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By the EdLaw Group at Lindabury

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## New Fair Pay Law Extends Period for Claims

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On January 29, 2009, the president signed a new law that significantly extends the period in which individuals may bring claims of race, color, religion, sex or national origin discrimination under the federal Civil Rights Act of 1964; age discrimination under the Age Discrimination in Employment Act; and disability discrimination under the American with Disabilities Act and the Rehabilitation Act of 1973. The Lilly Ledbetter Fair Pay Act of 2009 was enacted specifically to overturn the holding of a United States Supreme Court case, brought by Ms. Ledbetter, on the timeliness of claims under those laws.

Those laws prescribe a limited period (between 180 and 300 days, depending on the law in the state where the individual is employed) in which an aggrieved individual may file a charge with the Equal Employment Opportunity Commission (EEOC) alleging that unlawful discrimination has occurred. The new law redefines the meaning of the statutory phrase "an unlawful employment practice occurs" to include not only the time when a discriminatory decision or practice is adopted or when an individual becomes subject to it, but also when the person is affected by it. The new law then provides that this unlawful effect may include each time wages, benefits or other compensation is paid. Claims may arise years after an employment decision was initially made, as long as the alleged victim asserts that his or her pay or benefits are still being adversely affected by the discriminatory decision.

The impact of the new law is exemplified by Lilly Ledbetter's case. Her claim was not that she was paid less than men performing equal work, as would be asserted under the Equal Pay Act. Rather, she claimed that, over her approximately twenty-year career with the same employer, her performance evaluations, on which pay increases were based, were affected by discrimination. This eventually resulted in a large disparity between her wages and those of male employees with whom she compared herself. Even though many of these performance evaluations had been made years earlier, she claimed that her pay was still adversely affected by those evaluations. The Supreme Court rejected her claims as untimely because the charge filing period had expired. Under the new law, however, (*cont'd* ➔)

the charge would be considered as timely. The employer, therefore, may have to defend claims based on decisions made years earlier, by managers who may have retired, left the company or who, as in Ms. Ledbetter's case, are deceased. The employer will, in many instances, be left with only whatever records may have been retained pertaining to those old employment decisions.

Ms. Ledbetter's case dealt with only the effect of annual compensation decisions. The new law, however, casts a broader net and refers to "other practices" that are alleged to have been discriminatory when made. As such, it may have an ongoing effect on the level of an individual's wages, benefits and other compensation. The individual may seek relief for any such impact that occurs commencing two years preceding the filing of a charge with the EEOC. The law is given retroactive effect by providing that it applies to all claims of discrimination pending on or after May 28, 2007, the day before the Supreme Court decision in the Ledbetter case.

The risk of liability may already exist for employers with long-term employees who harbor the belief that a past employment decision was tainted by discrimination. If that decision can be said to have an ongoing impact on the level of compensation or benefits, these employees may take the opportunity to challenge them. The question is whether the employer has the current ability to substantiate the legitimate nondiscriminatory business reason for these old decisions. Alternatively, employers may examine their compensation and benefits programs to assure that old employment decisions do not have a continuing impact on such employees.



*The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at [edlawgroup@lindabury.com](mailto:edlawgroup@lindabury.com).*



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