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**LEDBETTER ACT REVERSES  
SUPREME COURT RULING ON  
FAIR PAY**

The new year has brought us not only a new president, but a new Congress that this week passed radical legislation pertaining to workplace pay claims that will impact employers in significant ways over the next several years. On January 22, 2009 the Senate passed S. 181, the Lilly Ledbetter Fair Pay Act, which will amend Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Rehabilitation Act and the Age Discrimination Act if signed into law by President Obama.

The Lilly Ledbetter Fair Pay Act is named for the employee who lost her equal pay claim before the Supreme Court in 2007. In *Ledbetter v. Goodyear Tire & Rubber Co.*, the Supreme Court heard argument from Ledbetter, who claimed that she was paid less than men for 20 years but waited until her retirement to bring suit. The Supreme Court ruled that the statute of limitations began to run when Ledbetter discovered, or should have discovered, the original pay inequity, and not every time a paycheck was issued.

In response to the Supreme Court, representatives in Congress formulated The Ledbetter Act, which creates a “paycheck rule” so that the statute of limitations to bring a discrimination suit resets every time a new paycheck is issued to the employee. While the original intent of the proposed legislation was to address pay inequities, the language of the actual bill refers not only to compensation decisions, but also to any “other practice that is unlawful” under the federal anti-discrimination statutes, and it resets the statute of limitations “each time compensation is paid pursuant to the discriminatory compensation decision or *other practice, and for other purposes.*” The phrases “other practice” and “for other purposes” are not defined by the bill and arguably a plaintiff could try to apply the language to other types of discrimination claims that involve more than just compensation issues, thereby extending the statute of limitations on their claim. Additionally, the Ledbetter Act contains language that allows not only the employee to file suit but also anyone “affected by” the pay inequity (for instance, a spouse or an ex-spouse receiving alimony). Finally, the bill is intended to be applied retroactively to the date of the Supreme Court’s 2007 decision in the Ledbetter case.

While in the Senate and during his presidential campaign, President Obama voiced his support for the Ledbetter Act and it is anticipated that he will sign it into law.

The new legislation places a huge burden on employers to defend pay decisions that may have occurred several years in the past and that might have been made by supervisors and managers no longer employed by the company. Moreover, the retroactive provision of the Ledbetter Act could expose employers to increased liability for back pay damages. At the very least, the impact of this bill on an employer will be that they will be required to pay closer attention to their pay policies and promotional decisions and reconsider their record retention practices so that they may store payroll records for several years longer than is currently required.

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