

How might the Ledbetter Fair Pay Act impact your business?

President Obama's first bill, the Lilly Ledbetter Fair Pay Act, was signed into law on January 29, 2009. The bill prohibits discrimination in compensation, but has received mixed reviews. In fact, one of the largest lobbying groups for small business has said the bill will have a negative impact on small business.

What happened to Lily Ledbetter?

The Lily Ledbetter Fair Pay Act is named for Lily Ledbetter, who worked at the Gadsden, Alabama, Goodyear Tire and Rubber Plant for about 20 years. A few months before her retirement, Ledbetter learned that she was being paid substantially less than her male counterparts and filed a complaint with the Equal Employment Opportunity Commission (EEOC). The matter went to trial in federal court, where several of Ledbetter's supervisors testified that she was consistently and intentionally given poor marks in her performance reviews because she was a woman. These poor review marks were used to establish Ledbetter's annual pay raises and, as a result, Ledbetter was paid less than her male counterparts simply because she was a woman.

The trial court found that Ledbetter was a victim of intentional discrimination because she had intentionally been paid less than men doing the same job based on the fact that she was a woman. The jury determined that Ledbetter was paid at least \$200,000 less than her male counterparts over the course of her employment solely because she was a woman and awarded her that amount.

Good year appealed this verdict and the US Supreme Court settled the matter in 2007. The Supreme Court held that paying Ledbetter, or issuing her paychecks, was not the discriminatory act, but rather that the discrimination consisted of the poor marks given by her supervisors in her performance evaluations. Further, while Ledbetter was continuing to receive her regular paychecks, none of the discriminatory performance evaluations had occurred within 180 days of the time she had made her complaint with the EEOC. Since the performance evaluations were the discriminatory act (rather than the act of being paid) Ledbetter's complaint was too late and she was time-barred by the 180-day statute of limitations.

What does the Lilly Ledbetter Fair Pay Act mean?

The Lilly Ledbetter Fair Pay Act was drafted to reverse the Supreme Court's 2007 ruling, limiting the statute of limitations on discrimination complaints to within 180 days of the occurrence of the discrimination.

The new bill says that if an employer is discriminating against an employee in their pay, then each time a paycheck is issued the time period for making a complaint starts over. That means there is a new 180-day period following the receipt of each paycheck before the claim time is barred.

There has been mixed reaction to this bill among women's rights groups. Although some feel it is a needed law, representatives of small businesses say it will have a very negative impact on hiring and could cause some businesses to fail.

Tuesley Hall Konopa's take on the Ledbetter Fair Pay Act.

Tuesley Hall Konopa's position on this new bill is that it is such a narrow matter it is unlikely to have much impact. The new law does not change the underlying law – it is still improper to intentionally pay a woman less than a man doing the same job just because she is a woman. The new law simply gives someone who is discriminated against more time (180 days after each paycheck) to make a complaint. In fact, a large part of the legal community feels that this new law only re-establishes what was in place before the Supreme Court ruling.

What you can do for your business.

Here are some suggestions for small business owners and managers to keep in mind regarding discrimination and compensation.

- Have a written anti-discrimination policy and post the policy on the company bulletin board or other visible area every year.
- Have a written compensation review policy. Include a schedule (it can have some flexibility) and procedures for reviews, then follow that schedule.
- Include in your compensation policy non-discriminatory business reasons for paying people doing the same job a different salary. Examples include seniority, skill and performance. However, employees who perform the same job, and have the same qualifications and same performance should have the same pay.
- Review employees in the same job and ensure there are documented, demonstrable, non-discriminatory business reasons for differences in pay.
- Train supervisors who have input on employment decisions on what the law requires.
- Ensure that employees who do file claims of discriminatory practices are not retaliated against. Employees are more successful proving retaliation than proving discrimination.
- Review job descriptions and review what employees "doing the same job" are actually doing. It's often the case that employees with the same job title have different or additional duties that should be recognized in their pay.
- Retain payroll information and performance reviews.
- Check liability insurance for coverage regarding claims made by former employees.

Keep in mind that discrimination in employment decisions against any of the protected classifications is prohibited. If you have any questions on what the protected classifications are, or what an employer can or cannot do, call **Tuesley Hall Konopa at 574-232-3538.**

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