



THE KULLMAN FIRM

A PROFESSIONAL LAW CORPORATION

CLIENT NEWSLETTER

Published as a service to clients and friends of The Kullman Firm, this newsletter discusses recent labor relations laws, regulations, policies, practices, and employment cases particularly applicable to the labor and employment arena.

In the coming months, we will be reporting to you on many new legislative activities, including both proposed and enacted laws and regulations. In addition, you will be receiving invitations to client seminars on labor and employment law topics. In these uncertain economic times, it is vitally important to consider taking proactive steps to avoid, as much as possible, challenges to your employment practices. Today we report on a newly enacted law that has the potential to open the floodgates to more employment litigation, as well as a last minute delay by the U.S. Citizenship and Immigration Services to the revised Form I-9 effective date.

LILLY LEDBETTER FAIR PAY ACT

President Obama signed the Lilly Ledbetter Fair Pay Act into law on January 29, 2009. The Act essentially eliminates many statute of limitations defenses to pay discrimination claims.

Background

The Act receives its name from Lilly Ledbetter, a former supervisor at a Goodyear tire plant in Gadsden, Alabama, who learned that she had been receiving less pay than her male counterparts for many years. In November of 1998, after having worked at the plant for nearly 20 years, Ledbetter sued Goodyear in federal court in Alabama, claiming pay discrimination under Title VII and the Equal Pay Act.

The District Court found in favor of Goodyear on Ledbetter's Equal Pay Act claim, but allowed the Title VII claim to proceed to trial. The jury found for Ledbetter and awarded back pay and damages. Goodyear appealed to the U.S. Eleventh Circuit Court of Appeals, arguing that Ledbetter's claims for damages that accrued 180 days before the filing of Ledbetter's charge of discrimination with the Equal Employment Opportunity Commission (EEOC) were void due to the statute of limitations placed on discrimination claims. The Eleventh Circuit agreed and reversed the trial court's order. Ledbetter then appealed to the U.S. Supreme Court.

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The Supreme Court, on May 29, 2007, ruled in Goodyear's favor and affirmed the Eleventh Circuit. Specifically, the Court held that Title VII required unlawful employment practices to have occurred within 180 days of the filing of an EEOC charge in order to be actionable. Thus, any acts that Ledbetter alleged were intentionally discriminatory had to have occurred within that time frame. Because Ledbetter failed to do so, and instead merely said that her paychecks would have been larger if evaluations occurring prior to the 180-day limitations period had not been discriminatory, the Court ruled against her and in favor of Goodyear.

The Act

The Supreme Court's decision quickly became something of a cause celebre in some circles, including Congress, leading to the enactment of the Lilly Ledbetter Fair Pay Act. The Act mandates that every paycheck or other compensation resulting, in whole or in part, from an earlier discriminatory pay decision constitutes an unlawful violation of federal law. The Act allows plaintiffs to recover back pay and damages for unlawful wage disparities occurring up to two years preceding the filing of an EEOC charge. The Act applies to workers who file claims of discrimination on the basis of race, sex, color, national origin, religion, age, or disability.

The Act will eliminate many statute of limitations defenses to pay discrimination claims, including defenses that have proven effective in defeating class action pattern and practice claims. In light of this, plaintiffs' lawyers are likely to have renewed optimism about pay discrimination claims, leading to more frequent filings and class actions. The publicity surrounding the Act likely will encourage some employees who had not previously considered bringing pay discrimination claims to do so.

The Bottom Line

Because the Act exposes employers to potential liability for accumulated pay differences that emerged over an extended time frame, and will likely mean that employers find themselves having to justify pay decisions made two, five or even twenty years earlier, employers should consider taking steps to reduce the risk of pay discrimination claims.

Some of the steps employers should consider taking, under the direction of counsel, include establishing and maintaining more documentation supporting pay decisions, and reviewing current compensation and benefits practices to ensure that these practices are implemented in a nondiscriminatory manner. Other proactive steps to consider taking include auditing payroll functions and developing or refining job descriptions. Experienced legal counsel can help determine the best steps to take and how to implement those steps.

If you have any questions regarding this legislation or other labor or employment related issues, please contact the Kullman Firm attorney with whom you regularly work.

EFFECTIVE DATE FOR USING REVISED FORM I-9 DELAYED UNTIL APRIL 3, 2009

On February 2, 2009, the U.S. Citizenship and Immigration Services (USCIS) announced that it has delayed by 60 days, until April 3, 2009, the effective date for using the revised Form I-9, originally scheduled to go into effect on February 2. **Please note: Employers who use the new form *prior* to the April 3, 2009 effective date could be subject to civil monetary penalties.**

If you have any questions regarding this matter, please consult with the Kullman attorney with whom you usually communicate.



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