NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

Ledbetter v. Goodyear Tire & Rubber Co.: The Supreme Court Limitation On Pay Discrimination Claims And The Legislative Fix

More than four decades after Congress outlawed wage discrimination based on sex, women continue to be paid, on average, only 78 cents for every dollar paid to men. This persistent wage gap can be addressed only if women are armed with the tools necessary to challenge sex discrimination against them. But the Supreme Court's recent decision in *Ledbetter v. Goodyear Tire & Rubber Co.* severely limits workers' ability to vindicate their rights and distorts Congress' intent to eliminate sex and other forms of discrimination in the workplace. In July 2007 the House of Representatives passed the Lilly Ledbetter Fair Pay Act to reverse the Supreme Court decision; the bill is currently pending in the Senate. Restoring adequate protection against pay discrimination is critical to assuring that all workers have fair workplace opportunities. As a result, Congress should act expeditiously to enact the Lilly Ledbetter Fair Pay Act.

Background on *Ledbetter v. Goodyear Tire & Rubber Co.*

Lilly Ledbetter was one of the few female supervisors at the Goodyear plant in Gadsden, Alabama, and worked there for close to two decades. She faced sexual harassment at the plant and was told by her boss that he didn't think a woman should be working there. She suspected that she was getting fewer and lower pay raises than the male supervisors, but Goodyear did not allow its employees to discuss their pay, and Ms. Ledbetter had no proof until she received an anonymous note revealing the salaries of three of the male managers. After she filed a complaint with the EEOC, her case went to trial, and the jury awarded her back-pay and approximately $3.3 million in compensatory and punitive damages for the extreme nature of the pay discrimination to which she had been subject.

The Court of Appeals for the Eleventh Circuit reversed the jury verdict, holding that her case was filed too late – even though Ms. Ledbetter continued to receive discriminatory pay – because the company's original decision on her pay had been made years earlier. In a 5-4 decision authored by Justice Alito, the Supreme Court upheld the Eleventh Circuit decision and ruled that employees cannot challenge ongoing pay discrimination if the employer's original discriminatory pay decision occurred outside of the statute of limitations period, even when the employee continues to receive paychecks that have been discriminatorily reduced.

Impact of *Ledbetter v. Goodyear Tire & Rubber Co.*

The Court's decision in *Ledbetter* upends prior precedent, undermines Title VII's goals and enforcement scheme, and is fundamentally unfair to those subject to pay discrimination.

- ***The Ledbetter decision upsets longstanding precedent.*** Under Title VII, an employee has 180 days after a discriminatory act, such as a firing or demotion, to file a discrimination claim. Before the *Ledbetter* decision, if an employee brought a claim for pay discrimination on the basis of race, color, religion, sex, national origin, age, or disability, both the EEOC and nine of the ten courts of appeals to consider the issue applied what is known as the "paycheck accrual rule." Under this longstanding rule, each new paycheck was treated as a separate discriminatory act that started a new 180-day clock. By holding instead that all charges of pay discrimination must be filed within 180 days of the employer's *original discriminatory decision,* the Supreme Court reversed this accepted practice and left victims of pay discrimination with no recourse against pay discrimination they don't immediately challenge.

- ***The Ledbetter decision undermines the Congressional goal of eliminating discrimination in the workplace.*** Contrary to Title VII's intent to encourage voluntary compliance by employers, the *Ledbetter* decision creates incentives for employers to conceal their discriminatory conduct until the statutory period has passed. As Justice Ginsburg noted in her dissent, after that time the *Ledbetter* rule renders employers' discriminatory pay decisions "grandfathered, a *fait accompli* beyond the province of Title VII ever to repair."[1]

- ***The Ledbetter decision enables employers to benefit from discrimination.*** With each discriminatorily reduced paycheck, employers continue to reap financial benefits from discrimination. The *Ledbetter* decision provides employers whose compensation decisions are not challenged within 180 days a windfall from continuing this discrimination.

