

## CLIENT ALERT

### Expansion of Equal Pay Provisions under the Federal Discrimination Laws - The Lilly Ledbetter Fair Pay Act of 2009

#### What happened -

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009.

#### Summary of the Law -

The Lilly Ledbetter Fair Pay Act of 2009 amends Title VII of the Civil Rights Act of 1964 ("Title VII") and the Age Discrimination in Employment Act of 1967 ("ADEA"), and further modifies the Americans with Disabilities Act of 1990 ("ADA") and the Rehabilitation Act of 1973, such that any discriminatory compensation decision that is unlawful under these Acts, is now deemed to occur each time compensation is paid pursuant to a discriminatory compensation decision or other unlawful pay practice.

#### Discussion -

The Lilly Ledbetter Fair Pay Act of 2009 makes pay practices that discriminate against individuals based on a classification protected under Title VII, the ADEA, the ADA and/or the Rehabilitation Act, unlawful each time wages, benefits, or other compensation is paid to the individual pursuant to a discriminatory compensation decision regardless of when the actual decision was made. This Act reverses the United States Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), that previously held that the limitations period for equal pay claims started to run from the date that the decision was made to pay in a discriminatory manner. The Court found that the language of the laws as they stood before the passage of this new Act did not allow the limitations period to run from the date that a payment was made to the employee even though it may have been paid under a discriminatory scheme or pursuant to a discriminatory pay decision. Under the Supreme

Court's rule therefore, a claim for an unlawful pay practice needed to be brought within the limitations period that started to run on the date the unlawful decision was made to compensate in a discriminatory manner.

#### How this changes things -

The practical impact of this new law is that employers cannot rely on the passage of time from the date that the discriminatory decision was made to defend an equal pay claim. The limitations period now renews each time an employee is paid or compensated based on a discriminatory compensation decision or other practice even though the actual pay decision may have been made outside the limitations period.

Employers should further analyze their pay practices to ensure that any pay differences are based on bona fide business reasons. Employers need to further prepare themselves for a challenge to such business reason by making sure that other alternatives are not available to accomplish the business reason forming the basis for the differential pay practice. Only when the employer can show that the business goal cannot be accomplished by way of a practice other than to have a pay differential will the employer be positioned to defend a discriminatory pay practice claim.

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