



## The Lilly Ledbetter Fair Pay Restoration Act A Sign of Changes on the Horizon

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With much fanfare, President Obama signed his first bill into law – the Lilly Ledbetter Fair Pay Restoration Act ("FPRA"). This new law relaxes the statute of limitations on filing an Equal Employment Opportunity Commission ("EEOC") charge related to discrimination in compensation. While this new law is important, it also signals a shift toward more employee-friendly federal and state laws.

### **The Ledbetter Decision and the FPRA**

The FPRA responds to what many perceived to be an unfair Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.* The Court held that employees claiming pay discrimination under federal law must file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 or 300 days after *each* allegedly discriminatory pay decision or forever lose the claim. (Where the state, like Washington, has an agency that accepts Title VII discrimination charges, a plaintiff has 300 days to file a charge with the EEOC.) Dissenters argued that it was difficult to discover discriminatory pay decisions and the statute of limitations should instead run from the date that the employee received a paycheck that reflected or continued a discriminatory pay decision and wage. (See SBJ's [July 2007 Note](#)).

Congress and the President reversed the effects of the Court's decision through the passage of the FPRA. Now, each paycheck that reflects a discriminatory pay decision extends the statute of limitations for another 180 or 300 days. The FPRA exposes employers to liability for up to two years before the unfair pay claim is filed and caps damages at \$300,000.

### **On the Horizon**

*Paycheck Fairness Act.* The second bill considered and approved by the House this term is the Paycheck Fairness Act. It would amend the Fair Labor Standards Act to provide more effective remedies to victims of wage discrimination on the basis of sex. Specifically, the law would require employers to show that wage disparities are job-related, not sex-based, and consistent with business needs, and protect employees who discuss salary information from retaliation. It would also make compensatory and punitive damages available as remedies in Equal Pay Act cases, authorize class actions governed by the Federal Rules of Civil Procedure, and mandate training and other outreach efforts by the EEOC and the Labor Department's Office of Federal Contract Compliance Programs on wage discrimination issues.

*The Employee Free Choice Act.* As discussed in our January 2009 Employment Note, the Employee Free Choice Act ("EFCA") is high on the President's list of priorities. EFCA contains proposed amendments to the National Labor Relations Act ("NLRA"). While the bill is likely to change as it moves through Congress, the following are the elements of EFCA in its current form: unions could be certified on the basis of card checks alone, rather than secret ballot elections; first, labor agreements could be imposed on the parties through mandatory arbitration if mediation is unsuccessful; stronger penalties for violations could be levied on employees, including treble back-pay, injunctive relief and civil fines of up to \$20,000.

*The RESPECT Act.* The Re-Empowerment of Skilled and Professional Employees and Construction Tradeworkers Act ("RESPECT Act") proposes to narrow substantially the definition of "supervisor" under the NLRA. Supervisor is broadly defined by Section 2(11) of the NLRA as an employee with the authority to "hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees or to responsibly direct them, or to adjust their grievances, or to effectively recommend such action." A "supervisor" is not an employee covered by the protections of the NLRA. The RESPECT Act would remove the activities of directing work and adjusting grievances from the list of supervisory activities. It also would require a supervisor to spend *the majority of his or her time* on the remaining supervisory duties, rather than merely engaging in them as part of his or her job. Under the proposed definition, shift leads, foremen, charge nurses and retail store managers would likely no longer be "supervisors" and could be unionized.

*The Employment Non-Discrimination Act (ENDA).* If enacted, this federal law would prohibit sexual orientation and gender-identity discrimination in the workplace. Currently, neither form of discrimination is explicitly prohibited under federal law. Sexual orientation and gender identity discrimination were made illegal under the Washington Law Against Discrimination in 2006.

*Executive Orders Directed at Federal Contractors.* The President also signed three new Executive Orders that impact the relationship between unions and federal contractors. The orders require federal contractors to post notices informing employees of their rights under the NLRA, prohibit federal contractors from using taxpayer money to try to influence their employees' choice of whether to have union representation, and require successor contractors to offer jobs to qualified employees of the predecessor company.

*Other Changes.* Changes in the leadership of the federal agencies dealing with employment and labor have occurred, or are on the way, including appointments to the National Labor Relations Board. Additionally, modifications to the WARN Act dealing with mass layoffs and changes to state and federal leave laws may be coming.

## **Conclusion**

Employers should keep in close contact with their human resources professionals and legal counsel to stay abreast of changes in labor and employment law. In addition, employers should immediately ensure their pay decisions are non-discriminatory and take proactive steps to eliminate the need for employees to join unions.

\*This Employment Law Note is written to inform our clients and friends of developments in labor and employment relations law. It is not intended nor should it be used as a substitute for specific legal advice or opinions since legal counsel may be given only in response to inquiries regarding particular factual situations. For more information on this subject, please call Sebris Busto James at (425) 454-4233.