litigation regarding wage disparity claims. In order to help minimize the risks of liability, we recommend that employers review their current compensation practices to confirm that all compensation decisions are well documented performance-based decisions. Additionally, employers should have objective guidelines for compensation decisions dependent on job descriptions and work departments. Further, we would recommend that employers implement and maintain in place a review system to ensure that compensation decisions are not based on the assessments or determination of a single individual. Finally, as we have mentioned before, employers should continue to document all decisions, including compensation decisions, in personnel files and maintain archived records of compensation practices in case you are required to defend a pay discrimination claim.