

The Lilly Ledbetter Fair Pay Act What Does it Mean to Your Business?

By now you have all heard about President Obama's signing of his first piece of legislation, the "Lilly Ledbetter Fair Pay Act". Putting aside the compelling story of the Alabama grandmother who was the impetus behind this bill, this is not a piece of legislation that favors employers.

WHAT IS IT AND WHAT CAN YOU DO ABOUT IT?

The Act

The Ledbetter Act did not create any 'new' law prohibiting salary discrimination. All it did was extend the time limit for employees to make a salary discrimination claim. Since 1964, the Civil Rights Act has provided that employers may not discriminate in pay based on gender, race, color or national origin. The Equal Pay Act has similar requirements. Those laws have not changed.

The upshot of the Ledbetter Act is it allows an employee to file a charge of discrimination on salary or wages, within 180 or 300 days from the date they were "affected" by the alleged discrimination – which could arguably be the date of their **last** paycheck.

Prior to Ledbetter, if an employee felt that her pay was unfair, as compared to another employee in a different 'protected group' (sex, race, national origin, color) – she had to bring a charge for discrimination within 300 days of the first "act" of discrimination – which courts had generally held to be the date of the **first** paycheck, the promotion or the salary change.

The Ledbetter Act changed this time limit. Now, that same employee can sue you for pay discrimination within 180 or 300 days from the date of the **last** alleged "discriminatory" paycheck or raise. That date could be five years after she was hired, promoted, or received the salary

increase at issue. In effect, this Ledbetter Act erases the statute of limitations for these pay claims.

What will this do? The publicity alone will likely increase the number of salary claims, and force you to "defend", or at least provide a reason, for salary changes which you may have made years ago.

On one small positive note – recovery of back pay damages for alleged discrimination is limited to two years. So, as long as you can defend the legitimacy of the decision, your exposure is still limited.

- Is the Ledbetter Act a great law? – **No**
- Is it a disaster? – **No** – It doesn't have to be, **if** you are proactive and take a few simple steps now.

WHAT CAN YOU DO?

There are a number of things that every business can and should do to protect itself from exposure to these suits. Some are easy, and some may require more work and planning. Here they are:

1. Make sure you have a good compensation system. Any business with more than 50 employees should have some sort of a compensation system or plan. This plan doesn't have to be complex, but there should be some document listing job titles, and the pay ranges for those titles. Obviously, in a larger company, these systems will need to be more involved and should be designed by a Human Resource or compensation professional.
2. Do a "spot check" – to see if your compensation system working. Many lawyers are now recommending full audits of compensation systems and salary policies. For most companies, there is no money in the budget to do that. So, what can you do? Even if you

don't have time for a full audit, do a spot check. Take one department or business unit and look at what all employees in several titles are earning. Do you see discrepancies between employees of different races or genders? Are people being hired at different rates? If you see a problem, probe deeper and find out why this is occurring.

3. Look at the 'hot spots' in an employee's career progression. – Look at the points when an employee's salary is being set or raised, and when discrepancies are thus likely to occur – such as: hiring, promotion, grade changes, and annual pay raises. Examine whether employees within one title are getting paid approximately the same. Is there a manager who is hiring people for the same title, at different salaries? Look for salary discrepancies, and if you see them – ask for an explanation.
4. Be open with employees about salary issues. It is far easier to deal with an internal grievance, than to defend a lawsuit or an EEOC charge. When you give employees their annual evaluation or salary review, be transparent. Tell them what their raise is, and how it compares to others in the job title (We are not suggesting you give names, but at least show them where they fall in the range). Document these conversations.
5. Give employees a **real** opportunity to file a grievance over their pay. In this litigious environment, **internal grievances are your friend.** The more accessible your internal processes are, the better opportunity you will have to prevent a lawsuit. Create a grievance policy, or amend your policy to make sure that employees know they can “grieve” a pay issue.
6. Train your managers or those who make salary decisions. Anyone who has responsibility for making promotion and salary decisions needs to understand that the law mandates equal treatment. Simply put, if they are going to give a woman a higher salary or a greater raise than her male peer, they need to have

objective reasoning – which is documented – for that decision. Make sure all managers are aware of this.

7. Keep good records. Look at the “hot spots” and keep good records of salary changes. For instance, keep a record of the initial salary demand; when an employee is given a raise or promotion, keep a record as to the reason for it, and the reason it was higher (or lower) than those in her job title. Train your managers that these records must be complete and accurate.
8. Make sure that HR is reviewing raises, especially in management job grades. Practically speaking, in a large company, the only way to ensure there is real equity – among those in a pay grade – is to have oversight at a corporate level. One manager in New Jersey may not know that his senior technician is making less than their counterpart in Des Moines – but HR will be able to see that. Again, if these discrepancies cannot be explained with objective reasons, they may need to be rectified.

This Ledbetter Act could potentially make life more difficult for employers. However, it does not have to be the end of the world. If you are proactive and take some of the steps outlined above to make sure your compensation system is functioning and your salaries are equitable, you should not find yourself on the losing side of any ‘fair pay’ claims.

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