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A Briefing on Recent Legal Decisions Impacting the Workplace

President Obama Signs Lilly Ledbetter Fair Play Act

The Lilly Ledbetter Fair Pay Act of 2009 overturns prior case law to allow claims for unequal pay to begin again every time the employee receives another paycheck. Importantly, the Act is retroactive to claims pending on or after May 28, 2007.

On January 29, 2009, President Barack Obama passed into law his first bill by signing the Lilly Ledbetter Fair Pay Act of 2009.. The passage of this law fulfills a promise made during his campaign, when Obama repeatedly told supporters that he would focus on closing the pay gap to ensure that America is a place where “our daughters have the same rights, the same chances and the same freedom to pursue their dreams as our sons.”

The Act expressly overturns the U.S. Supreme Court decision in *Ledbetter vs. Goodyear Tire and Rubber Company (2007)*, a case that held that the time limit to file a compensation-related claim begins on the date the compensation decision is made, and does not re-start upon receipt of successive paychecks that reflect the discriminatory decision. Under this ruling, employees who felt that they were receiving unequal pay relative to a co-worker would need to file a charge of discrimination within 180 days from the date the original pay decision was made which is often at the time of hire.

Under the new law, which is retroactive to May 28, 2007, the day of the Supreme Court decision in *Ledbetter*, an unlawful employment practice occurs when any of the following three actions takes place:

- When a discriminatory compensation decision is adopted;
- When an individual becomes subject to a discriminatory compensation decision; or
- When an individual is affected by application of a discriminatory compensation decision, including each time wages, benefits or other compensation is paid, resulting in whole or in part from such a decision

Thus, a new cause of action is available each time any of these events occurs and under part 3, the cause of action begins to run again each time the employee is paid

based on application of a discriminatory decision no matter how long ago that decision was made.

In essence, this creates a 'continuing violation' scenario under which an employee can base a claim on action taken prior to the normal 180-day charge filing period as long as that action is 'similar or related to' action occurring within the 180-day charge filing period.

Potential liability when a violation has occurred includes up to two years of back pay and the Act amends Title VII of 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 1973. Therefore, the new law applies to discrimination claims based on race, gender, age, color, disability, religion and national origin.

Impact: Employers may have to defend their prior compensation decisions as well as those currently being made. All employers should re-evaluate their compensation structure and individual pay records to ensure there is internal pay equity and minimize exposure to potential claims. Further, employers must be diligent to ensure that documentation of all compensation decisions is clear, comprehensive and well-maintained.

If you have any questions about the Lilly Ledbetter Act, or its impact on your pay practices or other workplace policies, please contact Vantage Solutions LLC at 312.440.0602 or info@vantage-solutions.com.