The Lilly Ledbetter Fair Pay Act: Paving The Way for Equal Pay Claims

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ABSTRACT

It is an established fact that more women are entering the labor market and entering a work world which, on the surface, appears to provide equal rights to women workers. Although there are a number of statutory protections against discrimination in the workplace, women are still being paid significantly less than men which results in a loss of many thousands of dollars over a woman's working life. The answer to this situation would seem to be recovery through litigation, yet the Supreme Court has decided several cases which makes it virtually impossible for a plaintiff to bring a viable Equal Pay claim. The Supreme Court decided that a plaintiff can only bring an Equal Pay claim 180 days after the initial discriminatory decision to pay a female worker differently than her male counterpart. Since many women are not aware of the pay differential at the start of their employment, they are automatically unable to bring a claim.

The Lilly Ledbetter Act, first signed into law by President Obama, overturns the Supreme Court's decision and treats each paycheck as a separate act of discrimination where each act represents a new act of discrimination. Women will now be able to bring forth their claims of discrimination 180 days after each paycheck. This paper examines the decision that led to the Act, and to the provisions of the Act itself.

INTRODUCTION

Women have faced a number of challenges to their careers—the glass ceiling, historical discrimination as to occupational choice, and overcoming the pay gap that still persists. Currently, it is estimated that women make seventy-five cents on the dollar and the gap is prevalent across occupations and job tenure. Women will earn significantly less money than their male counterparts over their working life thus losing hundreds of thousands of dollars in pay over their careers. This is the very definition of discrimination, yet the Supreme Court rendered decisions which made it virtually impossible for any plaintiff to bring an Equal Pay claim. Federal laws exist to prevent gender discrimination in pay, yet many plaintiffs discover that it was virtually impossible to satisfy the statute of limitations for equal pay claims. President Obama signed the Lilly Ledbetter Fair Pay Act into law this year which allows plaintiffs to bring an Equal Pay claim for pay discrimination more easily.

FEDERAL PROTECTIONS FOR EQUAL PAY

Title VII of the Civil Rights Act of 1964

One federal statute that addresses issues of sex discrimination is Title VII (TVII) of the Civil Rights Act of 1964.[1] The Act covers employers with 15 or more employees from discriminating on the basis of race, color, gender, national origin and religion. These classifications are known

1 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1).

as *protected classes* that are the specific groups of people who fall under the protection of the law. Employers are prohibited from engaging in two types of discrimination: disparate treatment and disparate impact. Disparate treatment occurs when the employer or an agent of the employer intentionally treats someone differently because of their membership in a protected class. Paying women less money for doing the same work as men is an example of disparate treatment. The second type of discrimination, disparate impact, occurs when a policy or practice results in discrimination against a protected class. For example, the landmark case of *Griggs v. Duke Power*[2], black employees were denied a promotion because they did not have a high school diploma. All candidates were required to possess a high school diploma. Although the practice seemed neutral on its face, the lower courts decided Duke Power had not engaged in any behavior that might be construed as being discriminatory.

Griggs and his co-workers demonstrated statistically that the diploma requirement acted in such a way that it screened out more Blacks than Whites simply because more blacks in the relevant labor market did not possess a high school diploma. Yet, Title VII was originally enacted to address disparate treatment.

The Supreme Court had a much different view and held that if any policy or practice, neutral on its face, resulted in discrimination against a protected class, then that policy or practice was discriminatory and could only be defended if the practice was shown to be job-related. In other words, an employer did not have to even intend to discriminate. Liability would attach should the practice result in discrimination.

The Equal Pay Act

Another federal law which forbids gender discrimination in pay is the Equal Pay Act of 1963[3] (E.P.A.) forbids unequal pay between men and women for performing substantially similar work in the same occupation. Filing an Equal Pay claim goes hand in hand with a filing of a Title VII action of the Civil Rights Act of 1964 since violations of the E.P.A. automatically fall under a Title VII claim. Gender discrimination by an employer is forbidden for any employer with 15 or more employees. Both claims require the aggrieved employee to file a claim with the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory act

2 Griggs v. Duke Power 401 U.S. 424 (1971)
3 The Equal Pay Act of 1963, 29 U.S.C. §206(d).

or 300 days if there is a state agency which shares the duties and responsibilities of the EEOC.

