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LILY LEDBETTER FAIR PAY ACT

The first bill signed into law by President Obama was the Lily Ledbetter Fair Pay Act, which overrules a controversial 5-4 decision by the Supreme Court, Ledbetter v. Goodyear Tire & Rubber Co., Inc., issued in 2007.

Lily Ledbetter began working for Goodyear in 1979. In March 1998, she received an anonymous note which led to her discovery that she was earning significantly less than her male colleagues. She initiated a questionnaire with the EEOC in March 1998, and sued Goodyear following her early retirement in November 2008, alleging, violations of Title VII and the Equal Pay Act. Ms. Ledbetter asserted that her pay had been kept lower than male counterparts because several supervisors had in the past given her poor evaluations because of her sex. As a result, her pay had not increased as much as it would have if she had been evaluated fairly. Those intentionally discriminatory evaluations had kept her pay lower than male counterparts throughout her career at Goodyear. The crux of Ms. Ledbetter's claim was that each paycheck paying her less than male counterparts constituted an act of discrimination.

Discriminatory Intent

The jury found in favor of Ms. Ledbetter. Goodyear appealed, arguing that all claims for damages before September 26, 1997 (180 days before Ms. Ledbetter began the administrative process in March 2008) were void because of the statute of limitations. There was no evidence of discriminatory intent during that period. The Eleventh Circuit reversed, finding in favor of Goodyear, and the Supreme Court affirmed, holding essentially that an employee must file her charge within 180 days of an employer's initial decision to pay her less than a male employee. That is, Ms. Ledbetter needed to file her charge within 180 days of the intentionally discriminatory evaluations.

Unlawful Employment Practices

The Lily Ledbetter Fair Pay Act amends both the Title VII and the Age Discrimination in Employment Act and modifies the operation of the Americans with Disabilities Act and the Rehabilitation Act of 1973. The Act provides that in cases involving discrimination in compensation, under Title VII or

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the ADEA, an unlawful employment practice (which would trigger the running of the statute of limitations) occurs (1) when a discriminatory compensation decision or other practice is adopted; (2) when an individual becomes subject to a discriminatory compensation decision or other practice; or (3) 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, resulting in whole or in part from such a decision or other practice."

The Act further provides that in addition to the damages recoverable under the Civil Rights Act of 1991, 42 U.S.C. § 1981a, Title VII claimants may recover back pay for up to two years preceding the filing of the charge, "where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge."

The provisions of the new statute are also extended to compensation claims under the Americans with Disabilities Act and the Rehabilitation Act of 1973.

Employers must now be made aware that discriminatory compensation decisions made in the past which have a continuing effect on one or more employees today could now give rise to a sustainable claim of discrimination.

HEALTH SAVINGS, SPENDING & REIMBURSEMENT PROGRAMS COMPARISON

Health Savings Accounts (HSA)

A tax-exempt trust or custodial account that you set up in conjunction with a HSA eligible plan to pay or reimburse certain medical expenses you incur.

- Unused funds remain available for use in later years
- The interest or other earnings on the assets in the account are tax free
- Portable
- Owned by the employee
- The employee, employer or any third party can contribute

Health Reimbursement Arrangement (HRA)

An employer-funded arrangement used to reimburse employees for qualified medical expenses

- Must be funded solely by the employer
- The employer controls the account
- Employees are reimbursed tax-free for qualified medical expenses

- Reimbursements of qualified claims are tax-deductible for the employer
- Not portable

Medical Savings Account (MSA)

An account created to help self-employed individuals and employees of certain small employers meet the medical care costs of the account holder, and family.

- Account designed for employers with 50 or fewer employees
- The employee or the employer can contribute, but not both
- Portable

Health Flexible Spending Arrangements (FSA)

An arrangement that allows an employee to set aside a portion of his or her earnings to pay for qualified medical expenses.

- Account can only be established by the employer
- FSAs are subject to an end-of-the-year "use it or lose it" requirement that limits their ability to protect against unexpected out-of-pocket medical expenses
- Not portable

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SALARY EXEMPT IN SOUTH CAROLINA

According to Department of Labor statistics, more than 70% of employers are not in compliance with the Fair Labor Standards Act (FLSA) in regards to classifications of employees.

Employees who work more than 40 hours in one week are entitled by federal law to be paid overtime. The federal law is the Fair Labor Standards Act (FLSA) and requires the overtime be paid at 1.5 times the employee's usual hourly rate.

FLSA also states that some categories of employees are exempt from overtime. Salaried employees are one of these categories. Employers, then, are often surprised to find that some salaried employees may be entitled to overtime pay.

FLSA separates salaried employees into salaried exempt (not eligible for overtime) and salaried non-exempt (entitled to overtime pay.) For an employee to be considered exempt, several factors have to be considered, including salary and

job duties. Employers can follow the following basic guidelines to determine which salaried employees are exempt.

- Only employees who make at least \$455 per week can be exempt from overtime pay. Workers who earn less than that, regardless of job function, must be paid overtime pay.
- Under federal law, professionals with advanced degrees, computer employees, executives, outside salespeople, highly paid employees and administrative employees are allowed to be exempt from overtime pay. These categories, however, require some further definition.
- A professional is someone with advanced knowledge, such as doctors or pharmacists. Creative professionals (artists and sculptors) are also exempt.
- An executive is an employee who manages two or more workers. Computer employees who are exempt are highly paid, including computer programmers, software engineers and system analysts.
- An administrative employee can be classified as overtime exempt only if he or she is in a position to use individual judgment in major company decisions. An employee who chooses which designers a clothing store buys from would be salaried exempt. The employee who places those orders via phone calls would be salaried non-exempt, and be entitled to overtime wages.

For additional assistance or an audit of your pay classifications contact Amanda Cannon in our Human Resources Department for assistance.

NEW SERVICES FOR OUR CLIENTS

Don't forget about our recently added benefits for our valued clients! Listed below are just some of the highlights associated with our new programs:

Employee Access Information System:

We will administer an online network that will allow your employees access to their personal payroll records, benefits information, and company policies.

Human Resources & Benefits Library:

This will present our clients with a web based library that delivers comprehensive information in relation to human resources, benefits, and business news 24 hours a day, 7 days a week.

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in the next few weeks. We will provide you with more information in the near future.



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