

SENATE BILL 368

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9lr0723
CF HB 288

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

Introduced and read first time: January 30, 2009

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 12, 2009

CHAPTER _____

1 AN ACT concerning

2 **Lilly Ledbetter ~~Fair Pay~~ Civil Rights 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 pending~~
13 ~~on or after a certain date;~~ and generally relating to unlawful discriminatory
14 compensation practices.

15 BY adding to

16 Article – State Government

17 Section 20–607 and 20–1009(b)(5)

18 Annotated Code of Maryland

19 (2004 Replacement Volume and 2008 Supplement)

20 (As enacted by Chapter ____ (H.B. 51) of the Acts of the General Assembly of
21 2009)

22 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – State Government
 2 Section 20–607 and 20–608
 3 Annotated Code of Maryland
 4 (2004 Replacement Volume and 2008 Supplement)
 5 (As enacted by Chapter ____ (H.B. 51) of the Acts of the General Assembly of
 6 2009)

7 BY repealing and reenacting, without amendments,
 8 Article – State Government
 9 Section 20–1012(b) and 20–1013(d)
 10 Annotated Code of Maryland
 11 (2004 Replacement Volume and 2008 Supplement)
 12 (As enacted by Chapter ____ (H.B. 51) of the Acts of the General Assembly of
 13 2009)

14 **Preamble**

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

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

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

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

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

30 **Article – State Government**

31 **20–607.**

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

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

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

3 (3) AN INDIVIDUAL IS AFFECTED BY APPLICATION OF A
4 DISCRIMINATORY COMPENSATION DECISION OR OTHER PRACTICE, INCLUDING
5 EACH TIME WAGES, BENEFITS, OR OTHER COMPENSATION IS PAID, RESULTING
6 WHOLLY OR PARTLY FROM THE DISCRIMINATORY COMPENSATION DECISION OR
7 OTHER PRACTICE.

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

16 [20-607.] **20-608.**

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

21 [20-608.] **20-609.**

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

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

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

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

34 20-1009.

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

8 20-1012.

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

11 20-1013.

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

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

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

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

30 SECTION ~~5~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
31 effect October 1, 2009.