The Equal Pay Act and Title VII both have similar filing deadlines which must be strictly followed. However, it is precisely those filing deadlines that have caused so much dissension amongst the courts. Some jurisdictions interpreted the deadline as starting from the first paycheck while other jurisdictions determined that each paycheck represented a separate discriminatory act which restarted the clock each and every time the employee received it. The matter was definitively settled with the Supreme Court Case of *Ledbetter v. Goodyear Tire & Rubber Co.,*[4] which mandated that the time clock on Equal Pay claims must run from the time the company decided to pay women differently in their positions than men.

The ruling was a severe setback to women fighting for equal pay since many women learned of their pay disparity some time later than the initial discriminatory decision thus making it impossible to even file an Equal Pay Claim Act since the 180 filing deadline had passed in many circumstances. The Supreme Court ruling put an immovable roadblock for women fighting for equal pay. The case represents the Court's unusual application of some of its previous decision to have the filing time start at the original decision, which resulted in discriminatory practices.

LEDBETTER V. GOODYEAR TIRE & RUBBER CO., 2007

The Supreme Court's decision was the principle reason behind the creation and passage of the Lilly Ledbetter Act. Lilly Ledbetter had worked for Goodyear for nineteen years as an Area Manager which was a position primarily occupied by men. Her salary was commensurate with her male co-workers at the beginning of her employment, but over time, her salary fell below that of her male co-workers with equal or less seniority than she had.[5] She discovered the inequity when she took early retirement in 1998. It was shortly after her retirement that she filed claims with the EEOC for violations of the Equal Pay Act and TVII of the Civil Rights Act of 1991.

Ledbetter contended that since raises at the plant were directly tied to the performance

4 Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 615 (2007).

5 Id. at 643. By the end of 1997, Ledbetter was the only woman working as an area manager and the pay discrepancy between Ledbetter and her 15 male counterparts was stark: Ledbetter was paid $3,727 per month; the lowest paid male area manager received $4,286 per month, the highest paid, $5,236. See 421 F.3d 1169, 1174 (C.A.11 2005); Brief for Petitioner 4.

appraisals of the workers, and because her performance appraisals resulted in lower evaluations due to sex discrimination, she received lower pay increases that persisted throughout her tenure at Goodyear. Upon her retirement, Ledbetter was making significantly less than her male counterparts who performed the same job as a result of the discrimination.[6]

The District Court granted summary judgment to Goodyear regarding the Equal Pay claim amongst others but allowed the TVII claim to go to a jury trial. Goodyear contended that the evaluations were conducted in a fair way without discriminatory effect, but the jury found in favor of Ledbetter and granted her damages and backpay.[7]

At the appellate level, Goodyear raised the issue of the 180-day statute of limitations. Goodyear claimed that all claims of discriminatory conduct prior to 180-days prior to the EEOC claim must be barred from consideration. It was further stated that since the evaluations were conducted without discrimination after that time, then there was no case. The Eleventh Circuit reversed since it agreed that all acts prior to the 180 days limitation were inadmissible and that the only two decisions regarding the evaluations did not present any evidence of discrimination.[8]

Ledbetter submitted a writ of certiorari to the Supreme Court not of the review of the case itself, but to answer and resolve the following question:

> "Whether and under what circumstances a plaintiff may bring an action under Title VII of the Civil Rights Act of 1964 alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentionally discriminatory pay decisions that occurred outside the limitations period."[9]

The Court granted certiorari stating that a number of previous decisions had produced contradictory interpretations regarding the application of the time limitation to disparate treatment pay cases. The Court attempted to clear up the contradiction.

