

Employer Liability Expansion

State-Level Proposals Unreasonably Expand Liability

Summary

Background

In a controversial 2007 U.S. Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co.*, the court held that the statute of limitations for federal civil rights actions under Title VII of the Civil Rights Act (for example, an annual raise decision) is not renewed each time an affected paycheck is issued. Lilly Ledbetter, the plaintiff, alleged gender discrimination acts that were more than a decade old had resulted in many years of significantly lower pay than her male colleagues, unbeknownst to her. The court affirmed that Ledbetter's claim was untimely and should be dismissed, since the only alleged discriminatory acts within the 180-day statute of limitations window were the issuance of her paycheck.

Federal/State Policy

The *Ledbetter* decision applied to Title VII, the federal-level workplace discrimination law, under which the statute of limitations for workplace discrimination claims is six months from time of the discriminatory act. The California equivalent is the Fair Employment and Housing Act (FEHA), under which the statute of limitations is one year and 90 additional days if the delay is due to lack of knowledge. The question of whether mere paycheck issuance is a discriminatory act sufficient to renew the statute of limitations has not been addressed in statute or by the California Supreme Court. However, California courts have developed doctrines, such as the continuing violations doctrine, which allow late claims in certain cases.

Both the California and federal Equal Pay Acts, which outlaw gender discrimination in pay decisions, allow for a two-year statute of limitations for non-willful acts and/or three years if willful.

Recent Legislation

In 2008, Governor Arnold Schwarzenegger vetoed California Chamber of Commerce-opposed AB 437 (Jones; D-Sacramento), which made a sweeping statement that California was rejecting the *Ledbetter* decision, on the basis that it would lead to unnecessary litigation.

In January 2009, President Barack Obama signed the Lilly Ledbetter Fair Pay Act, which overturned the U.S. Supreme Court's *Ledbetter* decision and established that the deadline for bringing pay discrimination claims under federal law is renewed every time the employee receives an "affected" paycheck or benefits. Federal law limits pay damages recovery to two years.

By contrast, state legislation introduced in February 2009, AB 793 (Jones; D-Sacramento), established that an "affected" paycheck or benefits renew the statute of limitations, but failed to also apply the two-year backpay damages limit. This means California employers would be subject to virtually unlimited pay damages, potentially spanning an employee's career and retirement years. It also violates the fairness principles behind statutes of limitation, which recognize that with the passage of time, memories fade, evidence disappears and witnesses are no longer available.

A large CalChamber-led business community coalition aggressively opposed the measure on this basis. The author rejected CalChamber-proposed amendments that would have addressed the unreasonable damages provision. The Legislature passed AB 793, but the Governor vetoed it on the basis that it could pose unreasonable and unlimited liability for California employers.

CalChamber Position

- If California codifies the federal Ledbetter Act, it should also conform to federal damages limits rather than imposing new, unlimited damages exposure on California employers.
- No change to California law is needed in response to the *Ledbetter* court decision, which had an impact only on federal law and was in any event overturned by Congress.

Reason for Position

Unlimited liability exposure would be catastrophic for both private and public sector California employers. This would kill jobs as well as have an adverse impact on California's standing nationally and globally as a place in which companies should invest and do business.

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