

## It's About Fairness

**B**eginning with his signing of the Lilly Ledbetter Fair Pay Act in 2009, which overturned the U.S. Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.* 127 S. Ct. 2162 (2007), President Obama has championed the fight for pay equity during his years in the White House. The President has observed that one in three women is on the verge of poverty in this country and one of the leading causes is the wage gap between men and women. Although the President has made attempts to further address the wage gap issue through additional legislation, Congress has blocked any effort at expanding such legislation. Prior to the passage of the Ledbetter Act, women's ability to establish pay inequality was an uphill battle.

In the Ledbetter case, the plaintiff, Lilly Ledbetter, worked at Goodyear for almost twenty years. Ledbetter's coworkers boasted about their overtime pay but because Goodyear did not permit its employees to talk about their salary, she was not aware that her supervisor salary was twenty percent lower than that of the lowest-paid male supervisor. However, when Ledbetter received an anonymous note informing her of the pay disparity, she sued Goodyear for discrimination. After a jury trial, she was awarded back pay and a little over three million in compensatory and punitive damages.

The Eleventh Circuit Court of Appeals reversed on the grounds that Ledbetter filed her claim years after the company's original decision and therefore her claim was too late. The Supreme Court upheld the Eleventh Circuit's decision and set forth a 180-day timeframe from the discriminatory pay setting decision within which to file a pay discrimination claim. In other words, the later effects of past discrimination did not restart the clock for filing a discrimination claim after each paycheck. Under the Ledbetter case, employers who could successfully hide the discriminatory pay setting decision could successfully escape liability.

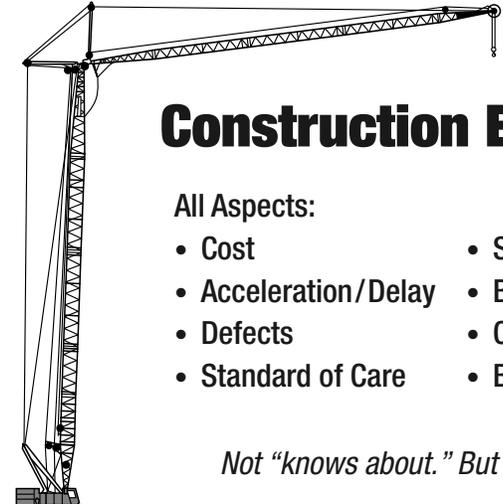
The Ledbetter Act adopted the "paycheck rule" which allows an employee to seek lost compensation within 180 days of receiving discriminatory compensation, no matter when the discriminatory decision took place. Under the Act,

Continued on page 4

by Raul Cadena, CASD President



Raul Cadena is a partner at Cadena Churchill, LLP, where he represents plaintiffs in the areas of employment law, including wage and hour class actions, insurance bad faith and personal injury. Mr. Cadena received his Bachelor of Arts from Harvard University and his Juris Doctor from the University of California at Berkeley School of Law, Boalt Hall. Mr. Cadena also studied at the Universidad Complutense in Madrid, Spain. He is a member of the Board of Directors and Parliamentarian of CASD and has been the Employment Law column editor for Trial Bar News since 2006. He may be contacted by email at: [rcadena@cadenachurchill.com](mailto:rcadena@cadenachurchill.com).



### Construction Expert Witness

All Aspects:

- Cost
- Acceleration/Delay
- Defects
- Standard of Care
- Site Work (Utilities & Earthwork)
- Buildings
- Concrete, Wood & Steel
- Building Envelope

*Not "knows about." But "been there, done that."*



Fred Nolta

**Nolta Consulting**  
[www.NoltaConsulting.com](http://www.NoltaConsulting.com)  
 858-232-9299

each discriminatory paycheck restarts the time in which to file a claim.

In an attempt to update the Equal Pay Act of 1963, which was signed into law more than 50 years ago by John F. Kennedy, President Obama has pushed for passage of the Paycheck Fairness Act. The Paycheck Fairness Act would, in addition to closing loopholes in the Equal Pay Act, prohibit employers from punishing employees who discuss their salaries and require employers to demonstrate that any wage gaps are not attributed to gender. In California, Labor Code section 232 already prevents employers from requiring that employees refrain from disclosing the amount of her wages. Passage of the Paycheck Fairness Act would ensure that employees throughout the rest of the country enjoy this same protection. However, each time the legislation has been up for consideration Congress has prevented its passage. Lily Ledbetter has described the pas-

sage of the Ledbetter Act but not the Paycheck Fairness Act as giving women a nail without a hammer. Some of the arguments against this legislation are that it opens up businesses to frivolous lawsuits and places unfair requirements on employers who may not have control over these pay differences. These arguments are not unlike those raised against passage of earlier civil rights legislation.