THE SUPREME COURT ANALYSIS

Ledbetter had filed a TVII action claiming that the performance evaluations were the result of gender discrimination. TVII of the Civil Rights Act of 1964 prohibits employers with 15 or more employees to discriminate on the basis of race, color, religion, gender and national origin

6 Id. at 644.
7 Id.
8 Ledbetter v. Goodyear Tire and Rubber Co., Inc., 421 F.3d 1169 C.A.11 (Ala.),2005.
9 Ledbetter supra note 4 at 623, quoting Pet. for Cert. i.

and gender differences in compensation are prohibited.[10] In order to file a TVII claim in a timely way, the employee is required to file a complaint with the Equal Employment Opportunity Commission within 180 or 300 days depending upon the state.[11] Failure to file in a timely way will bar the employee from litigating the issue.[12]

Ledbetter's Argument

Judge Alito, who provided the majority opinion of the Court, emphasized that whether the discrimination claim was timely filed must be decided by focusing on the employment practice that is at issue as was the case in *National Railroad Passenger Corporation v. Morgan*.[13] Ledbetter's claim centered on discrimination in pay. Ledbetter was alleging that she had been the victim of disparate treatment—intentional discrimination—in two ways. The first was the fact that her pay was lower than her male counterpart due to discrimination. She argued that since each paycheck issued was the result of sex discrimination, then each paycheck should be considered a separate act of discrimination. The other employment practice at issue was the denial of a pay increase in 1998 because the decision "unlawful because it carried forward intentionally discriminatory disparities from prior years."[14]

To support her claim, Ledbetter relied on the previous Supreme Court decision of *Bazemore v. Friday*,[15] where she cited the "paycheck accrual rule" that was formulated in the case. The rule basically stated that any paycheck that was the result of intentional discrimination or was impacted as a result of a discriminatory decision, would toll a new 180 filing period.[16] In *Bazemore*, the North Carolina Agricultural Extension Service (Service) employees were segregated into a "White" branch and a "negro" branch. It was not surprising that those in the "negro" branch received less money than those employees in the "White" branch. Eventually the two branches were joined in 1965 but the disparity in pay still was in existence. Once Title VII was amended to cover public employees, the employees filed suit for discrimination on the basis of race citing that the current pay of blacks was still significantly lower than that of whites due to

10 42 U.S.C. § 2000e-2(a)(1).
11 42 U.S.C. § 2000e-5(e)(1).
12 42 U.S.C. § 2000e-5(f)(1).
13 National Railroad Passenger Corporation v. Morgan, 536 U.S. 101,110-111(2002).
14 Ledbetter supra note 4 at 624 quoting the Reply Brief for Petitioner 20.
15 Bazemore v. Friday, 478 U.S. 385, (1986) (per curiam)
16 Id.

the persistence of the discriminatory effects of past discrimination.[17]

Although the appellate court rejected the claim of the service employees, the Supreme Court reversed. The reasoning of the Court was articulated by Justice Brennan's concurrence—a concurrence in which all members of the Court joined. In part, Justice Brennan states:

> "The error of the Court of Appeals with respect to salary disparities created prior to 1972 and perpetuated thereafter is too obvious to warrant extended discussion: that the Extension Service discriminated with respect to salaries prior to the time it was covered by Title VII does not excuse perpetuating that discrimination after the Extension Service became covered by Title VII. To hold otherwise would have the effect of exempting from liability those employers who were historically the greatest offenders of the rights of blacks. A pattern or practice that would have constituted a violation of Title VII, but for the fact that the statute had not yet become effective, became a violation upon Title VII's effective date, and to the extent an employer continued to engage in that act or practice, it is liable under that statute. While recovery may not be permitted for pre-1972 acts of discrimination, to the extent that this discrimination was perpetuated after 1972, liability may be imposed."[18]

Simply put, the pay system in this case was created with the intent to discriminate—the system itself discriminated on the basis of race and since that was the case, then

> "Each week's paycheck that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII, regardless of the fact that this pattern was begun prior to the effective date of Title VII."[19]

Ledbetter's reliance and interpretation of *Bazemore* was criticized by the majority since the discriminatory act for Ledbetter was in actuality the not the current paycheck. It was the initial discriminatory decision to give her the lower performance appraisal which resulted in lower pay. Nor could the paycheck be construed as a result of carryover from a past discriminatory decision.[20] The situation in *Bazemore* was quite different in that the resulting differential in pay was due to a discriminatory pay system that had been in place for quite some time. It is interesting to note that the decision to pay black and white workers differently was made prior to the time that Title VII became law. Despite that fact, the Court made it clear that

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17 Bazemore supra note 15, at 389-390.

