Lilly Ledbetter Fair Pay Act Becomes Law

Lilly Ledbetter brought a pay discrimination claim under Title VII of the Civil Rights Act of 1964 alleging that she had been denied promotions and pay raises based upon her sex. Such a charge has to be filed with the Equal Employment Opportunity Commission (the "EEOC") within a specified period (either 180 or 300 days, depending on the state) after the alleged unlawful employment practice, in this case pay discrimination, occurred. This 180 or 300 day period of time is referred to as the "charging period." If the employee does not submit an EEOC charge within the charging period, the employee's claim will not be considered by the EEOC and the employee will be barred from challenging that employment practice in court.

Ledbetter brought suit in federal court alleging that several supervisors had in years past given her poor evaluations because of her sex. As a result, she asserted that her pay had not increased as much as it would have if she had been evaluated fairly; that those past pay decisions affected the amount of her pay throughout her employment; and that by the end of her employment, she was earning significantly less than her male colleagues. Ledbetter claimed she did not become aware she was being paid less than her male counterparts until near the end of her 19-year career at a Goodyear Tire & Rubber Co. She further claimed that the charging period in her case began anew with each new paycheck she received, on the theory that the amount of each paycheck was affected by the past discrimination and thereby constituted a new violation of Title VII. The court found in Ledbetter's favor and Goodyear appealed.

The Eleventh Circuit reversed, and Ledbetter appealed to the U.S. Supreme Court. The Court agreed with the Eleventh Circuit, holding that the 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, however, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination. Thus, the issuance of each check does not start a new charging period, and Ledbetter could not point to any act of discrimination that occurred during the charging period. Her claim was not timely and therefore should have been dismissed. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 127 S. Ct. 2162 (2007).

Congress passed the Lily Ledbetter Fair Pay Act specifically to reverse the Supreme Court's ruling in *Ledbetter*. It amends the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1974 and provides that an unlawful employment practice occurs when a person is affected by application of a discriminatory compensation decision, including each time wages resulting in whole or in part from such a decision are paid. A new charging period now will begin each time a pay check is issued when the amount is connected to a prior discriminatory compensation decision or other practice, even though it occurred many years earlier. Clearly, it will now be much easier for employees to bring discriminatory compensation claims, since, as long as they continue to receive pay traceable to earlier discrimination, their claim will not be barred by the expiration of the charging period. Also, it will now be essential for employers to retain records relating to promotion and salary decisions virtually indefinitely.