

SENATE BILL 368

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CF HB 288

By: **Senators Raskin, Brochin, Frosh, Gladden, Harrington, King, Klausmeier, Kramer, Lenett, Madaleno, Muse, Peters, Pugh, Robey, Rosapepe, and Zirkin**

Introduced and read first time: January 30, 2009
Assigned to: Judicial Proceedings

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)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
 2 Article – State Government
 3 Section 20–1012(b) and 20–1013(d)
 4 Annotated Code of Maryland
 5 (2004 Replacement Volume and 2008 Supplement)
 6 (As enacted by Chapter ____ (H.B. 51) of the Acts of the General Assembly of
 7 2009)

8 Preamble

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

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

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

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

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

24 **Article – State Government**

25 **20–607.**

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

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

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

33 **(3) AN INDIVIDUAL IS AFFECTED BY APPLICATION OF A**
 34 **DISCRIMINATORY COMPENSATION DECISION OR OTHER PRACTICE, INCLUDING**

1 EACH TIME WAGES, BENEFITS, OR OTHER COMPENSATION IS PAID, RESULTING
2 WHOLLY OR PARTLY FROM THE DISCRIMINATORY COMPENSATION DECISION OR
3 OTHER PRACTICE.

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

12 [20-607.] 20-608.

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

17 [20-608.] 20-609.

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

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

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

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

30 20-1009.

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

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

3 20–1012.

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

6 20–1013.

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

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

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

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

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