

Calendar No. 14111TH CONGRESS
1ST SESSION**S. 181**

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of 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.

IN THE SENATE OF THE UNITED STATES

JANUARY 8, 2009

Ms. MIKULSKI (for herself, Mr. KENNEDY, Mr. HARKIN, Mr. LEAHY, Mr. REID, Ms. SNOWE, Mr. DODD, Mr. BINGAMAN, Mrs. MURRAY, Mr. REED, Mrs. CLINTON, Mr. SANDERS, Mr. BROWN, Mr. BYRD, Mr. INOUE, Mr. LEVIN, Mr. KERRY, Mr. ROCKEFELLER, Mr. KOHL, Mr. LIEBERMAN, Mr. AKAKA, Mrs. FEINSTEIN, Mr. DORGAN, Mrs. BOXER, Mr. FEINGOLD, Mr. WYDEN, Mr. DURBIN, Mr. JOHNSON, Ms. LANDRIEU, Mr. SCHUMER, Mrs. LINCOLN, Mr. CARPER, Ms. STABENOW, Ms. CANTWELL, Mr. NELSON of Florida, Mr. LAUTENBERG, Mr. SALAZAR, Mr. MENENDEZ, Mr. CARDIN, Mr. WEBB, Mr. CASEY, Ms. KLOBUCHAR, Mrs. MCCASKILL, Mr. WHITEHOUSE, Mr. TESTER, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. WARNER, Mrs. SHAHEEN, Mr. MERKLEY, Mrs. HAGAN, Mr. BEGICH, Mr. PRYOR, and Mr. BAYH) introduced the following bill; which was read the first time

JANUARY 9, 2009

Read the second time and placed on the calendar

A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967,

and to modify the operation of 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Lilly Ledbetter Fair
5 Pay Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Supreme Court in *Ledbetter v. Good-*
9 *year Tire & Rubber Co.*, 550 U.S. 618 (2007), sig-
10 nificantly impairs statutory protections against dis-
11 crimination in compensation that Congress estab-
12 lished and that have been bedrock principles of
13 American law for decades. The *Ledbetter* decision
14 undermines those statutory protections by unduly re-
15 stricting the time period in which victims of dis-
16 crimination can challenge and recover for discrimi-
17 natory compensation decisions or other practices,
18 contrary to the intent of Congress.

19 (2) The limitation imposed by the Court on the
20 filing of discriminatory compensation claims ignores

1 the reality of wage discrimination and is at odds
2 with the robust application of the civil rights laws
3 that Congress intended.

4 (3) With regard to any charge of discrimination
5 under any law, nothing in this Act is intended to
6 preclude or limit an aggrieved person's right to in-
7 troduce evidence of an unlawful employment practice
8 that has occurred outside the time for filing a
9 charge of discrimination.

10 (4) Nothing in this Act is intended to change
11 current law treatment of when pension distributions
12 are considered paid.

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

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

19 “(3)(A) For purposes of this section, an unlawful em-
20 ployment practice occurs, with respect to discrimination
21 in compensation in violation of this title, when a discrimi-
22 natory compensation decision or other practice is adopted,
23 when an individual becomes subject to a discriminatory
24 compensation decision or other practice, or when an indi-
25 vidual is affected by application of a discriminatory com-

1 pension decision or other practice, including each time
 2 wages, benefits, or other compensation is paid, resulting
 3 in whole or in part from such a decision or other practice.

4 “(B) In addition to any relief authorized by section
 5 1977A of the Revised Statutes (42 U.S.C. 1981a), liability
 6 may accrue and an aggrieved person may obtain relief as
 7 provided in subsection (g)(1), including recovery of back
 8 pay for up to two years preceding the filing of the charge,
 9 where the unlawful employment practices that have oc-
 10 curred during the charge filing period are similar or re-
 11 lated to unlawful employment practices with regard to dis-
 12 crimination in compensation that occurred outside the
 13 time for filing a charge.”.

14 **SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF**
 15 **AGE.**

16 Section 7(d) of the Age Discrimination in Employ-
 17 ment Act of 1967 (29 U.S.C. 626(d)) is amended—

18 (1) in the first sentence—

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

22 (B) by striking “(d)” and inserting
 23 “(d)(1)”;

24 (2) in the third sentence, by striking “Upon”
 25 and inserting the following:

1 “(2) Upon”; and

2 (3) by adding at the end the following:

3 “(3) For purposes of this section, an unlawful prac-
4 tice occurs, with respect to discrimination in compensation
5 in violation of this Act, when a discriminatory compensa-
6 tion decision or other practice is adopted, when a person
7 becomes subject to a discriminatory compensation decision
8 or other practice, or when a person is affected by applica-
9 tion of a discriminatory compensation decision or other
10 practice, including each time wages, benefits, or other
11 compensation is paid, resulting in whole or in part from
12 such a decision or other practice.”.

13 **SEC. 5. APPLICATION TO OTHER LAWS.**

14 (a) AMERICANS WITH DISABILITIES ACT OF 1990.—
15 The amendments made by section 3 shall apply to claims
16 of discrimination in compensation brought under title I
17 and section 503 of the Americans with Disabilities Act of
18 1990 (42 U.S.C. 12111 et seq., 12203), pursuant to sec-
19 tion 107(a) of such Act (42 U.S.C. 12117(a)), which
20 adopts the powers, remedies, and procedures set forth in
21 section 706 of the Civil Rights Act of 1964 (42 U.S.C.
22 2000e–5).

23 (b) REHABILITATION ACT OF 1973.—The amend-
24 ments made by section 3 shall apply to claims of discrimi-
25 nation in compensation brought under sections 501 and

1 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791,
2 794), pursuant to—

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

9 (2) paragraphs (1) and (2) of section 505(a) of
10 such Act (29 U.S.C. 794a(a)) (as amended by sub-
11 section (c)).

12 (c) CONFORMING AMENDMENTS.—

13 (1) REHABILITATION ACT OF 1973.—Section
14 505(a) of the Rehabilitation Act of 1973 (29 U.S.C.
15 794a(a)) is amended—

16 (A) in paragraph (1), by inserting after
17 “(42 U.S.C. 2000e–5 (f) through (k))” the fol-
18 lowing: “(and the application of section
19 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims
20 of discrimination in compensation)”; and

21 (B) in paragraph (2), by inserting after
22 “1964” the following: “(42 U.S.C. 2000d et
23 seq.) (and in subsection (e)(3) of section 706 of
24 such Act (42 U.S.C. 2000e–5), applied to
25 claims of discrimination in compensation)”.

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

4 “(f) Section 706(e)(3) shall apply to complaints of
5 discrimination in compensation under this section.”.

6 (3) AGE DISCRIMINATION IN EMPLOYMENT ACT
7 OF 1967.—Section 15(f) of the Age Discrimination in
8 Employment Act of 1967 (29 U.S.C. 633a(f)) is
9 amended by striking “of section” and inserting “of
10 sections 7(d)(3) and”.

11 **SEC. 6. EFFECTIVE DATE.**

12 This Act, and the amendments made by this Act, take
13 effect as if enacted on May 28, 2007 and apply to all
14 claims of discrimination in compensation under title VII
15 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.),
16 the Age Discrimination in Employment Act of 1967 (29
17 U.S.C. 621 et seq.), title I and section 503 of the Ameri-
18 cans with Disabilities Act of 1990, and sections 501 and
19 504 of the Rehabilitation Act of 1973, that are pending
20 on or after that date.

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