18 Id., at 395.

19 Id.

20 Ledbetter supra note 4 at 633, footnote 5. The appellate court stated "“[T]he majority holds, in effect, that because the pattern of discriminatory salaries here challenged originated before applicable provisions of the Civil Rights Act made their payment illegal, any ‘lingering effects' of that earlier pattern cannot (presumably on an indefinitely maintained basis) be considered in assessing a challenge to post-act continuation of that pattern." Supra note 8.

an employer could not escape liability for continuing to engage in discriminatory acts. In the case of *Bazemore*, the Court explained ". . .a freestanding violation may always be charged within its own charging period regardless of its connection to other violations."[21]

The Supreme Court stated that Ledbetter had misinterpreted the finding in *Bazemore* since

> "Bazemore stands for the proposition that an employer violates Title VII and triggers a new EEOC charging period whenever the employer issues paychecks using a discriminatory pay structure. But a new Title VII violation does not occur and a new charging period is not triggered when an employer issues paychecks pursuant to a system that is "facially nondiscriminatory and neutrally applied. The fact that precharging period discrimination adversely affects the calculation of a neutral factor (like seniority) that is used in determining future pay does not mean that each new paycheck constitutes a new violation and restarts the EEOC charging period.[22]
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> Because Ledbetter has not adduced evidence that Goodyear initially adopted its performance-based pay system in order to discriminate on the basis of sex or that it later applied this system to her within the charging period with any discriminatory animus, Bazemore is of no help to her. Rather, all Ledbetter has alleged is that Goodyear's agents discriminated against her individually in the past and that this discrimination reduced the amount of later paychecks. Because Ledbetter did not file timely EEOC charges relating to her employer's discriminatory pay decisions in the past, she cannot maintain a suit based on that past discrimination at this time."[23]

Ledbetter's argument failed because the Supreme Court considered both the paychecks and the denial of a raise were the result of discrimination that occurred prior to the 180 day limitation and was the result of an individual discriminatory act, rather than the result of a discriminatory pay system. Ledbetter was arguing that each paycheck was the result of a past discriminatory decision that culminated in paychecks that reflected the discrimination and in the decision not to provide her with the pay increase since that was based on performance appraisals that went beyond the 180 days. The Court stated that In order for the paychecks to be considered as separate discriminatory acts, each paycheck would have to be the result of separate decisions of discrimination made at the time of the check's issuance. As the Court noted, "Her attempt to

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21 Ledbetter supra note 4 at 636. The Court reiterated its position in Morgan by stating ""The existence of past acts and the employee's prior knowledge of their occurrence ... does not bar employees from filing charges about related discrete acts so long as the acts are independently discriminatory and charges addressing those acts are themselves timely filed." Supra note 13, at 113.
22 Ledbetter supra note 4 at 637 footnote 4 quoting Lorance v. AT & T Technologies, Inc.,22 490 U.S. 900,911, (1989).
23 Ledbetter supra note 4 at 637.

shift forward the intent associated with prior discriminatory acts to the 1998 pay decision is unsound, for it would shift intent away from the act that consummated the discriminatory employment practice to a later act not performed with bias or discriminatory motive, imposing liability in the absence of the requisite intent. Her argument would also distort Title VII's 'integrated, multistep enforcement procedure.'"[24] An examination of the language of TVII underscores that Congress originally intended the victims of discrimination to quickly file a claim of discrimination so that the matter could be quickly resolved.[25]