- ***The Ledbetter decision ignores fundamental workplace realities.*** Barring individuals from challenging pay disparities to which they continue to be subject unfairly ignores the ways in which pay discrimination is manifested in the workplace, as well as its impact over time. Pay information is often confidential; in fact, many employers explicitly forbid their employees from discussing their wages. Moreover, unlike other discriminatory decisions, pay discrimination is not manifested as an adverse action against the employee. In addition, while employees may be reluctant to challenge wage disparities that are small at the outset, the disparities can expand exponentially over the course of an employee's career as raises and pension contributions are calculated as a percentage of prior pay.

- ***The Ledbetter decision leaves employees in an untenable position.*** Under the *Ledbetter* rule, employees who wait to challenge suspected pay discrimination run the very real risk of forfeiting their right to any relief whatsoever. But the Court has previously held that an employee who complains to her employer about discrimination before s/he has a reasonable belief that the employer engaged in discrimination will not be protected if her employer responds by retaliating against her.[2] The *Ledbetter* decision thus forces an employee who suspects that s/he has been subject to pay discrimination to bypass any attempt to informally resolve the issue with her employer and to instead immediately file an adversarial charge with the Equal Employment Opportunity Commission. This result serves neither employees *nor* employers.

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1 *Ledbetter v. Goodyear Tire & Rubber Co., Inc*., 127 S.Ct. 2162, 2178 (2007) (Ginsburg, J., dissenting).

2 *Clark County Sch. Dist. v. Breeden,* 532 U.S. 268, 271 (2001).

The Legislative Fix: The Lilly Ledbetter Fair Pay Act (S. 1843)

The Lilly Ledbetter Fair Pay Act, currently pending in the Senate, would reverse the Supreme Court's decision in *Ledbetter* and help to ensure that individuals subjected to unlawful pay discrimination are able to effectively assert their rights under the federal anti-discrimination laws. The bill would reinstate prior law and adopt the paycheck accrual rule, making clear that pay discrimination claims on the basis of sex, race, national origin, age, religion and disability accrue whenever a discriminatory pay decision or practice is adopted, when a person becomes subject to the decision or practice, or when a person is affected by the decision or practice, including whenever s/he receives a discriminatory paycheck.

- **The Lilly Ledbetter Fair Pay Act will promote voluntary compliance by employers.** Because each discriminatory paycheck, rather than simply the original decision to discriminate, will trigger a new claim filing period, employers have a strong incentive to eliminate any discriminatory compensation practices. The rule also eliminates the incentive created by the *Ledbetter* decision for employers to hide discrimination.

- **The Lilly Ledbetter Fair Pay Act responds to workplace realities.** The Lilly Ledbetter Fair Pay Act will enable individuals to challenge continuing pay discrimination, ensuring both that employees are not penalized if they are initially unaware of the discrimination and also that employers have incentives to remedy the impact of pay disparities before the gaps are compounded by raises, pension and other contributions over time.

- **The Lilly Ledbetter Fair Pay Act allows employees to assess the validity of their claims.** Employees have every incentive to challenge compensation discrimination claims as promptly as possible and the bill does nothing to counter those incentives. Plaintiffs are still subject to Title VII's two-year limitation on back-pay and, because employees bear the burden of proof in Title VII discrimination cases, they will disproportionably be affected by delayed litigation. But the paycheck accrual rule means they can take the time necessary to evaluate and confirm that they have been subject to discrimination without forfeiting their right to file a charge. This will ultimately limit the number of pay discrimination claims that are filed.

- **The Lilly Ledbetter Fair Pay Act restores long-standing law.** The Lilly Ledbetter Fair Pay Act simply restores prior law, which had been applied by the nine of the twelve federal courts of appeals and the EEOC before the *Ledbetter* decision.

In sum, to ensure that workers continue to be protected from workplace discrimination as Congress intended, Congress should promptly enact the Lilly Ledbetter Fair Pay Act.