

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 368

(Senator Raskin, *et al.*)

Judicial Proceedings

Health and Government Operations

Lilly Ledbetter Civil Rights Restoration Act of 2009

This bill expands the time period for which an employee may seek relief for an unlawful employment practice 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. Any potential increase in the workload for the Judiciary or the Maryland Commission on Human Relations can be absorbed within existing budgeted resources.

Local Effect: Any potential increase in the workload of the circuit courts can be absorbed within existing budgeted resources.

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

Analysis

Current Law: Individuals alleging employment discrimination may file a complaint with the Maryland Commission on Human Relations (MCHR). A complaint must be filed within six months from the date the alleged violation occurred. 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, compensatory damages, and any other appropriate equitable relief. Any back pay awarded is offset by any earnings or amounts that may be earned with reasonable diligence by the aggrieved party. (*See* State Government Article §§ 20-1004 and 20-1009.)

A civil cause of action is also available in employment discrimination complaints. A complainant or respondent may elect to have the claims asserted in the complaint determined in a civil action brought by MCHR on the complainant's behalf if: (1) a complaint has been filed with MCHR; (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. (*See* State Government Article § 20-1007.)

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, specified relief, including back pay, may be awarded. Back pay is offset by interim earnings or amounts that may be earned with reasonable diligence by the aggrieved party. (*See* State Government Article § 20-1013.)

Background: 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 alleging discrimination 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 in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), 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.

On January 30, 2009, President Obama chose the Lilly Ledbetter Fair Pay Act as the first bill he signed as President. The Act makes clear that each discriminatory paycheck is a new act of discrimination that resets the 180-day limit to file a claim.

Additional Comments: The current law citations are consistent with HB 51 of 2009 which revises, restates, and recodifies the laws of the State that relate to discrimination by adding a new title to the State Government Article to be designated and known as "Title 20. Human Relations."

Additional Information

Prior Introductions: SB 563 of 2008 passed the Senate and was heard in the House Health and Government Operations Committee but was withdrawn. Its cross file, HB 439, received an unfavorable report from the Health and Government Operations Committee.

Cross File: HB 288 (Delegate Rosenberg, *et al.*) - Health and Government Operations.

Information Source(s): Human Relations Commission, Judiciary (Administrative Office of the Courts), National Women's Law Center, Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2009
mlm/kdm Revised - Senate Third Reader - March 24, 2009

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510