The Court's Response to Ledbetter

The Court formulated its response to Ledbetter by relying on its previous decisions such as *United Air Lines, Inc. v. Evans*,[26] where United refused to retain married flight attendants on the job. Evans got married and was released from her employment. She did not file a claim with the EEOC at that point in time, however, she was rehired sometime later and since she was not given seniority credit or benefit credit from her previous employment, it was at that time that she decided to file a claim stating that "the airline's refusal to give her credit for her prior service gave "present effect to [its] past illegal act and thereby perpetuate[d] the consequences of forbidden discrimination."[27]

Even though the Court recognized that Evans' pay and benefits were the result of a discriminatory decision, it was the discriminatory decision itself that triggered the statute of limitations. In other words, Evans should have filed her claim within the time limitation at the point she was fired. The Court reasoned that just because the decision resulted in diminished pay and fringe benefits didn't mean that a present violation existed. Therefore, they found in favor of the airline.

The Court relied on its a history of distinguishing between the act of discrimination and the effects of discrimination, refusing to equate the two. In a similar case, *Delaware State College v. Ricks,*[28] a college librarian was denied tenure on account of race. Ricks was given a one-year non-renewable contract after which time he was terminated from the job. Ricks failed

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24 Ledbetter supra note 4 at 619 quoting Occidental Life Ins. Co. of Cal. v. EEOC, 432 U.S. 355, 359 (1977).
25 Ledbetter supra note 4 at 632.
26 United Air Lines, Inc. v. Evans, 431 U.S. 553 (1977).
27 Id. at 557.
28 Delaware State College v. Ricks,28 449 U.S. 250, 101 (1980).

to file a claim with the EEOC at the time of the tenure decision. Instead, Ricks filed within 180 days of his actual termination date reasoning that the termination was the result of a discriminatory decision and represented in and of itself a discriminatory act. The Court disagreed saying that Ricks failed to demonstrate that a discriminatory decision was made at the time of termination therefore any claim made at the termination date was outside of the statute of limitations.[29]

Lorance v. AT & T Technologies, Inc.,[30] another Supreme Court decision used to decide the issue, involved changes to a seniority system. The seniority system under the original collective bargaining agreement was the standard system that gave employees greater seniority based on the employee's length of employment with the company. Under the new collective bargaining agreement, the highly paid "testers" were given seniority based on the amount of time spent in that position only and not for time spent in any other position. Since the majority of the testers were male, they accrued the most seniority in that position. Several years later the testers were laid off based on seniority resulting in more female testers being laid off than male testers. The female testers brought a charge of TVII discrimination stating that the change in seniority was intentionally designed to save the jobs of the male testers. [31]

Once again the Supreme Court stated that the proper time to file the charge was 180 days after the new seniority system had been adopted, not 180 days after the layoff decisions had been made. The decision to adopt the new seniority system represented the discriminatory decision whereas the effect of the layoff decision represented the effect of the decision and was not the proper reference point.[32] Interestingly enough, Congress made a point of amending Title VII[33] to specifically include the creation of an intentionally discriminatory seniority system and the effects of that system.[34]

29 Id. at 258.
30 Lorance v. AT & T Technologies, Inc.,30 490 U.S. 900 (1989).
31 Id., at 902-903.
32 Ledbetter supra note 4 at 627 quoting Lorance v. AT & T Technologies, Inc., 490 U.S. 900 at 911, (1989) ("Because the claimed invalidity of the facially nondiscriminatory and neutrally applied tester seniority system is wholly dependent on the alleged illegality of signing the underlying agreement, it is the date of that signing which governs the limitations period.")
33 42 U.S.C. § 2000e-5(e)(2)
34 Ledbetter supra note 4 at 627. Interestingly enough, the majority takes the opportunity to disagree with the minority view that Congress' actions should be interpreted as a signal that the decision in Lorance was incorrectly interpreted and decided. The majority noted that the amendment dealt with one

In a fairly recent decision, *National Railroad Passenger Corporation v. Morgan*,[35] the Court stated that "the time for filing a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC) begins when the discriminatory act occurs. We have explained that this rule applies to any "[d]iscrete ac[t]" of discrimination, including discrimination in "termination, failure to promote, denial of transfer, [and] refusal to hire."

