

# SENATE BILL 563

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CF HB 439

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By: **Senator Raskin**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Lilly Ledbetter Fair Pay Act of 2008**

3 FOR the purpose of authorizing the recovery of certain back pay where a certain  
4 unlawful employment practice is similar or related to a certain other unlawful  
5 employment practice; clarifying that a certain unlawful employment practice  
6 occurs when a certain decision or practice is adopted, when an individual  
7 becomes subject to a certain decision or practice, or when an individual is  
8 affected by application of a certain decision or practice, including each time  
9 certain compensation is paid under a discriminatory compensation decision or  
10 practice; declaring the intent of the General Assembly; providing for the  
11 application of this Act; and generally relating to unlawful discriminatory  
12 compensation practices.

13 BY repealing and reenacting, with amendments,  
14 Article 49B – Human Relations Commission  
15 Section 11(e) and 11A(d)  
16 Annotated Code of Maryland  
17 (2003 Replacement Volume and 2007 Supplement)

18 BY adding to  
19 Article 49B – Human Relations Commission  
20 Section 11B(e–1) and 16(f–1)  
21 Annotated Code of Maryland  
22 (2003 Replacement Volume and 2007 Supplement)

23 Preamble

24 WHEREAS, The Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.*,  
25 No. 05–1074 (May 29, 2007), significantly impairs statutory protections against  
26 discrimination in compensation that have been bedrock principles of fair employment  
27 law for decades; and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The Ledbetter decision undermines those statutory protections by  
2 unduly restricting the time period in which victims of discrimination can challenge  
3 and recover for discriminatory compensation decisions or other practices; and

4 WHEREAS, The limitation imposed by the Court on the filing of discriminatory  
5 compensation claims ignores the reality of wage discrimination and is at odds with the  
6 robust application of fair employment law; and

7 WHEREAS, The laws of Maryland governing employment discrimination have  
8 been derived in large part from the statutory provisions enacted by Congress; now,  
9 therefore,

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article 49B – Human Relations Commission**

13 11.

14 (e) (1) If, after reviewing all of the evidence, the administrative law judge  
15 finds that the respondent has engaged in any discriminatory act within the scope of  
16 this article, the administrative law judge shall so state the findings.

17 (2) The administrative law judge shall issue and cause to be served  
18 upon the respondent an order requiring the respondent to cease and desist from the  
19 discriminatory acts and to take affirmative action to effectuate the purposes of the  
20 particular subtitle.

21 (3) If the respondent is found to have engaged in or to be engaging in  
22 an unlawful employment practice charged in the complaint, the remedy may include:

23 (i) Enjoining the respondent from engaging in the  
24 discriminatory act;

25 (ii) Ordering appropriate affirmative relief, including the  
26 reinstatement or hiring of employees, with or without back pay;

27 (iii) Awarding compensatory damages; or

28 (iv) Ordering any other equitable relief the court considers  
29 appropriate.

30 (4) Compensatory damages awarded under this subsection are in  
31 addition to:

32 (i) Back pay or interest on back pay that the complainant may  
33 recover under any other provision of law; and

1 (ii) Any other equitable relief that a complainant may recover  
2 under any other provision of law.

3 (5) The sum of the amount of compensatory damages awarded to each  
4 complainant under this section, for future pecuniary losses, emotional pain, suffering,  
5 inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses, may  
6 not exceed:

7 (i) \$50,000 if the respondent employs not fewer than 15 and not  
8 more than 100 employees in each of 20 or more calendar weeks in the current or  
9 preceding calendar year;

10 (ii) \$100,000, if the respondent employs not fewer than 101 and  
11 not more than 200 employees in each of 20 or more calendar weeks in the current or  
12 preceding calendar year;

13 (iii) \$200,000, if the respondent employs not fewer than 201 and  
14 not more than 500 employees in each of 20 or more calendar weeks in the current or  
15 preceding calendar year; and

16 (iv) \$300,000, if the respondent employs not fewer than 501  
17 employees in each of 20 or more calendar weeks in the current or preceding calendar  
18 year.

19 (6) In case of an award of back pay under paragraph (3) of this  
20 subsection, interim earning or amounts earned with reasonable diligence by the  
21 person or persons discriminated against shall operate to reduce the back pay  
22 otherwise allowable.

