

President Obama Launches Labor Law Reform (*Part I*)

Labor law reform was a central promise of candidate Obama's platform, and President Obama made good on it just nine days into office.

On Jan. 29, the new president signed his first bill into law—"The Lilly Ledbetter Fair Pay Act of 2009." Named after a former Goodyear Tire and Rubber employee who lost her pay discrimination case in the Supreme Court last year, the new law makes it significantly easier for employees like Ledbetter to sue for pay discrimination.

Background. Democrats in Congress and pro-labor interests were angered by a 2007 Supreme Court ruling involving Ledbetter's pay discrimination lawsuit. The central issue in the case was how long a plaintiff could wait before filing suit for pay discrimination. In her lawsuit, Ledbetter claimed that her supervisors purposely ranked her lower than her male counterparts during her 19 years of employment with Goodyear and that she was unfairly and discriminatorily paid less than the men as a result. She filed suit many years later when she got wind of the alleged discrimination.

A federal jury agreed with Ledbetter's discrimination claim and awarded her back pay and other damages for pay discrimination. However, an appellate court found that, despite the merits of her claim, Ledbetter had waited too long to sue. This was because the claim she was making stemmed from decisions made many years earlier.

In a 5-4 decision, the U.S. Supreme court agreed, stating that an employee's time for filing a claim for unequal pay starts as soon as the employer makes the initial "pay-setting decision" and communicates it to the employee – regardless of whether the employee knows or suspects at the time that the decision is discriminatory. The Supreme Court rejected



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Ledbetter's argument that her time limit for filing suit should start anew with each paycheck that resulted from a discriminatory pay decision.

Within days of the Supreme Court's decision, pro-labor interest groups began a campaign to overturn the decision legislatively. Then, Senator Obama was a key supporter. Since Democrats knew that they'd never get George W. Bush to sign the anti-business legislation, they waited patiently for the new administration.

They didn't have to wait very long. Fewer than two weeks into the new president's administration, Democrats handed President Obama the Ledbetter Fair Pay Act, and he eagerly signed it.

The Ledbetter Fair Pay Act is retroactive to May 28, 2007, and applies to all lawsuits pending on or after that date – including Ledbetter's own case against Goodyear Tire and Rubber Company.

In justifying its quick action in passing the Ledbetter Fair Pay Act, Congress stated that the Supreme Court's ruling in Ledbetter's case undermined federal job bias laws "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." But, business groups and other critics of the new legislation say that the new law unduly expands the time period for filing suit and potentially exposes employers to a series of

new complaints based on decisions they made years or even decades ago.

The time limits for filing charges under the Ledbetter Fair Pay Act are similar to those that have long applied to lawsuits under the federal and California versions of the Equal Pay Act. But, those laws had limited reach because they apply only to unequal pay based on gender. The Ledbetter Fair Pay Act expands existing law. It applies these new rules not only to gender claims, but also to all other types of pay discrimination claims such as those based on race, national origin, religion, age and disability.

Business groups anticipate that the Ledbetter Fair Pay Act will encourage employees to file suit under job bias statutes and make those lawsuits more difficult and expensive to defend. As a result, companies ought to review pay practices and policies with expert labor law counsel to guard against potential pay discrimination claims.

What's Next? Given the overwhelming majority of Democrats in Congress, the business community views the Ledbetter Fair Pay Act as just the first in a long list of anti-business regulatory actions likely to come from the new administration. With organized labor being the largest contributor to President Obama's campaign, the handwriting is on the wall. With an ally in the White House, big labor is aggressively pushing Democrats to pass a host of other big ticket items on their reform list. Will there be a union in your company's future?

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