



January 8, 2009

VIA FACSIMILE

Re: Lilly Ledbetter Fair Pay Act, H.R. 11

Dear Representative:

On May 29, 2007, the Supreme Court issued a decision in *Ledbetter v. Goodyear Tire & Rubber Company* reversing a well-established legal standard and weakening severely protections against pay discrimination that have been critical for women in the workplace. We write to urge you to support the Lilly Ledbetter Fair Pay Act, H.R. 11, which would correct this decision by restoring the standard used to determine whether pay discrimination claims have been filed in a timely manner. Without this legislation, protections against pay discrimination will become little more than an empty promise, seriously eroding our nation's commitment to equal employment opportunity.

Background

Lilly Ledbetter, the only woman supervisor in her division at the Goodyear plant, sued Goodyear for sex-based pay discrimination under Title VII of the Civil Rights Act of 1964 (Title VII) after learning that she was paid substantially less – 15 to 40 percent – than her male colleagues. A jury awarded Ms. Ledbetter over \$3.2 million, which was later reduced to \$360,000 (\$300,000 in compensatory and punitive damages and \$60,000 in back-pay) due to Title VII's damages caps.

A sharply divided Supreme Court ruled that Ms. Ledbetter's claim was time-barred because she waited too long to file her claim. Title VII requires employees to file within 180 days of "the alleged unlawful employment practice." The Court calculated the deadline from the day that Goodyear allegedly made the initial discriminatory pay decision, rather than – as decades of precedent recognized – from the day Ms. Ledbetter received her last discriminatory paycheck. Because Ms. Ledbetter filed her charge more than six months after the pay decision, the Court concluded that her claim must fail, even though she continued to make less money due to her sex for many years after that decision – and within 180 days of when she filed her charge.

Restoring the Timeliness Standard for Pay Discrimination Claims

The Lilly Ledbetter Fair Pay Act would amend Title VII to make clear that an unlawful employment practice occurs (1) when a discriminatory compensation decision or other practice *is adopted*, (2) when an individual *becomes subject to* a discriminatory compensation decision or practice, *or* (3) when an individual *is affected by* the application of a discriminatory compensation decision or other practice, including each time compensation is paid. This legislation thus would reinstate the rule that had been in place for decades – the paycheck accrual rule – which provides that the 180-day time limit for filing a charge of discrimination with the EEOC begins to run anew after each discriminatory paycheck is received.

A Step Backward

The *Ledbetter* decision is a step backward for women and for any employee alleging pay discrimination under Title VII. Despite Title VII's guarantee of equal employment opportunity, the Court's ruling would leave many victims of pay discrimination without an effective remedy, even when their rights have been

violated. If allowed to stand uncorrected, this decision authorizes employers to violate Title VII's bar on pay discrimination with impunity as long as they do not get caught within 180 days. Now employers will have every reason to try to avoid liability simply by keeping pay disparities hidden during the Title VII charge-filing period.

Impact on Women's Wages and Closing the Wage Gap

Although the Court painted the discrimination that Ms. Ledbetter faced as long past, the pay discrimination that Ms. Ledbetter and so many others have endured is current and very real. Many women are all too painfully aware that discriminatory pay practices have a present-day impact that accumulates and grows each day women are paid less pursuant to a policy of discrimination. Such discrimination is one reason many women and people of color continue to experience persistent wage disparities. The Supreme Court's decision will only exacerbate these problems for women workers and employees of color, at a time when many families are facing economic uncertainty. The current recession is having a particularly harsh impact on the economic security of women and people of color, whose incomes have already been declining: between 2004 and 2007, the median pay of women ages 25 to 54 fell in real terms from \$15.04 per hour to \$14.84 an hour, while men's hourly wages rose by about \$2.¹ Likewise, between 2000 and 2007 real median household income held steady for Whites, but fell by 5.1% for African Americans, 3.1% for Latinos, and 1.5% for Asians.² Even before the current downturn, women and people of color were experiencing higher poverty rates, with 13.8% of women living in poverty compared to 11.1% of men; and African Americans experiencing a poverty rate of 24.5% compared to 8.2% for non-Hispanic Whites.³ The economic status of many women of color is particularly precarious: more than 25% of African American women, and nearly 25% of Latinas, lived in poverty as of 2007.⁴ In such an environment, it is essential that all workers are paid fairly and that victims of pay discrimination can vindicate their rights.

Conclusion

The *Ledbetter* ruling effectively guts critical legal protections against pay discrimination, leaving many victims without a remedy. The Lilly Ledbetter Fair Pay Act is necessary to ensure that all workers receive a fair, nondiscriminatory wage and the opportunity to participate in the workforce on equal ground.

Sincerely,



Debra Ness
President

¹ Louis Uchitelle, *Women Are Now Equal as Victims of Poor Economy*, N.Y. Times, July 22, 2008, at A1.

² Jared Bernstein, Economic Policy Institute, *Income Picture* (August 26, 2008), online at http://www.epi.org/content.cfm/webfeatures_econindicators_income_20080826.

³ Alexandra Cawthorne, Center for American Progress, *The Straight Facts on Women in Poverty* (October 2008), online at http://www.americanprogress.org/issues/2008/10/women_poverty.html; Carmen DeNavas-Walt, Bernadette D. Proctor and Jessica C. Smith, U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2007* (August 2008), at Table 3, online at <http://www.census.gov/prod/2008pubs/p60-235.pdf>.

⁴ Cawthorne/Center for American Progress Fact Sheet, *supra* note 3.