

President Obama Signs Lilly Ledbetter Fair Pay Act Into Law

First law signed by new President addresses statute of limitations for pay discrimination claims

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President Obama signed into law yesterday the "Lilly Ledbetter Fair Pay Act," which provides that an employee who alleges pay discrimination in violation of various federal laws has up to 300 days to file a legal claim after receiving each new paycheck alleged to contain discriminatory pay. Then-Senator Obama made passage of the law one of the banner promises of his presidential campaign throughout 2008, and he often campaigned together with the new law's namesake, Lilly Ledbetter, the former Goodyear Tire employee whose pay discrimination case before the United States Supreme Court first brought her into the national spotlight two years ago.

In Ledbetter's case, decided in May 2007, the U.S. Supreme Court ruled that an employee who alleges pay discrimination must make her complaint to the EEOC within 180 or 300 days (the time period varies by state; in Michigan, it's 300 days) of when an employer makes a decision to set a discriminatory pay rate. According to the Court's decision, the employee's regular receipt of paychecks thereafter, with the discriminatory rate of pay in them, did not give the employee a new 300-day time period to file a complaint after each check.

The new law provides that a limitations period starts when the discriminatory pay decision is made, when the employee learns about it, or whenever the employee receives a paycheck containing discriminatory pay. The law is retroactive to May 2007 and applies to any pay discrimination legal claims filed since then and now pending.

Though President Obama's signing of this law has received significant national media attention, it has more political significance than legal significance for employers already in compliance with the law. Discriminating against an employee by paying a lower rate or salary because of her race, gender, national origin, or disability was the law before, and it remains the law. Employers who do pay employees of different genders different rates for the same work must still be able to show that the disparity is due to a bona fide reason unrelated to the employee's gender (or race, etc.) or run the risk of liability for the pay discrepancy. And the new law has not changed the amount of back pay an employee can recover if she were to prevail in a pay discrimination action. Existing law caps an employee's recovery to two years of back pay in such cases, and the Ledbetter law does not change that cap.

Given the political attention that will now be paid to this issue, employers would be wise to review any pay discrepancies that otherwise happen to affect employees of different genders, races, etc. to determine the legitimacy of the pay rates. Employers who are presently defending against pay discrimination claims where the Ledbetter Supreme Court decision provided a basis for defense will need to recalculate risk and potential liability.