Case law provides support that no recourse is available to practices which stemmed from a previous discriminatory decision or procedure and that subsequent nondiscriminatory acts—the simple issuance of the paychecks—could not be classified as discriminatory acts. In order to count each paycheck as a separate act of discrimination, the checks would have to be the result of a discriminatory pay system such as in the case of *Bazemore v. Friday*.[36] Ledbetter was arguing that each and every paycheck was a continuation of discrimination, but her argument, according to the Court, flew in the face of previous decisions. The intent to discriminate lay with the initial decision to pay her differently and not with the subsequent paychecks which represent a neutral practice according to the Court. Ledbetter's reasoning that paychecks gave current effect to a discriminatory decision was declared unsound by the Court[37] and resulted in affirmation of the Court of Appeals decision. It was never an option to extend the filing deadlines since TVII must be considered as it was adopted by Congress with deadlines intact[38] Since the statute of limitation could not be extended, and since the filing was commenced after the filing deadline of the discriminatory act, the Court affirmed the appellate decision of the Eleventh Circuit.

THE LILLY LEDBETTER FAIR PAY ACT OF 2009[39]

The *Ledbetter* decision represented a severe setback in a woman's ability to raise an Equal Pay claim. Given that matters of pay are usually secretive in the most fair of conditions and

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type of employment issue – seniority. None of the other issues decided in Evans and Ricks resulted in Congressional amendments. The majority reasoned that had Congress felt those decisions, instrumental in the decision in Lorance, were correctly reasoned.
35 Morgan, supra note 13 at 114.
36 Bazemore supra note 15.
37 Ledbetter supra note 4 at 697.
38 Id. at 630 stating that ", we must "give effect to the statute as enacted," quoting Mohasco Corp. v. Silver, 447 U.S. 807, 819 (1980), and "we have repeatedly rejected suggestions that we extend or truncate Congress' deadlines." See, e.g., Electrical Workers v. Robbins & Myers, Inc., 429 U.S. 229, 236-240, (1976) (union grievance procedures do not toll EEOC filing deadline); Alexander v. Gardner-Denver Co., 415 U.S. 36, 47-49, (1974) (arbitral decisions do not foreclose access to court following a timely filed EEOC complaint).
39 Lilly Ledbetter Fair Pay Act of 2009. Public Law No. 111-2, 123 Stat. 5 (2009)

disparities are not easily discovered, the Court made it nearly impossible for women to rectify situations of unequal pay legally. The mere fact that the Supreme Court mandated that claims must be made within 180 days of the actual discriminatory decision coupled with the fact that each paycheck would not necessarily represent a separate act of discrimination, then the likelihood that a plaintiff would file a timely Equal Pay or Title VII claim was substantially reduced.

The only way to counter this precedent is for Congress to pass legislation that advances a more reasonable filing period. It did not take long before Congress introduced two versions of the bill: The Lilly Ledbetter Fair Pay Act and The Fair Pay Restoration Act.[40] Congress was behind both of these bills, but the President Bush made it clear that he would veto any such bill. It was clear that the bill would never pass under the Bush administration.[41] A new version of the bill, The Lilly Ledbetter Fair Pay Act, was introduced in the Senate on January 9, 2009. The bill quickly passed with a 61-36 vote. The House of Representatives passed the bill 250-177 five days later.[42] President Obama signed the Lilly Ledbetter Fair Pay Act into law on January 29, 2009. He addressed the public regarding the Act and stated:

> “So signing this bill today is to send a clear message: that making our economy work means making sure it works for everybody; that there are no second-class citizens in our workplaces; and that it’s not just unfair and illegal, it’s bad for business to pay somebody less because of their gender or their age or their race or their ethnicity, religion or disability; and that justice isn’t about some abstract legal theory, or footnote in a casebook. It’s about how our laws affect the daily lives and the daily realities of people: their ability to make a living and care for their families and achieve their goals. . . .
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> …This bill is an important step—a simple fix to ensure fundamental fairness for American workers—and I want to thank this remarkable and bipartisan group of legislators who worked so hard to get it passed. And I want to thank all the advocates who are in the audience who worked so hard to get it passed. This is only the beginning. I know that if we stay focused, as Lilly did—and keep standing for what’s right, as Lilly did—we will close that pay gap and we will make sure that our daughters have the same rights, the same chances, and the same freedoms to pursue their dreams as our sons. “[43]

