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Labor and Employment Update: The Lilly Ledbetter Fair Pay Act of 2009

By John Balitis and Jessica L. Catlett

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009. The Act extends the filing period for wage discrimination claims brought under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973. Under the new legislation, a new EEOC filing period begins each time wages, benefits, or other compensation is paid pursuant to an allegedly discriminatory pay decision based on a protected characteristic (race, color, religion, gender, national origin, age or disability). The filing period for such claims is 300 days in Arizona, Colorado, and Nevada, although a shorter, 180-day filing period applies in some other states.

The Act retroactively applies to all claims of discrimination made on or after May 28, 2007. Accordingly, the Act revives claims that may have been dismissed as untimely and may cause employees to file new claims previously believed to be outside the applicable filing period. A successful claimant will be able to recover back pay for up to two years preceding the filing of the charge, in addition to any other relief to which he or she may be entitled.

The Act responds to a 2007 Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), in which the Court held that an EEOC charge was untimely when it was based on a pay decision made outside the EEOC filing period. The Court rejected the plaintiff's contention that each paycheck she received pursuant to the allegedly discriminatory pay decision triggered a new filing period with the EEOC.

In light of these developments, employers should be more vigilant than ever before to ensure that their pay practices comply with state and federal civil rights laws. Legal counsel can assist employers with pay audits and guidance on how to design and implement compliant pay systems.

John Balitis focuses his practice in labor and employment, representing employers in arbitration, litigation, and administrative proceedings. His labor and employment practice includes counseling employers on personnel policies, restrictive covenants, employee disability issues, drug/alcohol testing, wage and hour issues, and unemployment compensation matters. He earned his B.A. (1984) from Dickinson College and his J.D. (1987) from the University of Virginia.

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