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OBAMA SIGNS LILLY LEDBETTER FAIR PAY ACT

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President Barack Obama recently approved legislation that will increase the difficulty for employers fighting pay discrimination suits. The new law expands the possibility for employees to challenge pay discrimination based on race, gender, age or disability.

The signing of the Lilly Ledbetter Fair Pay Act represents an attempt by Congress and President Obama to repair a perceived error by the Supreme Court. The law overturns the ruling in *Ledbetter v. Goodyear, 2007*.

Background: *Ledbetter v. Goodyear, 2007*

- Lilly Ledbetter, 70, was employed by Goodyear Tire and Rubber Company in Gadsden, Alabama from 1979 until 1998. During that time, Ledbetter's supervisors gave her poor performance reviews which she believed were based solely on her gender. As a result, she claimed that she would have been higher on the pay-scale if she were evaluated solely on the quality of her work.

- Providing an employee with inaccurate performance reviews based solely on gender is unlawful. It is also unlawful for an employer to issue paychecks based on a discriminatory pay structure. In Alabama, individuals who wish to sue his or her employer under Title VII for these types of discrimination must first file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days "after the alleged unlawful practice occurs."

- Ledbetter argued that each time Goodyear gave her a paycheck which, due to gender discrimination, was smaller than it should have been, the 180 day window to file a charge with the EEOC was reset. Therefore, she was not acting outside of the statute of limitations when she filed her claim. Goodyear claimed that Ledbetter's pay

discrimination charges, which were alleged to have taken place before September of 1997, were time barred because they occurred over 180 days before she filed a charge with the EEOC.

- The case passed through the district court and the Eleventh Circuit Court of Appeals before appearing in front of the United States Supreme Court. In 2007, the Supreme Court agreed with Goodyear and the Eleventh Circuit Court of Appeals, ruling that a discrimination charge must be filed with the EEOC 180 days "after the alleged unlawful practice occurs." New 180-day periods do not commence because of subsequent nondiscriminatory acts that are the result of past discriminatory acts. Furthermore, an employer was not liable for intentional discrimination that took place before the 180-day time period, even if the effects continue into the 180-day period.

Lilly Ledbetter Fair Pay Act Will Restrict Employers, Expand Employee Ability to File Discrimination Claims

On Thursday, January 29, 2009 President Obama signed the Lilly Ledbetter Fair Pay Act. It marks the first legislative act of his presidency. The new law overturns the Supreme Court's *Ledbetter* ruling.

Congress indicated that the Supreme Court's *Ledbetter* decision had significantly impaired statutory protections that have been "bedrock principles of American law for decades" by unduly restricting the time period in which victims of discrimination can challenge discriminatory decisions and practices. The new law makes clear that a discriminatory compensation decision or practice occurs each time compensation is paid pursuant to the improper decision or practice.

The Act amends Title VII, The Americans with Disabilities Act, and The Age Discrimination in Employment Act, effectively extending the statute of limitations under all major federal civil rights laws which pertain to employee compensation.

The Act also makes clear that it is not intended to preclude or limit a claimant's right to introduce evidence of an unlawful employment practice outside the time to file a charge of discrimination.

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What did this law mean for the employer-employee relationship?

As a practical matter, the Lilly Ledbetter Fair Pay Act will make it harder for employers to defend against discrimination suits and increase their exposure. If the alleged discrimination occurred many years in the past, it is possible that those responsible for the discrimination may no longer be available as witnesses. The financial exposure also can increase exponentially since the period of time over which damages may be owing can be many years.

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Awareness of new labor and employment legislation is vital to executives and employers especially during times of economic turmoil. As you navigate the maze of the changing employer/employee landscape, now, more than ever, it is critical to obtain sound legal advice. Murphy, Hesse, Toomey & Lehane, LLP, is ready to assist you in any area relating to labor, employment, and the employer/employee relationship.

MHTL brings substantial experience to the table. We have over 150 years combined experience representing private and public employers before federal and state courts and agencies. This uniquely enables us to quickly and efficiently devise strategies for your particular situation. Additionally, we have guided clients through economically volatile times in the past and can provide practical advice to minimize exposure when litigation inevitably increases.

For questions about pending or proposed laws or regulatory enforcement priorities, and how they will affect your operations, please contact Arthur Murphy, Katherine Hesse, Nan O'Neill or Geoffrey Wermuth or the attorney assigned to your account.

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