40 Grossman, Johanna L. The Lilly Ledbetter Fair Pay Act of 2009: President Obama's First Signed Bill Restores Essential Protection Against Pay Discrimination, http://writ.news.findlaw.com/grossman/20090213.html
41 Id.
42 Id.
43 The Washington Post, January 29, 2009 at http://voices.washingtonpost.com/44/2009/01/29/obama_signs_lilly_ledbetter_ac.html

Provisions of the Act

The Act was designed to do two things: 1) to overturn the decision in *Ledbetter* by condemning the decision as being unduly restrictive and contrary to the intent of Congress; 2) to clarify what constitutes acts of discrimination. As the Act States:

> "(1) The Supreme Court in Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007), significantly impairs statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades. The Ledbetter decision undermines those statutory protections by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.
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> (2) The limitation imposed by the Court on the filing of discriminatory compensation claims ignores the reality of wage discrimination and is at odds with the robust application of the civil rights laws that Congress intended."[44]

With regards to discrimination in pay, the Act clearly states that the application of a discriminatory decision, such as the receipt of a paycheck, represents a discriminatory act. Consequently, a plaintiff may file a claim within 180 days from the issuance of that check unless the charge is a Section 1981 claim which extends the filing time to 300 days years from the discriminatory act if the State has an agency which shares the powers and duties of the EEOC. The Act states:

> "For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.
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> In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge."[45]

The wording of the Act makes it very clear that both discriminatory decisions and the results of that decision are subject to liability. Even though the Act was signed into law in 2009,

44 Lilly Ledbetter Act, supra note 39 §2(1) and §2(2).
45 Id. §3(A) and §3(B).

the Act specifies that provisions of the Act should be treated as if they were enacted on March 29, 2007.[46] Cases that were filed from that time that were originally dismissed due to time limitations will very likely be refilled with a higher likelihood of success. For future plaintiffs, the Act has reestablished Congress' original conception as to how a discriminatory act should be defined making it easier to file claims of pay disparity without fear of dismissal.

CONCLUSION

Although the Act focuses on a singular issue—when a claim of discrimination may be filed—its impact is enormous. The doors are now wide open for aggrieved plaintiffs to bring their claims for Pay discrimination based on the application of a discriminatory decision, i.e., the paycheck. No longer will plaintiffs be barred from claims that are filed more than 180 days from the time of the original discriminatory decision. Furthermore, it is not only women who are protected. That right extends to all protected classes—race, gender, disability and age. The courts will now be required to consider each and every paycheck as a separate act of discrimination and must hear cases where the Plaintiff has made a timely filing. The way is paved for all of those who have been discriminated on the basis of pay to get some sort of justice. Women workers, who have been routinely underpaid, may be more likely to file a claim to rectify their pay disparities.

The passage of the Act sends a warning to employers. No longer will employers be able to rest easy because their underpaid female workers discovered their pay rates are far less than that of their male counterparts. Employers must intensify their examination of the compensation policies and rates to make sure that they are in compliance of the law since their liability attaches with each paycheck that would represent an act of discrimination. The burden of compliance will rest on the employer to a greater extent than what had been the case previously.

The Lilly Ledbetter Act of 2009 is a boon for women and returns various discrimination laws to Congress' original intent—statutory defense for all protected classes against discriminatory acts of employers. The Act sends a clear message to employers and the judiciary in maintaining a more liberal interpretation of filing claims of discrimination. It is highly ironic that Lilly Ledbetter, the person who suffered underpayment for her work for so many years, will not benefit from the act that bears her name. She can take some comfort in the fact that she has blazed a trail for workers to achieve equality in compensation.

46 Id. §6

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