

RESOLUTION ELF-04-2007

DIGEST

Time For Filing A Charge Of Discrimination Based On Unequal Pay

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates urges the Senate of the United States to pass H.R. 2831, and the President to sign the bill if passed by the Senate. The text of H.R. 2831 follows.

110th CONGRESS

1st Session

H. R. 2831

AN ACT

To amend title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans With Disabilities Act of 1990, and the Rehabilitation Act of 1973 to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Lilly Ledbetter Fair Pay Act of 2007'.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) The Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.*, No. 05-1074 (May 29, 2007), significantly impairs statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades. The *Ledbetter* decision undermines those statutory protections by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.
- (2) The limitation imposed by the Court on the filing of discriminatory compensation claims ignores the reality of wage discrimination and is at odds with the robust application of the civil rights laws that Congress intended.
- (3) With regard to any charges of discrimination under any law, nothing in this Act is intended to preclude or limit an aggrieved person's right to introduce evidence of unlawful employment practices that have occurred outside the time for filing a charge of discrimination.

(4) This Act is not intended to change current law treatment of when pension distributions are considered paid.

SEC. 3. DISCRIMINATION IN COMPENSATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended by adding at the end the following:

`(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, 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.

`(B) In addition to any relief authorized by section 1977a of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where 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.'

SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF AGE.

Section 7(d) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)) is amended--

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by striking `(d)' and inserting `(d)(1)';

(3) in the third sentence, by striking `Upon' and inserting the following:

`(2) Upon'; and

(4) by adding at the end the following:

`(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this Act, when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to a discriminatory compensation decision or other practice, or when a person 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.'

SEC. 5. APPLICATION TO OTHER LAWS.

(a) Americans With Disabilities Act of 1990- The amendment made by section 3 shall apply to claims of discrimination in compensation brought under title I and section 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq., 12203), pursuant

to section 107(a) of such Act (42 U.S.C. 12117(a)), which adopts the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5).

(b) Rehabilitation Act of 1973- The amendments made by section 3 shall apply to claims of discrimination in compensation brought under sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794), pursuant to--

(1) sections 501(g) and 504(d) of such Act (29 U.S.C. 791(g), 794(d)), respectively, which adopt the standards applied under title I of the Americans with Disabilities Act of 1990 for determining whether a violation has occurred in a complaint alleging employment discrimination; and

(2) paragraphs (1) and (2) of section 505(a) of such Act (29 U.S.C. 794a(a)) (as amended by subsection (c)).

(c) Conforming Amendments-

(1) REHABILITATION ACT OF 1973- Section 505(a) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)) is amended--

(A) in paragraph (1), by inserting after `(42 U.S.C. 2000e-5 (f) through (k))' the following: `(and the application of section 706(e)(3) (42 U.S.C. 2000e-5(e)(3)) to claims of discrimination in compensation)'; and

(B) in paragraph (2), by inserting after `1964' the following: `(42 U.S.C. 2000d et seq.) (and in subsections (e)(3) of section 706 of such Act (42 U.S.C. 2000e-5), applied to claims of discrimination in compensation)'.

(2) CIVIL RIGHTS ACT OF 1964- Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended by adding at the end the following:

`(f) Section 706(e)(3) shall apply to complaints of discrimination in compensation under this section.'.

(3) AGE DISCRIMINATION ACT OF 1967- Section 15(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(f)) is amended by striking `of section' and inserting `of sections 7(d)(3) and'.

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, take effect as if enacted on May 28, 2007 and apply to all claims of discrimination in compensation under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), title I and section 503 of the Americans with Disabilities Act of 1990, and sections 501 and 504 of the Rehabilitation Act of 1973, that are pending on or after that date.

Passed the House of Representatives July 31, 2007.

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Under the Supreme Court's interpretation of Title VII (and related laws), a person must file a charge of discrimination based on discriminatory unequal pay within 180 days after

the employer first takes the action causing the unequal pay, regardless whether the employees then knows of the discrimination and regardless of the fact that the discriminatory unequal pay is carried forward in each and every paycheck after the initial discriminatory pay decision.

This Resolution: This resolution urges the U.S. Senate to pass and the President to sign H.R. 2831, which would reverse the Supreme Court and cause each new paycheck that carries forward a discriminatory pay decision to trigger a new 180-filing period for a charge of discrimination

The Problem: When an employer fixes the pay of two or more similarly situated employees on a basis that is unequal and is discriminatory because the disparity is based upon a factor such as gender or race, the employee being discriminated against may not immediately be aware that his or her pay is not equal to the pay of a co-worker. Thus, the employee may not become aware of the disparity until long after the employer sets the unequal pay. The Supreme Court decided that was an irrelevant factor, and held that the initial act of setting pay unequally was the discriminatory act, and that the aggrieved employee must file a charge of discrimination within 180 days of that act. H.R. 2831, which was passed by the House of Representatives on July 31, 2007, would reverse that decision. It would amend Title VII and related laws to provide that each time the discriminatory pay practice is carried forward in the issuance of paychecks, a new 180-day time period for filing a charge begins to run. Many lower courts had previously followed that rule before the Supreme Court held otherwise. If employers wish to maintain a level of confidentiality regarding how much each of its employees is paid, it should not be able to cloak discriminatory practices in that manner. H.R. 2831 protects employers against situations where an employee may learn of the discriminatory pay practice but sleep on his or her rights by limiting back pay to two years.

IMPACT STATEMENT

This resolution would not affect any other statute, regulation, or law.

AUTHOR AND/OR PERMANENT CONTACT: John T. Hansen, Nossaman, Guthner, Knox & Elliott, LLP, 50 California Street, 34th Floor, San Francisco, CA 94111. Telephone: 415-438-7245; Fax: 415-398-2438; E-Mail: jhansen@nossaman.com.

RESPONSIBLE FLOOR DELEGATE: John T. Hansen