The Lilly Ledbetter Fair Pay Act of 2009: What You Need to Know

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In 2009, Congress passed the Lilly Ledbetter Fair Pay Act in response the United States Supreme Court’s opinion in the case Ledbetter v. Goodyear Tire & Rubber Co., Inc. The act has broad-ranging implications for employers, including Community Action Agencies (CAAs).

Background
For 21 years, Lilly Ledbetter worked as a supervisor at a Goodyear plant in Alabama. During that time, she was paid significantly less than any of her male colleagues. Shortly before taking early retirement, Ledbetter submitted a questionnaire to the Equal Employment Opportunity Commission (EEOC) alleging certain acts of sex discrimination and filed a formal EEOC charge. After taking early retirement, Ledbetter filed a lawsuit with the federal district court in which she asserted, among other claims, a pay discrimination claim under Title VII of the Civil Rights Act of 1964 (Title VII) and a claim under the Equal Pay Act of 1963 (EPA). The basis for Ledbetter’s claims was that poor performance evaluations she had received earlier in her tenure with Goodyear were based on sex discrimination and resulted in her consistently receiving lower pay than her male colleagues through the end of her career.

In May 2007, in a 5-4 majority opinion, the United States Supreme Court sided with Goodyear, holding that Ledbetter’s claim was time barred because it was not filed within the deadline set by Title VII. The Court held that the mere act of issuing a paycheck did not constitute a separate chargeable violation, even if that paycheck gave present effect to past instances of discrimination such as the gender based poor performance evaluations. The current paychecks could not “breathe life into prior, uncharged discrimination.” According to the Court, Ledbetter needed to file her claims within 180 or 300 days (depending on the state) of the initial discriminatory actions. In a passionate dissent, Justice Ginsburg implored Congress to pass a bill that would reverse the majority’s opinion.

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Though immediate congressional action was thwarted by President Bush’s veto, the 2008 Democrat-controlled Congress quickly revived the opposition to the Court’s Ledbetter decision and President Obama signed the Lilly Ledbetter Fair Pay Act (LLFPA) into law on January 29, 2009. The new law, in effect overturned Supreme Court’s decision, expanding the definition of an unlawful employment practice to include situations not only when a discriminatory pay policy is adopted, but also to cases “when an individual becomes subject to such a policy, or when an individual is affected by application of
a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid.” Thus, for instance, each time an employee receives a paycheck reflecting an unlawful discriminatory policy regardless of when that policy was first established, the 180- or 300-day period within which the complainant must file a claim begins to run anew.

Although the Ledbetter case was based on a sex discrimination claim, the LLFPA applies equally to compensation discrimination claims based on race, color, religion, or national origin, as well as to those filed under the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act of 1973. The LLFPA is retroactive to May 28, 2007, the day before the Supreme Court issued its decision in Ledbetter. Therefore, the LLFPA applies to cases still pending a final ruling that had been filed the day before the Court’s ruling. Employee recovery of back pay in a successful suit, however, is limited to the two-year period preceding the discrimination charge.

**Implications for Community Action Agencies**

The LLFPA mainly affects human resources procedures and policies relating to record retention and employee compensation. Steps CAAs should consider taking to ensure compliance with the LLFPA are:

- Implement policies and procedures for documenting reasons for compensation decisions.
- Retain indefinitely documents and data supporting compensation decisions (i.e. payroll records, performance reviews, promotions, etc.).
- Implement a policy to regularly analyze current and past compensation data and decisions to unearth potential problems and develop future solution.
- Ensure demonstrable business reasons exist for any disparities in compensation, especially among similar positions.
- Work with a local attorney knowledgeable in state and federal employment law matters and consult with your state’s department of labor to ensure compliance with state laws that may govern record retention periods.
- Digitize all records to alleviate the practical burdens of maintaining paper files.
- Evaluate the concentration of authority and range of discretion granted to managers when determining compensation rates for subordinates.
- Implement managerial training and education to underscore the importance of objectively determining compensation policies and of maintaining records.

In short, to comply with the LLFPA, CAAs must be especially vigilant in identifying and stamping out unlawful discriminatory compensation policies and prudent in adopting sound record retention procedures to bolster their defense in the event of a discrimination lawsuit.

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7. 123 Stat 5 (emphasis added) (amending Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-5(e))).

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