



# Legal INSIGHTS

with Jeffrey W. Larroca



## *Who Is Lilly Ledbetter and Why Does She Matter?*

Lilly Ledbetter has a law named after her, but many people do not know who she is, or more importantly, what that law means. American employers should know all about Ms. Ledbetter, because her efforts have heightened their responsibilities under the law and perhaps more importantly, their potential liability.

In 1998, Ledbetter sued her employer, Goodyear Tire and Rubber Company, for sex discrimination. Specifically, she alleged that she was paid less than male employees who performed the same job. Indeed, Ledbetter was paid \$3,727 per month. The lowest paid male area manager at Goodyear received \$4,286 per month, and the highest was paid \$5,236. Her case, however, was jettisoned on a simple theory: the statute of limitations had run. The statute of limitations is the period of time between when an act occurs and when a person can file an action for damages based on that act. For example, if you want to sue your employer under federal law for race or national origin discrimination in your termination, you must first file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). If you were fired in a jurisdiction where there is a state, city or county human rights commission or office (such as the District of Columbia Office of Human Rights, the California Department of Fair Employment & Housing, or the New York City Commission on Human Rights), you have 300 days from the date you were informed of your termination to file such a charge. If you were fired in a jurisdiction where there is no state, city or county human rights commission or office, and your only recourse is to file directly with the EEOC, you have 180 days to file your charge. If you snooze, you lose, and unless there are some extraordinary circumstances justifying your failure to file within the required time, your discrimination complaint will be kicked out of federal court.

When Ms. Ledbetter brought suit, Goodyear argued that the alleged act of discrimination - the decision regarding Ms.

Ledbetter pay rate - occurred more than 180 days after she brought her charge. Indeed, Ms. Ledbetter admitted that she knew about the pay disparity six years before she filed her charge. While the trial court let her claims go forward and Ms. Ledbetter prevailed at trial, the 11th Circuit Court of Appeals held that her claims were barred by the statute of limitations. The Supreme Court agreed, holding: "the EEOC charging period is triggered when a discrete unlawful practice takes place. A new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination." As such, the Supreme Court rejected Ms. Ledbetter's argument that every time she received a paycheck that included the alleged discriminatory amount of pay, the 180-day clock started again at "one."

Congress and President Obama, however, disagreed with the Supreme Court. Thus, the Lilly Ledbetter Fair Pay Act of 2009 was passed. The law has been heralded as a momentous leap forward in the cause of fairness for women in the workplace. In 2008, Ms. Ledbetter was given the opportunity to speak at the Democratic National Convention, where she said, "My case is over. I will never receive the pay I deserve. But there will be a far richer reward if we secure fair pay. For our children and grandchildren, so that no one will ever again experience the discrimination that I did. Equal pay for equal work is a fundamental American principle." When signing the law, which was the first to cross his desk, President Obama remarked, "It is fitting that with the very first bill I sign — the Lilly Ledbetter Fair Pay Act — we are upholding one of this nation's first principles: that we are all created equal and each deserve a chance to pursue our own version of happiness." Ms. Ledbetter has even written a book, favorably reviewed by *Slate* magazine, who observed that her work: "shows both how far we have come since the 1970s and also how much further we still need to

go. Long gone are the days when a married woman would be lectured by the bank teller for wanting to open her own bank account or when a woman would be sent home from work, and the man allowed to stay, after filing a sexual harassment complaint. And yet, as Ledbetter experienced firsthand, women have still not achieved equal pay with men."

The law, however, is both technical and gender-neutral. It simply reverses the Supreme Court's determination, stating that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new discriminatory paycheck. And it does not matter if the litigant is a man or a woman.

Justice Alito set forth the foundation for the decision against Ms. Ledbetter when he wrote that the EEOC filing deadline "protect[s] employers from the burden of defending claims arising from employment decisions that are long past." Now, a single decision with regard to pay can become the basis of a lawsuit years after that decision is made, a reality that certainly impacted the EEOC's 2011 announcement: "Job Bias Charges Hit Record High of Nearly 100,000 in Fiscal Year 2010" (both gender discrimination and equal pay charges increased from the previous fiscal year).

Accordingly, employers should analyze their pay practices to ensure that there are not troubling disparities, and if such disparities are found, ensure that the reasons for those differences are borne of legitimate, nondiscriminatory reasons. Because, thanks to Lilly Ledbetter, the clock on an alleged discriminatory pay decision never runs out.

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