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## **Lilly Ledbetter Fair Pay Act**

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On January 29, 2009, President Obama signed the first new law of his administration, the Lilly Ledbetter Fair Play Act of 2009, overturning a U.S. Supreme Court decision that limited the time frame for bringing pay discrimination claims. The signing ceremony included Lilly Ledbetter, Worker's Rights advocate groups and leaders from the House and Senate as part of the new administration's interest in revamping the current labor laws and expanding employee coverage under existing employment laws.

The Ledbetter Act reverses a May 2007 Supreme Court decision that Ledbetter could not recover in a discrimination suit because the 300 day time limit for filing her discrimination charge with the Equal Employment Opportunity Commission ("EEOC") had expired. Under Ledbetter, the time limit for filing a discrimination claim begins to run every time the employee receives a paycheck, with each paycheck being a separate discriminatory act. Ledbetter essentially relaxed the statute of limitations for compensation-related actions under Title VII of the Civil Rights Act of 1964 and other federal employment statutes, such as the Americans with Disabilities Act and the Age Discrimination in Employment Act.

Therefore, so long as workers file a charge within 180/300 days of receiving a discriminatory paycheck, their charge is timely no matter how long ago the discriminatory decision was made. It is also critical to note that Ledbetter applies retroactively, as if the law was in effect on May 28, 2007, the day before the Supreme Court ruled on Ledbetter. Practically speaking, Ledbetter will force employers to defend decisions they made years, or even decades ago, often without the benefit of witnesses who may have long ago left the company.

Plaintiffs will still have the burden of proving that the compensation practice decision was discriminatory and employers will be able to defend and defeat such claims if they prove a legal, non-discriminatory reason for the practice or decision. Moreover, while employees and retirees may now reach back to their first day of employment for evidence of a discriminatory pay decision, they can only recover back-pay up to two (2) years preceding the filing of their claim.

In light of a possible flood of new litigation, employers should audit their current compensation and benefits plans and policies to determine if there is a risk of exposure for such claims. Be sure to document reasons for pay decisions, especially when certain employees receive higher and lower pay, benefits and evaluations than similarly situated co-workers. As always, good written documentation is key to defending against a pay discrimination claim. It also is critical to train managers/supervisors and you may now need to hold onto personnel files for a much longer period of time.

With the potential impact of Ledbetter, please do not hesitate to call with any questions.