New "Fair Pay" Law May Not Be Fair at All

Publication
1.26.09

Sometimes good titles (and intentions) make bad law. Here's a case in point. A bill that has passed the U.S. House of Representatives and was expected to pass the Senate this week has been called "The Ledbetter Fair Pay Act." It is also sometimes referred to as the "Fair Pay Restoration Act." Both versions of this legislation (House and Senate) involved the same basic objective - to allow claims of discriminatory pay practices to linger almost indefinitely, even though the underlying employer decision about pay rate may have taken place decades earlier.

The Ledbetter case stands for the proposition that in pay discrimination cases, "pay-setting" is the 'discrete act' that triggers the statute of limitations. This means that even though an employee may later receive paychecks that have been affected by discrimination, the countdown for commencing legal action begins when the employee first learns about the unlawful pay decision or practice. But the proposed new "fair pay" law would radically change this approach, and conceivably make each paycheck the start of a new limitations period and potential lawsuit.

This article appeared in the January 26, 2009 issue of the *Dallas Business Journal*.

Related People

Michael V. Abcarian
Regional Managing Partner
214.220.8300
Email

Email