

President Obama Signs Legislation Extending Time to File Title VII Pay Discrimination Claims

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Earlier this year President Obama signed a new law that gives employees a longer period of time to file pay discrimination claims under Title VII of the Civil Rights Act of 1964. The “Lilly Ledbetter Fair Pay Act” was a direct response to the United States Supreme Court's holding in Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007) which required that plaintiffs file an EEOC charge within 180 days of the decision resulting in the pay disparity.

Ledbetter involved a female supervisor at an Alabama tire factory who waited until the end of her nineteen years of employment to allege that she was the victim of gender discrimination because she had been paid less than male employees. The Supreme Court held that Ledbetter waited too long to file an EEOC charge asserting that she had been discriminated against on the basis of gender in violation of Title VII, despite a jury verdict which had awarded Ledbetter \$223,776 in backpay, \$4,662 for mental anguish and \$3,285,979 in punitive damages. The Supreme Court held that Ledbetter's Title VII claims should have been dismissed as untimely because all of the actual decisions relating to her pay took place more than 180 days before she filed her EEOC charge. Ledbetter unsuccessfully argued that the “clock” restarted every time she received a paycheck.

The legislation signed by President Obama effectively sets aside the Supreme Court's holding in Ledbetter. Despite the media focus on gender discrimination, the legislation also applies to discrimination with respect to compensation based on race, color, religion, national origin, disability and age, in addition to gender. Under the new law, a plaintiff has 180 days to file an EEOC charge from the date the employee “becomes subject to a discriminatory compensation decision or other practice” or is affected by the “application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid.” In other words, plaintiffs alleging pay discrimination under Title VII now have 180 days from their last paycheck to file an EEOC charge, regardless of when the decision setting compensation was made, and each paycheck that is alleged to be the result of discrimination marks the start of a new 180 day period. Despite this change, the law also provides that plaintiffs are limited to recovering damages for only the two years prior to the date on which their charge of discrimination was filed, in addition to any other damages that were previously available.

With respect to gender-based pay discrimination claims, it is important to recognize that claims regarding unequal pay can be brought under both the Equal Pay Act and Title VII. The two statutes, although different, overlap and “any violation of the Equal Pay Act is also a violation of Title VII.” 29 C.F.R. § 1620.27(a). The EPA provides that employers may not discriminate on the basis of sex by paying employees at a lower rate than is paid to employees of the opposite sex for “equal work” on jobs requiring “equal skill, effort, and responsibility” that

are performed under similar working conditions. 29 U.S.C.A. § 206(d). The EPA also sets out four express exceptions permitting differences where the disparity is due to “(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.” Id. Unequal pay is not prohibited where the jobs do not involve “equal work.” The Equal Pay Act does not require proof of intentional discrimination or the filing of an EEOC charge. Employees have two years to file an Equal Pay Act suit from the date of a non-willful violation, or three years in the case of a willful violation. Although Ms. Ledbetter originally asserted a violation under the Equal Pay Act, that claim was dismissed by the trial court early in the case on the basis that her poor performance constituted a valid “factor other than sex” that justified the pay difference. Neither the 2007 Supreme Court case nor the new legislation affect Equal Pay Act claims.

To establish a claim of sex-based pay discrimination under Title VII, which is broader than the EPA, a plaintiff must show that the job he or she held was similarly situated to higher paying jobs occupied by members of the opposite gender. Title VII expressly incorporates the Equal Pay Act’s affirmative defenses. 42 U.S.C.A. § 2000e-2; County of Washington v. Gunther, 452 U.S. 161 (1981). Thus, an employer who proves that a pay difference is the result of an Equal Pay Act exception is not liable under either the EPA or Title VII. Although the Equal Pay Act’s four affirmative defenses apply to Title VII claims, its concept of “equal work” does not.

The impact of this new legislation on employees is that some employees may now file suits based on very old employment decisions that still have current effects. While employers cannot change what happened in the past, going forward they should be careful to clearly document the basis for decisions relating to compensation.