

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 563

(Senator Raskin)

Judicial Proceedings

Health and Government Operations

Lilly Ledbetter Fair Pay Act of 2008

This bill expands the time period for which an employee may seek back pay in certain circumstances. Specifically, the bill authorizes the recovery of back pay for up to two years preceding the filing of a complaint for employment discrimination based on an unlawful employment practice that occurred outside the statute of limitations for filing a complaint, but was similar or related to an unlawful practice with regard to discrimination in compensation that occurred during the complaint filing period. The bill specifies that an unlawful employment practice with respect to discrimination in compensation occurs when (1) a discriminatory compensation decision or practice is adopted; (2) an individual becomes subject to a discriminatory compensation decision or practice; or (3) an individual is affected by the application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting wholly or partly from the discriminatory decision or practice.

Fiscal Summary

State Effect: None. The bill is not expected to materially impact resources of the Maryland Human Relations Commission.

Local Effect: None.

Small Business Effect: Potential meaningful. Small businesses held liable for employment discrimination may be subject to increased awards of back pay.

Analysis

Current Law: Individuals alleging employment discrimination may file a complaint with the Maryland Human Relations Commission. A complaint must be filed within six months from the date of the occurrence alleged to be a violation. On a finding of an unlawful employment practice, administrative remedies may include enjoining the respondent from engaging in the discriminatory act, the reinstatement or hiring of employees with or without back pay, and compensatory damages. Any back pay awarded is offset by any earnings or amounts earned with reasonable diligence by the aggrieved party.

A civil cause of action is also available in employment discrimination complaints. A complainant may elect to have the claims asserted in the complaint determined in a civil action brought by MHRC on the complainant's behalf if: (1) a complaint has been filed with MHRC; (2) the commission finds the respondent has engaged in, or is engaging in, a discriminatory act; and (3) the parties have failed to reach an agreement for the remedy and elimination of the discriminatory act.

A complainant may also file a civil action if the complainant initially filed a complaint or an administrative charge alleging discrimination under federal, State, or local law; and at least 180 days have elapsed since the filing of this complaint or charge. On a finding that the respondent has engaged in or is engaging in an unlawful employment practice, certain relief, including back pay, may be awarded. Back pay is offset by interim earnings or amounts earned with reasonable diligence by the aggrieved party.

Background: The bill's preamble indicates that it was introduced in response to the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, No. 05-1074 (May 29, 2007). Lilly Ledbetter began working for the Goodyear Tire & Rubber Company at its Alabama plant in 1979. Goodyear based its decisions regarding compensation on evaluations and recommendations regarding worker performance. Ledbetter filed formal charges with EEOC in July 1998. In November 1998, Ledbetter sued in federal District Court, claiming pay discrimination in violation of Title VII and the Equal Pay Act. Ledbetter claimed she had been evaluated unfairly based on her gender and as a result, had been paid less than her male colleagues throughout her employment.

When a jury found for Ledbetter and awarded back pay and damages, Goodyear appealed and argued that Ledbetter's pay discrimination claim was time barred for all pay decisions made prior to 180 days before Ledbetter filed her EEOC questionnaire alleging sex discrimination. The Supreme Court held that a complainant in a Title VII action must allege actual discriminatory intent that occurred within the applicable charging period.

Because Ledbetter based her complaint on discriminatory acts that occurred long before she initiated her complaint with EEOC, she was not entitled to relief.

Additional Information

Prior Introductions: None.

Cross File: HB 439 (Delegate Rosenberg, *et al.*) – Health and Government Operations.

Information Source(s): Human Relations Commission, Department of Legislative Services

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