NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

The Lilly Ledbetter Fair Pay Act of 2009

Women today are paid, on average, only 78 cents for every dollar paid to men. And the gap is even worse for women of color – African American women earn only 69 cents and Latina women earn only 59 cents for each dollar earned by males. To help address this unfair and unacceptable wage gap, President Obama signed the Lilly Ledbetter Fair Pay Act on January 29, 2009,[1] restoring the protection against pay discrimination that was stripped away by the Supreme Court's 5-4 decision in *Ledbetter v. Goodyear Tire & Rubber Co.*

The Act reinstates prior law and makes clear that pay discrimination claims on the basis of sex, race, national origin, age, religion and disability "accrue" whenever an employee receives a discriminatory paycheck, as well as when a discriminatory pay decision or practice is adopted, when a person becomes subject to the decision or practice, or when a person is otherwise affected by the decision or practice. The law is retroactive to May 28, 2007, the day before the Court issued its ruling in *Ledbetter*.

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. Her co-workers bragged about their overtime pay, but Goodyear did not allow its employees to discuss their pay, and Ms. Ledbetter did not know she was the subject of discrimination 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 subjected.

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 more than 180 days earlier, even when the employee continues to receive paychecks that have been discriminatorily reduced.

This decision upset longstanding precedent under Title VII of the Civil Rights Act of 1964 and other important civil rights statutes. It also undermined the Congressional goal of eliminating discrimination in the workplace. Contrary to Title VII's intent to encourage voluntary compliance by employers, the *Ledbetter* decision created incentives for employers to conceal their discriminatory conduct until the 180 day period had passed. Moreover, the decision allowed pay discrimination to continue – and employers to benefit from it – indefinitely. With

[1] Public Law No. 111-2, 123 Stat. 5 (2009).

each discriminatorily reduced paycheck, employers continued to reap financial benefits from discrimination. In an opinion dissenting from the decision in *Ledbetter*, Justice Ginsburg emphasized that it was up to Congress to correct the Court's "parsimonious reading of Title VII."[2] Taking the rare step of reading her opinion from the bench, Justice Ginsburg instructed that "[o]nce again, the ball is in Congress' court."[3]

The Legislative Fix: The Lilly Ledbetter Fair Pay Act of 2009

Congress and the Administration acted quickly. Less than two years after the *Ledbetter* decision and during the first month of the 111th Congress, both the House and Senate passed the Lilly Ledbetter Fair Pay Act of 2009. And the Act was the first substantive piece of legislation signed by the President.

The Act restores longstanding law and helps to ensure that individuals subjected to unlawful pay discrimination are able to effectively assert their rights under the federal anti-discrimination laws. Under the Act, each discriminatory paycheck (rather than simply the original decision to discriminate) resets the 180-day limit to file a claim.

- **The Lilly Ledbetter Fair Pay Act promotes voluntary compliance by employers.** Employers will have a strong incentive to eliminate any discriminatory compensation practices because they will continue to be on the hook for discriminatory pay practices. The Act 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 Act enables individuals to challenge continuing pay discrimination, ensuring both that employees are not penalized if they are initially unaware of the discrimination and that they remain able to challenge pay discrimination that is compounded by raises, pensions, and other contributions over time.

- **The Lilly Ledbetter Fair Pay Act allows employees to assess the validity of their claims.** Employees will continue to have every incentive to challenge compensation discrimination claims as promptly as possible. 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 disproportionately be affected by delayed litigation. But the Act gives employees 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 swift action by Congress and the Administration restored the law and reestablished employer accountability for pay discrimination to ensure that future generations of workers will be treated fairly.

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

[3] *Id.*