

LEDBETTER ACT MAKES OLD CLAIMS NEW AGAIN - WHAT'S AN EMPLOYER TO DO?

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The Lilly Ledbetter Fair Pay (the Act) specifically amends and applies to Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Each time an individual receives wages, benefits or other compensation, if discrimination results from a past discriminatory decision or practice, discrimination occurs at that time without regard to how long ago the decision or practice began. There are many criticisms of the Act, but they largely consist of due process and unfairness claims because employers may already have destroyed records they never knew they would need regarding employment decisions made long ago.

The controversial retroactive applications of the amendments will be tested because courts are dealing with claims previously dismissed in addition to those currently pending. Courts are just now beginning to address the potential impact of the amendments, what types of claims are permitted, and whether the law may apply to Section 1981 claims.

As we continue to watch what the courts will do with the new amendments, there are two things employers can do to address the new statute of limitation under the Act. Employers should be more aware of past issues being newly raised now, even if they have been dealt with in the past; and they should change records retention policies to maintain any and all records relating to pay (performance appraisals, consideration for training, promotions, etc.). Employment lawyers must modify their client compliance

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strategies in response to the Act. More careful analysis, examination of past practices, and attention to claims previously thought to have been "dead and gone" are now important steps to take to help clients be in a position to defend against claims under the Act.

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