

Lilly Ledbetter Act Extends Time for Filing Fair Pay Claims

by Broderick Coleman Dunn

ONE OF PRESIDENT BARACK OBAMA'S FIRST EXECUTIVE ACTS was to sign the Lilly Ledbetter Fair Pay Act of 2009 into law on January 29, 2009. The act directly overturns the U.S. Supreme Court's holding in *Ledbetter v. Goodyear Tire & Rubber Co.*¹ which held that the statute of limitations for filing an equal-pay lawsuit before the Equal Employment Opportunity Commission (EEOC) begins to run at the date the pay was agreed upon rather than the date of the most recent paycheck. President Obama signed the act as its namesake, Lilly Ledbetter, and several female senators looked on.

Background

Ledbetter worked for Goodyear Tire and Rubber Company at its Gadsden, Alabama, plant from 1979 until 1998.² When Ledbetter first started working at Goodyear, the managers were all paid at the same rate.³ With such transparency, Ledbetter knew that she was making the same amount of money as her male counterparts. At some point during Ledbetter's tenure, however, Goodyear switched to a performance-based compensation system.

The new pay system imposed by Goodyear was anything but transparent. Managers such as Ledbetter, were forbidden to discuss how much they were being paid. Accordingly, Ledbetter was shocked to learn that despite years of positive reviews, she was earning between 15 percent and 40 percent less than her male counterparts.⁴ Specifically, by the end of her tenure at Goodyear, Ledbetter was making \$3,727 per month. The lowest-paid male area manager received \$4,286 per month and the highest-paid male received \$5,236.⁵

Ledbetter v. Goodyear Tire & Rubber Co.

Title VII of the Civil Rights Act of 1964 makes it an "unlawful employment practice" to discriminate "against any individual with respect to his compensation ... because of such individual's race, color, religion, sex or national origin."⁶ Ledbetter filed a formal EEOC charge against Goodyear in July of 1998.⁷ She did this prior to filing suit because an individual wishing to bring a Title VII lawsuit must first file an EEOC charge within 180 days "after the alleged unlawful employment practice occurred."⁸ After taking an early retirement from Goodyear and filing an EEOC charge, Ledbetter asserted a Title VII claim, among other charges, instituting *Ledbetter v. Goodyear*.

At trial, Ledbetter introduced evidence that during the course of her employment, several supervisors had given her poor evaluations because of her gender.⁹ Moreover, Ledbetter

alleged that as a result of these evaluations, her pay was not increased as much as it would have been if she had been evaluated fairly.¹⁰ She argued that the aggregate effect of these discriminatory pay decisions left her with a lower salary and lower pension. The jury agreed and awarded her back pay as well as more than three million dollars in compensatory and punitive damages.¹¹

On appeal, Goodyear argued to the U.S. Court of Appeals for the Eleventh Circuit that Ledbetter's pay discrimination claim was time barred with respect to all pay decisions made prior to 180 days before the filing of her EEOC questionnaire. The court of appeals reversed the trial court's decision, holding that a Title VII pay discrimination claim cannot be based on any pay decision that occurred prior to the last pay decision that affected the employee's pay during the EEOC charging period.¹² The court of appeals concluded by finding that there was insufficient evidence to prove that Goodyear acted with discriminatory intent in making the only two pay decisions that occurred within the 180-day time span between Ledbetter's last two pay checks before she filed her EEOC questionnaire.¹³

By petition for writ of certiorari, Ledbetter asked the Supreme Court to consider the following issue:

Whether and under what circumstances a plaintiff may bring an action under Title VII of the Civil Rights Act of 1964 alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentionally discriminatory pay decisions that occurred outside the limitations period.¹⁴

By a 5-4 majority, the Supreme Court held that because the later effects of past discrimination do not restart the clock for filing an EEOC charge, Ledbetter's claim was untimely.¹⁵

The majority didn't find compelling Ledbetter's argument that discriminatory acts which occurred prior to the charging period had continuing effects during that pay period. Specifically, the majority noted that the short EEOC filing deadline reflected Congress's strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation.¹⁶ Moreover, the majority noted that the EEOC filing deadline protected employers from the burden of defending claims arising from employment decisions that occurred long before discrimination charges.¹⁷

Conversely, the minority was persuaded by Ledbetter's arguments that the nature of pay discrimination trumped pro-

cedural limitations. In a dissenting opinion authored by the Court's only female justice, Ruth Bader Ginsburg, the minority noted that the majority's insistence on immediate contest overlooks the common characteristics of pay discrimination. Namely, pay disparities often occur, as they did in Ledbetter's case, in small increments, whereby cause to suspect that discrimination is at work develops only over time.¹⁸

Comparative pay information often is hidden from the employee's view. Ledbetter learned that she was being paid less than her male counterparts only when someone placed an anonymous note in her mailbox at work.¹⁹ Justice Ginsburg further noted that because of such a lack of transparency in pay decisions, it is easy for employers to keep the pay differentials maintained among supervisors under wraps. Thus, small initial discrepancies may not be seen as meet for a federal case — particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves.²⁰

Lilly Ledbetter Fair Pay Act of 2009 (Pub. L. No. 111-2)²¹

Debate over the Supreme Court's 5-4 decision in *Ledbetter v. Goodyear* began almost overnight. Congress in 2007 attempted to pass an earlier version of what would become the Lilly Ledbetter Fair Pay Act but the measure failed to pass the Senate by a vote of 56-42, four votes short of a filibuster-proof majority.²² Proponents and opponents of the measure attempted to politicize the vote on the measure, with one side declaring a defeat for all women and the other side labeling it "gotcha politics."

