

HOUSE BILL 288

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9lr0722
CF 9lr0723

By: **Delegates Rosenberg, Mizeur, and Pena-Melnyk**

Introduced and read first time: January 29, 2009

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Lilly Ledbetter Fair Pay Restoration Act of 2009**

3 FOR the purpose of clarifying that a certain unlawful employment practice occurs
4 when a certain decision or practice is adopted, when an individual becomes
5 subject to a certain decision or practice, or when an individual is affected by
6 application of a certain decision or practice, including each time certain
7 compensation is paid under a discriminatory compensation decision or practice;
8 authorizing the recovery of certain back pay where a certain unlawful
9 employment practice is similar or related to a certain other unlawful
10 employment practice; declaring the intent of the General Assembly; providing
11 for the application of this Act; providing that a certain Supreme Court ruling is
12 not to be applied to any cases brought under certain provisions of law; and
13 generally relating to unlawful discriminatory compensation practices.

14 BY adding to
15 Article – State Government
16 Section 20–607 and 20–1009(b)(5)
17 Annotated Code of Maryland
18 (2004 Replacement Volume and 2008 Supplement)
19 (As enacted by Chapter ____ (H.B. 51) of the Acts of the General Assembly of
20 2009)

21 BY repealing and reenacting, with amendments,
22 Article – State Government
23 Section 20–607 and 20–608
24 Annotated Code of Maryland
25 (2004 Replacement Volume and 2008 Supplement)
26 (As enacted by Chapter ____ (H.B. 51) of the Acts of the General Assembly of
27 2009)

28 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Government

Section 20–1012(b) and 20–1013(d)

Annotated Code of Maryland

(2004 Replacement Volume and 2008 Supplement)

(As enacted by Chapter ____ (H.B. 51) of the Acts of the General Assembly of
2009)

Preamble

WHEREAS, The decision of the Supreme Court in Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007), significantly impairs statutory protections against discrimination in compensation that have been bedrock principles of fair employment law for decades; and

WHEREAS, 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; and

WHEREAS, 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 fair employment law; and

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

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

Article – State Government

20–607.

(A) FOR PURPOSES OF THIS SUBTITLE, AN UNLAWFUL EMPLOYMENT PRACTICE OCCURS, WITH RESPECT TO DISCRIMINATION IN COMPENSATION IN VIOLATION OF THIS SUBTITLE, WHEN:

(1) A DISCRIMINATORY COMPENSATION DECISION OR OTHER PRACTICE IS ADOPTED;

(2) AN INDIVIDUAL BECOMES SUBJECT TO A DISCRIMINATORY COMPENSATION DECISION OR OTHER PRACTICE; OR

(3) 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

1 WHOLLY OR PARTLY FROM THE DISCRIMINATORY COMPENSATION DECISION OR
2 OTHER PRACTICE.

3 (B) IN ADDITION TO ANY RELIEF AUTHORIZED BY THIS TITLE, LIABILITY
4 MAY ACCRUE AND AN AGGRIEVED PERSON MAY OBTAIN RELIEF AS PROVIDED IN
5 § 20-1009 OF THIS TITLE, INCLUDING RECOVERY OF BACK PAY FOR UP TO 2
6 YEARS PRECEDING THE FILING OF THE COMPLAINT, WHERE THE UNLAWFUL
7 EMPLOYMENT PRACTICE THAT HAS OCCURRED DURING THE COMPLAINT FILING
8 PERIOD IS SIMILAR OR RELATED TO AN UNLAWFUL EMPLOYMENT PRACTICE
9 WITH REGARD TO DISCRIMINATION IN COMPENSATION THAT OCCURRED
10 OUTSIDE THE TIME FOR FILING A COMPLAINT.

11 [20-607.] 20-608.

12 An employer shall be immune from liability under this title or under the
13 common law arising out of reasonable acts taken by the employer to verify the sexual
14 orientation of any employee or applicant in response to a charge filed against the
15 employer on the basis of sexual orientation.

16 [20-608.] 20-609.

17 (a) Disabilities caused or contributed to by pregnancy or childbirth:

18 (1) are temporary disabilities for all job-related purposes; and

19 (2) shall be treated as temporary disabilities under any health or
20 temporary disability insurance or sick leave plan available in connection with
21 employment.

22 (b) Written and unwritten employment policies and practices involving
23 matters such as the commencement and duration of leave, the availability of
24 extensions of leave, the accrual of seniority and other benefits and privileges,
25 reinstatement, and payment under any health or temporary disability insurance or
26 sick leave plan, formal or informal, shall be applied to disability due to pregnancy or
27 childbirth on the same terms and conditions as they are applied to other temporary
28 disabilities.

29 20-1009.

30 (b) (5) IN ADDITION TO ANY OTHER RELIEF AUTHORIZED BY THIS
31 SUBSECTION, A COMPLAINANT MAY RECOVER BACK PAY FOR UP TO 2 YEARS
32 PRECEDING THE FILING OF THE COMPLAINT, WHERE THE UNLAWFUL
33 EMPLOYMENT PRACTICE THAT HAS OCCURRED DURING THE COMPLAINT FILING
34 PERIOD IS SIMILAR OR RELATED TO AN UNLAWFUL EMPLOYMENT PRACTICE
35 WITH REGARD TO DISCRIMINATION IN COMPENSATION THAT OCCURRED
36 OUTSIDE THE TIME FOR FILING A COMPLAINT.

1 20-1012.

2 (b) If the court finds that a discriminatory act occurred, the court may
3 provide the remedies specified in § 20-1009(b) of this subtitle.

4 20-1013.

5 (d) If the court finds that a discriminatory act occurred, the court may
6 provide the remedies specified in § 20-1009(b) of this subtitle.

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

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all
13 claims of discrimination in compensation under Title 20 of the State Government
14 Article or under Article 49B of the Annotated Code of Maryland pending on or after
15 October 1, 2009.

16 SECTION 4. AND BE IT FURTHER ENACTED, That the decision of the
17 Supreme Court in Ledbetter v. Goodyear Tire & Rubber, 550 U.S. 618 (2007), that an
18 action regarding current discriminatory pay disparity is barred by the statute of
19 limitations under federal law if the original decisions that gave rise to the disparity
20 occurred outside the limitations period, is not to be applied to any cases brought under
21 Title 20, Subtitles 3 through 11 of the State Government Article of the Annotated Code
22 of Maryland.

23 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2009.