

# EMPLOYMENT

## FACT SHEET

# The Lilly Ledbetter Fair Pay Act Five Years Later – A Law that Works

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On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act (Ledbetter Act), restoring protections against pay discrimination that the Supreme Court had stripped away in the 2007 *Ledbetter v. Goodyear Tire & Rubber Co.* decision.<sup>1</sup> In that case, the Court upset longstanding precedent and held that employees could not sue for pay discrimination under Title VII of the Civil Rights Act of 1964 if their employer's original discriminatory pay decision occurred more than 180 days before they initiated a claim - even when the employee continues to receive paychecks that have been discriminatorily reduced.<sup>2</sup> None of the discriminatory paychecks that Ledbetter had continued to receive for decades from her employer would re-start the 180-day filing period, and so her claim was thrown out. The Ledbetter Act reinstated prior law, and made it clear that each discriminatory paycheck – and not just an employer's original decision to engage in pay discrimination – resets the period of time during which a worker may file a claim of pay discrimination on the basis of sex, race, national origin, age, religion and disability.

The Ledbetter Act has already made a critical difference for the workers whose rights were eviscerated by the *Ledbetter* decision. It restored the ability of workers in all occupations and parts of the country to seek to vindicate their rights against pay discrimination. It is also a prime example of how common-sense laws can benefit workers who have suffered from discrimination. The many individuals who have challenged unfair pay as a direct result of the Act are Lilly Ledbetter's legacy. For example:

- ***Johnson v. Portfolio Recovery Assoc., LLC.*** Portfolio Recovery Associates, a company that purchases and collects delinquent debt, hired Mark Johnson in July 2003 as an Assistant Vice President. Between July

2003 and December 2005 the company hired two more men at the Vice President level - these two men were both Caucasian, while Johnson is African American. All three men had substantially similar job duties, but the other men received more compensation than Johnson. Although Johnson raised his concerns that he was not being paid fairly with his boss on multiple occasions, his compensation was never brought to the same level as the two other men. In 2008, Johnson filed a charge of discrimination with the Virginia Council on Human Rights and the Equal Employment Opportunity Commission, and then filed a discrimination lawsuit. The company initially tried to argue that Johnson's lawsuit should be dismissed because he had not raised a timely Title VII claim based on the Supreme Court's decision in *Ledbetter*. However, following the passage of the Ledbetter Act the company conceded that Johnson's Title VII claim was timely because he had received an allegedly discriminatory paycheck approximately a month prior to filing his administrative discrimination charge, and Johnson was permitted to proceed with his pay discrimination claim.<sup>3</sup>

- ***Mikula v. Alleghany County of Penn.*** Mary Lou Mikula started working as the Grants Coordinator for the Alleghany County Police Department in March of 2001. After learning that a male colleague in a similar position was paid \$7,000 more a year than she was, Mikula submitted a request to the Police Superintendent that her salary be increased so it would be comparable to that of her male colleague. She received no response to this request. Over the course of the next two years Mikula continued to repeatedly raise her concerns about unfair pay with County employees, but she received no response until finally she was rebuffed by an August 2006 letter



from the Human Resources Department. In April of 2007 Mikula filed a discrimination charge with the Equal Employment Opportunity Commission alleging that the County had violated Title VII by paying her less than a male in a similar position would receive. Mikula then brought a Title VII discrimination claim in federal court. Applying the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, the lower court held that Mikula had not filed her Title VII pay discrimination claim in time and granted judgment in favor of the County. Mikula appealed, and the Court of Appeals held that her pay discrimination claim was timely under the Ledbetter Act.<sup>4</sup>

- **Schengrund v. Penn. State Univ.** In the late 1990s a series of studies identified disparities between the salaries of male and female professors at the Penn State College of Medicine that could not be attributed to the amount of time these professors had spent in their current positions. A group of faculty members pressed the University to conduct an independent study of the issue, which in June 2004 found systemic gender disparities in pay at the College of Medicine. The University promised to address the problem and to provide female faculty with compensation for past pay disparities, but when the University made pay adjustments in September of 2004 they only paid the female faculty for wages lost as a result of discrimination going back about two months. In April 2005 a group of female faculty members at the College of Medicine filed charges with the Equal Employment Opportunity Commission alleging that they had experienced sex discrimination in pay dating back to 1997 or earlier, and later filed suit in federal court. The plaintiffs and the University agreed that the Ledbetter Act applied to their Title VII pay discrimination claims, and the court held that the plaintiffs could recover for the wages that they lost due to discrimination for up to two years prior to their EEOC charge.<sup>5</sup>

- **Herster v. Bd. of Supervisors of La. State Univ.** In early 2009 Margaret Herster and her husband both sought employment at Louisiana State University. Herster's husband obtained a position as an assistant professor at the University's law school, and Herster obtained a position with University's School of Art. Herster met several times with her supervisor to discuss her responsibilities and the fact that she was paid a lower salary despite performing duties typically assigned to persons in higher-paid tenure track

positions. She was informed that her lower salary reflected her supervisor's belief that she was a "trailing spouse" who had just pursued a job at the University because of her husband's employment there. In December of 2010, Herster was finally promoted to a Professional-in-Residence position and given a raise, but was excluded from seeking a joint-tenure track position in which she was interested. Instead a male candidate was hired for that position, at a higher salary than Herster received in any position at the University. Herster's position required a similar work load and set of responsibilities as the joint-tenure track position given to her male colleague. Herster filed a lawsuit alleging both pay discrimination and retaliation claims against the University. The University tried to have Hester's pay discrimination claims dismissed by arguing that they were time-barred. The court disagreed, holding that Herster's claim that she was paid less than a male counterpart for similar work was timely based on the Ledbetter Act.<sup>6</sup>

The Lilly Ledbetter Fair Pay Act was crucial in keeping the courthouse doors open so that victims of discrimination have the opportunity to challenge unfair pay. However, even after this critical law, our existing equal pay laws remain weakened by a series of other court decisions that have opened loopholes in the law and by insufficient federal tools to detect and combat pay discrimination. In addition, too often wage disparities go undetected because employers maintain policies that punish employees who voluntarily share salary information with their coworkers. Efforts to ensure that workers really can address and remedy pay discrimination are far from complete.

There are measures pending in Congress that would help to end pay discrimination once and for all. The Paycheck Fairness Act – another common-sense law – updates and strengthens current laws against pay discrimination to ensure that guarantees of equal pay will be meaningful. The bill would protect employees who voluntarily share pay information with colleagues from retaliation, fully compensate victims of sex-based pay discrimination, improve the accountability of employers when pay differentials between men and women are not related to job performance and business needs, empower women and girls by strengthening their negotiation skills, and give the federal government the information it needs to effectively enforce the law.

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

2 550 U.S. 618 (2007).

3 *Johnson v. Portfolio Recovery Assoc., LLC*, 682 F.Supp.2d 560 (E.D. Va. 2009).

4 *Mikula v. Alleghany County of Penn.*, 583 F.3d 181 (3d Cir. 2009).

5 *Schengrund v. Penn. State Univ.*, 705 F.Supp.2d 425 (M.D. Penn. 2009).

6 *Herster v. Bd. of Supervisors of La. State Univ.*, No. 13-139-JJB, 2013 WL 2422893 (M.D. La. June 3, 2013).