



S. 181 – Lilly Ledbetter Fair Pay Act

FLOOR SITUATION

S. 181 will likely be considered on the floor under a closed rule, which allows no amendments. The rule is expected to waive all points of order against the bill, except those arising under clauses 9 and/or 10 of rule XXI (Earmarks and PAYGO). The rule provides for one hour of debate, equally divided between the Majority and the Minority, and one motion to recommit.

This legislation was introduced by Sen. Barbara Mikulski (D-MD), and passed the Senate by a [61-36](#) vote on January 22, 2009. S. 181 is identical to H.R. 11, which passed the House by a vote of [247-171](#) on July 31, 2007. Note however that S. 181 does not include provisions of the Paycheck Fairness Act (H.R. 12), which was added to H.R. 11 during engrossment of the House-passed bill; the Senate introduced and passed the Ledbetter bill without the Paycheck Fairness provisions attached, necessitating a second House vote on the measure before it is cleared for the President to sign.

SUMMARY

S. 181 would amend Title VII of the Civil Rights Act of 1964, in order to allow an employee to seek damages for wage discrimination based on sex, race, color, religion, or national origin each time wages, benefits, or other compensation is paid based on such discrimination. Under current law, a wage discrimination claim must be filed within 180 days of the initial discrimination violation.

Specifically, the language is expanded to allow suits to be filed within 180 days of “when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.”

S. 181 would allow an employee to bring a suit against an employer if it can be argued that they are “affected” by discriminatory compensation, even if the actual discriminatory decision was made decades ago. Effectively, S. 181 would eliminate the filing deadlines and statute of limitations for employees filing discrimination lawsuits under Title VII of the Civil Rights Act of 1964.

S. 181 is a direct legislative response to the 5-4 Supreme Court decision in [Ledbetter v. Goodyear Tire & Rubber Co., Inc.](#), on May 29, 2007. In this case, the Court upheld the reporting statutory time limit of Title VII of the Civil Rights Act of 1964 regarding discriminatory acts. The Ledbetter Fair Pay Act would dramatically alter and expand the statutory limits to discriminatory cases as codified in Title VII. Under this new provision, each and every paycheck that represents a perceived discriminatory act becomes a new act of discrimination. Under current law only the initial discriminatory act is considered for statute of limitations purposes.

The bill would also permit employees to collect back pay (at a non-discriminatory rate) for up to two years preceding the filing of the charge when “the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.”

S. 181 would make the revised law retroactive to May 28, 2007—one day before the Supreme Court ruled on the Ledbetter case.



BACKGROUND

Lilly Ledbetter was an employee of Goodyear at the tire assembly department in Gadsden, Alabama. Beginning in 1979, Lilly Ledbetter worked as supervisor at Goodyear's tire assembly department in Gadsden, Alabama. Ms. Ledbetter held this position until 1998, when she received an anonymous letter claiming that she was receiving less pay for the same position as her male colleagues because of her sex.

After receiving this letter, Ms. Ledbetter filed a discrimination charge with the Equal Employment Opportunity Commission in March of 1998, under Title VII of the Civil Rights Act, which makes it illegal for employers to discriminate on the basis of race, color, religion, sex, or national origin.

Under Title VII of the Civil Rights Act, claims must be filed within 180 days (or 300 days, depending on the state) of the original discriminatory act. Nonetheless, Ms. Ledbetter filed suit against Goodyear Tire & Rubber Co, Inc, in the Northern District of Alabama. During this trial, Ms. Ledbetter's attorneys argued that each paycheck represented a discriminatory act and therefore she was entitled to sue pursuant to Title VII.

Goodyear argued that the difference in pay was not based on her sex, but rather based upon poor job reviews she had received during her career at the assembly department. The managers at the plant implemented a system in 1982 that ranked output and performance of its employees. Based on this system, pay increases were awarded for those at the top of the list and those at the bottom were not granted raises. Throughout her career, Ms. Ledbetter constantly ranked near the bottom of this list and because of this, Goodyear argued, she did not receive raises.

Because of the timing of her lawsuit, Ms. Ledbetter was only able to offer evidence of pay discrimination that occurred after September 1997, due to the Title VII 180 day filing requirement. Still, the court ruled in her favor and awarded her \$4 million in pay and punitive damages, which the judge then reduced to \$360,000.

Goodyear appealed the ruling in the 11th Circuit Court of Appeals, which unanimously dismissed the claim and award. In writing for the Court, Judge Gerald Tjoflat wrote Ledbetter's Title VII claim must stem from some discriminatory act, either the issuance of an insufficient paycheck or a manager's raise recommendation, citing *National Railroad Passenger Corp. v. Morgan*. Regardless, the act had a 180-day expiration date.

Due to the fact that Title VII prevented Ms. Ledbetter from presenting evidence of sexual discrimination that occurred before September 1997, Ms. Ledbetter needed to offer evidence at trial that the pay checks she received after September 1997 were discriminatory against her. Judge Tjoflat ruled that she failed to prove that pay discrimination occurred after September 1997. He also ruled that individual illegal acts that occurred before the limitations period began cannot be aggregated and introduced to demonstrate intent or to broaden the scope of damages.

Following this ruling, Ms. Ledbetter appealed to the Supreme Court of the United States. On May 29, 2007, in a 5-4 decision, the Court ruled against Ms. Ledbetter. Writing for the majority, Justice Samuel Alito explained that "Ledbetter should have filed an E.E.O.C. charge within 180 days after each allegedly discriminatory pay decision was made and communicated to her. She did not do so, and the paychecks that were issued to her during the 180 days prior to the filing of her E.E.O.C. charge do not provide a basis for overcoming that prior failure."

Justice Alito also noted "This short deadline (180 or 300 days) reflects Congress's strong preference for



the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation." The Supreme Court decision upheld the reporting statutory time limit of Title VII.

As noted in the Supreme Court decision, the filing time limit is an important legislative feature of Title VII that was put in place to ensure swift action in cases of discrimination. Opponents to S. 181 have argued that the purpose for the 180 day filing requirement is to ensure that there are incentives for individuals to bring and adjudicate discrimination suits promptly and award benefits in a timely manner. Without prompt legal action, it is argued, discriminatory practices could go on for years. In addition, if discriminatory suits are not brought in a timely fashion, death and loss of documents can critically damage the cases of both the plaintiff and the defendant.

S. 181 is a direct legislative response to the Supreme Court decision on May 29, 2007, which upheld the statutory reporting time limit of Title VII of the Civil Rights Act of 1964 regarding discriminatory acts. The legislation would retroactively overturn this ruling by allowing an employee to file a claim within 180 days of being "affected" by application of a discriminatory compensation decision. This would include every time an employee received wages, benefits, or other compensation. Under current law, a discriminatory claim must be filed within 180 days after the alleged unlawful employment practice occurred.

In effect, the bill would allow employees (or other individuals that can argue that they have been "affected" by wage discrimination) to sue for compensation for alleged discrimination that took place years ago. This could result in a litany of potentially frivolous lawsuits from decades ago being brought into the courts. In addition to tying up the judicial system, these suits may place an unnecessary and costly burden on employers forced to defend against illegitimate claims said to have occurred years ago.

COST

A CBO score for S. 181 was not available at press time. A CBO score for identical legislation (H.R. 2831) in the 100th Congress stated that the bill "would not significantly increase costs to the EEOC or to the federal courts over the 2008-2012 period." In addition, the legislation would not affect revenues or direct spending.

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