



## Fair Pay Act Becomes Law

Employment, Labor & Benefits Practice Group

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### **PRACTICE AREAS**

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President Barack Obama signed the Lilly Ledbetter Fair Pay Act into law on January 29, 2009. The Fair Pay Act changes the time for filing a worker's claim of pay discrimination under Title VII of the Civil Rights Act of 1964. The Fair Pay Act provides that an unlawful employment practice occurs when a discriminatory pay decision or practice is adopted, when the employee becomes subject to the decision or practice, and each additional application of that decision or practice. In other words, the violation occurs each time compensation is paid. The Fair Pay Act also applies to claims filed under the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

The Fair Pay Act is in response to a 2007 U.S. Supreme Court ruling in the case of Lilly Ledbetter v. Goodyear Tire and Rubber Company. In that decision, Ledbetter, a longtime employee of Goodyear, charged her employer with wage discrimination when she discovered that she had been paid less than a male supervisor at another plant. By the time she learned of the practice, several years had passed, and she had since retired. The Supreme Court ruled that Ledbetter was no longer entitled to file a claim because she had failed to do so within 180 days of the initial discriminatory wage decision.

Under the Fair Pay Act, claims such as Ledbetter's will be permitted because a new unlawful employment practice would occur with each paycheck that comes after the initial discriminatory wage decision. Therefore, the statute of limitations would reset with each paycheck or other application of the discriminatory decision or practice. In states such as Michigan, which has its own antidiscrimination laws, the statute of limitations is increased from 180 days to 300 days.

The Fair Pay Act does retain some limits on employer liability by restricting back-pay awards to two years. However, this new legislation will impact employer's record retention requirements and considerations. For example, employers may have disparities in pay between female and male employees that date back 10 or 15 years. Therefore, it may be difficult to articulate the reason for that disparity.

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In response, employers should examine their current pay structures and correct any discriminatory practices as soon as possible and make sure supervisors and managers are trained to avoid them in the future. Employers should also review any closed or pending charges and lawsuits, and review all antidiscrimination policies to ensure that they clearly reflect the employer's commitment to fair employment practices.

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