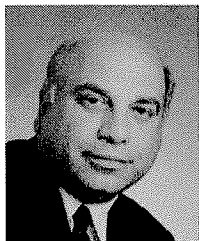


MORE NEWS



Lou DiLorenzo

Lilly Ledbetter Fair Pay Act

Last month, President Obama signed his first bill into law — the Lilly Ledbetter Fair Pay Act. This law overrules a 2007, 5 4 Supreme Court decision. In *Ledbetter*, the Supreme Court ruled that the statute of limitations for a suit claiming pay discrimination begins to run when the underlying pay decision is made, not from receipt of the last paycheck affected as a result. Since an EEOC charge must be filed, in a deferral state such as New York, within 300 days of the discriminatory act, the ruling prevented employees from challenging decisions made outside the 300 day period despite the fact that a recent paycheck may continue to reflect the results of that decision.

The Lilly Ledbetter Fair Pay Act changes that and allows the case to be brought provided an EEOC charge is filed within 300 days of the issuance of the last discriminatory paycheck.

This new law changes the landscape dramatically. Old decisions of 10-15-20 years ago as to merit pay amounts, demotions, promotions, a changed sales territory or commission rate, could be challenged today since today's paycheck would continue to reflect the results of that previous decision. The possible lack of documentation and witnesses to explain the non-discriminatory rationale for the decision, makes management lawyers shudder at the mere thought that such stale claims could possibly still be alive. Such claims may even be brought by retired employees claiming backpay or pension impact.

There are a number of strategic decisions now facing employers as a result of this law. Should we give bonuses instead of wage increases to avoid any future effects of a pay decision; should we get releases signed to attempt to wipe out old claims; should we shorten the statute of limitations with a handbook or contract provision; should we revamp our document creation and retention program; should we have the same starting salary and give lockstep increases based on seniority or other objective factors; should we do a salary analysis and make equity adjustments if pay disparities are identified. All of these strategic considerations present various pros and cons, and each should be carefully considered and evaluated.

In this economic downturn and the likely increase in employment litigation, this is not the type of legislation employers need. Unfortunately, it is here and it appears more is on the way.

Be Careful Out There!

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