23 **(7) IN ADDITION TO ANY OTHER RELIEF AUTHORIZED BY THIS**  
24 **SUBSECTION, A COMPLAINANT MAY RECOVER BACK PAY FOR UP TO 2 YEARS**  
25 **PRECEDING THE FILING OF THE COMPLAINT, WHERE THE UNLAWFUL**  
26 **EMPLOYMENT PRACTICE THAT HAS OCCURRED DURING THE COMPLAINT FILING**  
27 **PERIOD IS SIMILAR OR RELATED TO AN UNLAWFUL EMPLOYMENT PRACTICE**  
28 **WITH REGARD TO DISCRIMINATION IN COMPENSATION THAT OCCURRED**  
29 **OUTSIDE THE TIME FOR FILING A COMPLAINT.**

30 ~~[(7)]~~ **(8)** In cases of discrimination other than those involving  
31 employment, in addition to the award of civil penalties as specifically provided in this  
32 article, nonmonetary relief may be granted to the complainant, except that in no event  
33 shall an order be issued that substantially affects the cost, level, or type of any  
34 transportation services.

35 ~~[(8)]~~ **(9)** In cases involving transportation services which are  
36 supported fully or partially with funds from the Maryland Department of  
37 Transportation, no order may be issued which would require costs, level, or type of

1 transportation services different from or in excess of those required to meet U.S.  
2 Department of Transportation regulations adopted pursuant to Section 504 of the  
3 Rehabilitation Act of 1973, codified as 29 U.S.C. § 794, nor would any such order be  
4 enforceable under § 12(a) of this subtitle.

5 11A.

6 (d) If the court finds that a discriminatory act took place, the court may  
7 provide the remedies specified in § 11(e)(3) through [(6)] (7) of this subtitle.

8 11B.

9 (E-1) IN ADDITION TO ANY OTHER RELIEF AUTHORIZED BY THIS SECTION,  
10 A COMPLAINANT MAY RECOVER BACK PAY FOR UP TO 2 YEARS PRECEDING THE  
11 FILING OF THE INITIAL COMPLAINT, WHERE THE UNLAWFUL EMPLOYMENT  
12 PRACTICE THAT HAS OCCURRED DURING THE COMPLAINT FILING PERIOD IS  
13 SIMILAR OR RELATED TO AN UNLAWFUL EMPLOYMENT PRACTICE WITH REGARD  
14 TO DISCRIMINATION IN COMPENSATION THAT OCCURRED OUTSIDE THE TIME  
15 FOR FILING A COMPLAINT.

16 16.

17 (F-1) (1) FOR PURPOSES OF THIS SECTION, AN UNLAWFUL  
18 EMPLOYMENT PRACTICE OCCURS, WITH RESPECT TO DISCRIMINATION IN  
19 COMPENSATION IN VIOLATION OF THIS SUBTITLE, WHEN:

20 (I) A DISCRIMINATORY COMPENSATION DECISION OR  
21 OTHER PRACTICE IS ADOPTED;

22 (II) AN INDIVIDUAL BECOMES SUBJECT TO A  
23 DISCRIMINATORY COMPENSATION DECISION OR OTHER PRACTICE; OR

24 (III) AN INDIVIDUAL IS AFFECTED BY APPLICATION OF A  
25 DISCRIMINATORY COMPENSATION DECISION OR OTHER PRACTICE, INCLUDING  
26 EACH TIME WAGES, BENEFITS, OR OTHER COMPENSATION IS PAID, RESULTING  
27 WHOLLY OR PARTLY FROM THE DISCRIMINATORY COMPENSATION DECISION OR  
28 OTHER PRACTICE.

29 (2) IN ADDITION TO ANY RELIEF AUTHORIZED BY THIS ARTICLE,  
30 LIABILITY MAY ACCRUE AND AN AGGRIEVED PERSON MAY OBTAIN RELIEF AS  
31 PROVIDED IN § 11(E) OF THIS ARTICLE, INCLUDING RECOVERY OF BACK PAY  
32 FOR UP TO 2 YEARS PRECEDING THE FILING OF THE COMPLAINT, WHERE THE  
33 UNLAWFUL EMPLOYMENT PRACTICE THAT HAS OCCURRED DURING THE  
34 COMPLAINT FILING PERIOD IS SIMILAR OR RELATED TO AN UNLAWFUL

1 **EMPLOYMENT PRACTICE WITH REGARD TO DISCRIMINATION IN COMPENSATION**  
2 **THAT OCCURRED OUTSIDE THE TIME FOR FILING A COMPLAINT.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the  
4 General Assembly that, with regard to any charges of discrimination under any law,  
5 nothing in this Act is intended to preclude or limit an aggrieved person's right to  
6 introduce evidence of unlawful employment practices that have occurred outside the  
7 time for filing a charge of discrimination.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all  
9 claims of discrimination in compensation under Article 49B of the Annotated Code of  
10 Maryland pending on or after October 1, 2008.

11 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2008.