### There is Much Work Yet to be Done

Despite the existence of the Equal Pay Act and the Ledbetter Act, the U.S. Census Bureau reports that women make only 77 cents for every dollar earned by men. According to the Institute for Women's Policy Research ("IWPR"), despite the significant advances in gender integration of work it will take women until 2058 to reach pay parity with men as gender discrimination in terms of pay, hiring or promotion remains

rampant in the workplace. The IWPR further notes that about half of all women workers still report that they are discouraged from discussing wage and salary information in the workplace. See Institute for Women's Policy Research, www.lwpr.org.

Women are also more likely to find themselves in occupations that have poverty wages as defined by the U.S. Department of Health and Human Services. These occupations typically fall in the retail, restaurant and cleaning services industries.

However, even at the other end of the spectrum, women who hold in-house counsel jobs make much less than male attorneys. See ABA Journal.com: "Top in-house lawyers get paid a lot less when female, survey says." For instance, male general counsel and chief legal officers were paid an average total compensation of almost \$150,000 more than that of women holding the same position. *Id.*

Continued on page 29

WEST COAST RESOLUTION GROUP

Her Resolve: **Equal Parts Empathy and Reality**

Your Resolution: **Denise Asher**



*exceptional service*

“Denise understands the details and the big picture and helps identify the strengths and weaknesses of each case.”

-Medical Malpractice Attorney

**Denise's Featured Practice Areas:**  
 Elder Abuse and Neglect, Employment Law, Medical Malpractice, Personal Injury

**Dispute Resolution.** It's what we do and we take it personally.





west coast  
resolution group

A Division of NCRC

Our Resolve. Your Resolution.

[westcoastresolution.com](http://westcoastresolution.com) 619.238.7282

A Washington Business Journal article cited to a study that found that women lawyers who do not step off the partnership track for childcare still earn less than their male counterparts. See Washington Business Journal.com: Study: "Women lawyers still paid less than their male colleagues". This dispels the myth that women earn less than males because they are less productive due to childcare obligations.

The pay disparity has implications even in the courtroom. Gender is often used as a factor in future lost earnings by experts who prepare damages calculations in litigated cases. Any limit that is placed on a plaintiff's damages award based on earnings effectively perpetuates the discrimination.

### CASD Women's Caucus

The people our members represent include women who have been subjected to gender discrimination. The pay disparities described above are not an uncommon occurrence but can be challenging claims as employers are under no obligation to demonstrate that any wage gaps are not attributed to gender. Many, and perhaps all of us, have had a mother, wife, sister or daughter subjected to wage discrimination. Likely, many of

our own members have been subjected to wage discrimination throughout their careers. Our advocacy of gender equality in the employment context is essential in light of the limited tools to combat discriminatory pay practices. We must also continue the conversation of how to address these disparities as well as other issues that limit the opportunities of women.

The relatively new CASD Women's Caucus, which is open to all CASD members interested in advancing the opportunities of women in the CASD community, facilitates this conversation. In particular, CASD's Women's Caucus focuses on building a strong community for women lawyers within CASD to make a difference in the profession and in society at large.

The current goals of CASD's Women's Caucus are:

- To support CASD women in their specific profession in their personal and professional lives
  - To provide opportunities for CASD women to connect with and learn from each other
  - To offer programs which focus on issues of concern to CASD women lawyers
- To partner with the CAOC Women's Caucus and support its efforts
  - To foster leadership and mentorships in CASD

CASD's Women's Caucus also strives to bridge the gap between new and seasoned CASD women lawyers, which presents a remarkable opportunity for our new women lawyers. This is yet another example of CASD members supporting one another and serving as a resource for each other.

It is through advocacy in the courts and through the efforts of groups such as CASD's Women's Caucus that we can move toward a society that judges people in the workplace based on merit rather than gender. I encourage all members to attend the mixers and educational programs offered by our Women's Caucus and to continue participating in the discussion of fair treatment under the law regardless of gender. Unless we are content with telling our daughters that they should expect to be paid less than their male schoolmates when they reach the workplace, we must all remain engaged in this discussion. **TBN**

# SHARP®

SHARP BUSINESS SYSTEMS



**Sharp Business Systems specializes in document solutions. We can assist you streamlining your workflow by bridging equipment to your existing software to achieve some of the following:**

- Cost Recovery/ Client Tracking
- Electronic Bates Stamping
- Scan to Word/Excel

**CASD Members Receive A 40% Discount**



**Lizette Robles**  
619-258-1400 x1174