

January 30, 2009

## **The Lilly Ledbetter Fair Pay Act**

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009 (the "Fair Pay Act") which reverses a 2007 Supreme Court decision. The Supreme Court had held that compensation discrimination claims must be filed within 180 days of when a compensation decision is *made* rather than within 180 days of *receipt* of the last paycheck.<sup>1</sup> Under the Fair Pay Act, an unlawful compensation practice occurs (1) when a discriminatory decision or practice is adopted, (2) when an individual becomes subject to the discriminatory practice or decision, or (3) when a person is affected by a discriminatory practice or policy, including each time wages, benefits or other compensation is paid as a result in whole or in part from the discriminatory decision or policy. Hence, under the Fair Pay Act, each new paycheck begins a new statute of limitations period, even if the alleged discriminatory practice or decision happened many years before. However, there is a two-year recovery cap from the date the EEOC Charge is filed. The Fair Pay Act amends Title VII, the ADA, the Rehabilitation Act and ADEA to include this broader limitations period. The effective date of the Fair Pay Act is retroactive to May 28, 2007, the day before the Ledbetter decision was filed by the Supreme Court, and is applicable to claims pending on or after that date.

Given the expansive nature of the Fair Pay Act, employers should review compensation programs and policies to ensure that such programs and policies have appropriate documentation protocols. In addition, employers should review their document retention policies with counsel to ensure that relevant records are safeguarded for potential litigation many years down the line. If you have any questions or need assistance reviewing your policies or programs, please feel free to contact [Tonianne Florentino](#) at (212) 758-7782 or any of the other attorneys in our firm.

<sup>1</sup> The 180-day period is expanded to 300 days in states with fair employment practice agencies that have workshare agreements with the EEOC.

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