

January 20, 2009

House Passes Two “Fair Pay” Bills

On January 9, 2009, the United States House of Representatives passed the Lilly Ledbetter Fair Pay Act and the Paycheck Fairness Act. The bills now go to the Senate for consideration, and President Obama is expected to sign both into law should they reach his desk. Discussed in greater detail below, the Ledbetter bill essentially negates a 2007 United States Supreme Court decision that limited an individual's ability to sue for pay discrimination long after the first discriminatory paycheck occurred. The Paycheck Fairness legislation, in turn, puts gender-based discrimination on equal footing with other forms of discrimination when a discrimination plaintiff seeks compensatory and punitive damages.

Lilly Ledbetter Fair Pay Act

This bill was inspired by Goodyear Tire and Rubber Co. employee Lily Ledbetter, who sued the company for gender-based discrimination. In 2007, the United States Supreme Court ruled that Ledbetter was not entitled to back pay in her Title VII discrimination case because the alleged initial violation took place before the 180-day statute of limitations.

The Ledbetter bill amends the Civil Rights Act of 1964 and other anti-discrimination laws to clarify at which points in time discrimination actions qualify as an “unlawful employment practice.” According to the legislation, unlawful conduct occurs when: “(1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to the decision or practice; or (3) an individual is affected by application of the decision or practice, *including each time compensation is paid.*” The law further provides that individuals may receive back pay as compensation for discrimination that occurred up to two years preceding the filing of a charge.

Under the bill, therefore, employees would be permitted to reclaim lost pay, no matter when the initial violation took place, if a claim is filed within 180 days of the discriminatory paycheck's issuance.

Paycheck Fairness Act

Passed in tandem with the Ledbetter bill, the Paycheck Fairness Act is designed to close loopholes and bolster provisions of the decades-old Equal Pay Act. The bill, most notably, increases penalties against employers who pay employees differently based on their gender and allows individuals to sue for punitive damages in addition to compensatory awards for gender-based discrimination. Further, it places the burden on employers to prove that any disparities in wages are performance-related and not gender-based, and bars employers from retaliating against workers who discuss or disclose salary information with their co-workers.

Ultimately, if either Act becomes law, an employer's potential liability in gender-based compensation lawsuits will be far greater than it has been previously. Given that employees will experience less difficulty bringing employment-related pay discrimination claims, employers should expect increased litigation.

If you have any questions regarding gender discrimination pay issues, please contact:

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