Proponents of the bill echoed Justice Ginsburg's dissent noting the difference in the common characteristics of pay discrimination. Proponents also expressed support for upholding the initial district court jury verdict in Ledbetter's favor. Opponents, however, noted that the 180-day rule was necessary to prevent frivolous lawsuits. As one senator put it, "The only ones who will see an increase in pay are some of the trial lawyers who bring the cases."²³

As soon as the 2008 Congress convened, the Ledbetter Act was reintroduced. This time, the act passed the Senate by a vote of 61-36, with every Democratic senator²⁴ and all four female Republican senators voting in its favor. When he signed the act into law, President Obama said, "There are no second-class citizens in our workplaces, and it's not just unfair and illegal, but bad for business, to pay someone less because of their gender, age, race, ethnicity, religion, or disability."²⁵

The Ledbetter Act essentially applies a paycheck accrual rule like the one Ledbetter argued in favor of in her lawsuit. A paycheck accrual rule holds that each paycheck triggers a new EEOC charging period during which the complainant may properly challenge any prior discriminatory conduct that impacted that paycheck's amount, no matter how long ago the discrimination occurred.²⁶ Specifically, the act amends section 706(e) of the Civil Rights Act of 1964 by adding the following:

For the purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.²⁷

Accordingly, a plaintiff similarly situated to Ledbetter now has 180 days from his or her last paycheck, during which time she can bring a complaint to the EEOC that evidences discriminatory conduct outside of that 180-day period.

While the act is named for Ledbetter and the struggles of women in the workplace have been highlighted in passing the act, women are not the only beneficiaries. Besides amending Title VII of the 1964 Civil Rights Act, the act also amends the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA). Thus, the Ledbetter Act grants equal pay rights to all federally protected classes, including race, age, and disability.

Pandora's Box?

It is too soon to know whether the Lilly Ledbetter Fair Pay Act of 2009 represents vindication for dreams deferred or whether Congress has opened a Pandora's box. Supporters laud the act's potential to level the employment playing field. The American Bar Association praised the "bipartisan cooperation" that went into passing the act and the act's renewed "federal commitment to a fundamental principle that all employees should be protected from pay discrimination based on gender, race, color, religion, national origin, age, or disability."²⁸ The Service Employees International Union said the act "strengthens the rights of women and all workers to pursue justice for wage discrimination on the basis of sex, race, color, religion, nation origin, age, or disability."²⁹

While supporters extol the act's breadth, detractors — including many in the business community — claim that the act radically amends all major federal civil rights laws, effectively granting Equal Pay Act rights to every federally protected class of individuals. Michael Eastman, executive director of labor policy for the U.S. Chamber of Commerce lamented that, "the real effect of this [law] is the volume of frivolous complaints."³⁰ The EEOC receives more than five thousand wage bias charges each year under Title VII, the Equal Pay Act, the ADEA, and the ADA.³¹ This number is almost sure to go up under the Lilly Ledbetter Fair Pay Act.

The footnote to this story is that Ledbetter will not be among the beneficiaries of the act. While the act, and the amendments made by the act, takes effect as if enacted on May

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28, 2007, that date was after her case had already gone to the Supreme Court. ■

Endnotes:

- 1 *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 127 S.Ct (2007) (hereinafter *Ledbetter* 2007), at 2162.
- 2 Lilly Ledbetter, *Equal Pay for Equal Work: Hearing before the Senate Judiciary Committee 110th Congress*.
- 3 *Id.*
- 4 *Id.*
- 5 *Ledbetter* 2007, at 2162, 2171.
- 6 42 U.S.C. §2000e-2(a)(1).
- 7 *Ledbetter* 2007, at 2162, 2165.
- 8 42 U.S.C. §2000e-2(a)(1).
- 9 *Ledbetter* 2007, at 2162, 2165-2166.
- 10 *Id.* at 2166.
- 11 *Ledbetter*, *supra*. (The trial judge was forced to reduce the damages award because of Title VII's \$300,000 damages cap.)
- 12 *Ledbetter v. Goodyear Tire & Rubber Co.*, 421 F.3d (2005) (hereinafter *Ledbetter* 2005), at 1169, 1182-1183.
- 13 *Id.*, at 2162, 2166.
- 14 *Ledbetter* 2007, at 2162, 2166 . at 1186-1187 (quoting petitioner's Petition for Certiorari).
- 15 *Id.* at 2166-2178.
- 16 *Id.* at 2163.
- 17 *Id.* at 2170 (quoting *Delaware State College v. Ricks*, 449 U.S. 250, 256-257 (1980), which concerned a college librarian who alleged that he had been discharged because of his race).
- 18 *Id.* at 2178
- 19 *Ledbetter*, *supra*.
- 20 *Ledbetter* 2007, at 2162, 2179.
- 21 Carl Hulse, *Republican Senators Block Pay Discrimination Measure*, N.Y. TIMES, April 24, 2008, at A1.
- 22 *Id.* (quoting Orrin G. Hatch).
- 23 (Senator Edward M. Kennedy was not present to vote because of illness.)
- 24 *Supporters Cheer, Critics Brace for Litigation As Obama Signs Ledbetter Measure Into Law*, U.S.Law Week, February 3, 2009 (hereinafter USLW), at 2458.
- 25 See e.g. *Ledbetter* 2007 at 2162, 2164.
- 26 See 42 U.S.C. § 2000e-5.
- 27 USLW at 2459.
- 28 *Id.*
- 29 *Id.*
- 30 *Id.*