

## GROWING & STRENGTHENING AMERICA'S MIDDLE CLASS

**VOTE YES ON H.R. 2831:  
THE LILLY LEDBETTER FAIR PAY  
ACT OF 2007**



*Lilly Ledbetter testifies before the Education & Labor Committee in June.*

**110<sup>TH</sup> CONGRESS**

**THE HONORABLE GEORGE MILLER  
CHAIRMAN  
COMMITTEE ON EDUCATION AND LABOR  
UNITED STATES HOUSE OF REPRESENTATIVES**

**July 2007**

## ***Lilly Ledbetter Fair Pay Act of 2007***

- ✓ Restores employee rights to challenge pay discrimination.
- ✓ A narrow fix to reverse *Ledbetter* and restore prior law.

On May 29, 2007, in its 5-4 *Ledbetter v. Goodyear* decision, the Supreme Court severely restricted the rights of employees to challenge unlawful pay discrimination. Under the *Ledbetter* ruling, if an employee does not file a claim within 180 days of her employer's *decision* to pay her less, she is barred forever from challenging the discriminatory paychecks that follow. The discrimination is immunized. **And the employee must live with discriminatory pay for the rest of her career.** (Note: Under certain circumstances in some jurisdictions, the statute of limitations is 300, not 180, days for discrimination claims.)

Under the law before *Ledbetter*, every discriminatory paycheck was a new violation that restarted the clock for filing a claim. H.R. 2831 restores that rule.



*Ledbetter speaks at a June press conference.*

## **The Ledbetter v. Goodyear Decision**

Supervisor Lilly Ledbetter worked for Goodyear for more than 19 years. She experienced sexism on the job. A supervisor, for example, told her that “the plant did not need women, that [women] didn’t help it, [and] caused problems.” But she did not know that such animus extended to her pay until 1998, when someone anonymously left a paper in her mailbox showing her what she was being paid compared to her male counterparts. Her supervisor salary was 20 percent lower than that of the lowest-paid male supervisor. She immediately filed an EEOC claim under Title VII.

**A jury found that Goodyear had intentionally discriminated against her in pay and awarded her \$3.8 million in back pay and damages, which was reduced to \$360,000 because of caps on Title VII damages.**

The Supreme Court reversed the decision, 5-4. The majority, led by Alito, found that while Ledbetter may have filed a charge within 180 days of receiving a discriminatory paycheck, she did not file within 180 days of Goodyear’s *decision* to pay her less. The Court rejected prior case law holding that every discriminatory paycheck is a new violation and dismissed her case. Despite the pay discrimination found by a jury, **Ledbetter had no remedy.**

In her dissent, Justice Ginsburg said the majority “**does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination.**” She explained that the majority’s rule makes discriminatory pay decisions “*a fait accompli* beyond the province of Title VII ever to repair.” The majority ignored precedent, congressional intent, and the realities of the workplace. She called on Congress to reverse the ruling legislatively.

*H.R. 2831 does precisely that.*

## **Supreme Court Decision Guts the Law Against Pay Discrimination**

After *Ledbetter*, to have the right to challenge pay discrimination an employee must file her charge within 180 days of the *decision* to pay her less. This requirement ignores the realities of the workplace. **As Ledbetter experienced, it is very difficult to discover pay discrimination:**

- ✘ One-third of employers have adopted specific rules prohibiting employees from discussing their pay with their coworkers.
- ✘ Even where employees are permitted to discuss pay, social norms of the workplace keep employees from asking or answering questions from each other about their pay.
- ✘ Discriminatory pay compounds over time and may become readily apparent only long after the initial decision to discriminate was made.

Given how difficult it is for an employee to eventually discern pay discrimination, by narrowing the window for a timely claim, **the Supreme Court has rendered civil rights law on pay virtually unenforceable.**

## **Supreme Court Decision Creates All the Wrong Incentives**

### **Bad Incentives for the Employer:**

**Before the *Ledbetter* decision**, when any discriminatory paycheck was subject to challenge, employers had an incentive to review their payrolls and pay structures and correct discrimination.

**After the *Ledbetter* decision**, employers have an incentive to simply keep discriminatory pay decisions hidden for 180 days and then never correct them. Once 180 days has elapsed since the decision, the employer can continue paying discriminatory wages to the employee for the rest of her career and reap the economic benefit of not paying certain employees as much as he should.

### **Bad Incentives for the Employee:**

**Before the *Ledbetter* decision**, when employees could file a charge after any discriminatory paycheck, employees could attempt to figure out whether their suspicions of discrimination were justified before jumping the gun and filing a charge of discrimination. When they had sufficient evidence, they could approach the employer and attempt to resolve their complaint informally.

**After the *Ledbetter* decision**, because employees can be fired for complaining to their employer about discrimination without sufficient evidence, employees now have an incentive to immediately file a charge with the EEOC after every pay decision, simply to preserve their rights to challenge discrimination. The law was intended to encourage informal conciliation between employers and employees. The *Ledbetter* decision encourages immediate filings, sparking more conflict and litigation.

## **H.R. 2831 Is a Narrow Fix to Ledbetter v. Goodyear**

Under H.R. 2831, every paycheck or other compensation resulting, in whole or in part, from an earlier discriminatory pay decision or other practice would constitute a violation of Title VII, which guards against discrimination on the basis of race, sex, color, national origin, and religion.

**In other words, each discriminatory paycheck would restart the clock for filing a charge. As long as workers file their charges within 180 days (or 300 days in some jurisdictions) of a discriminatory paycheck, their charges will be considered timely.**

Since the *Ledbetter* decision can impact pay discrimination claims under other statutes, H.R. 2831 ensures that these simple reforms extend to the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act to provide the same protections for victims of age and disability discrimination.



*Ledbetter, Chairman George Miller, and Rep. Robert Andrews*

**No one should ever be forced to work for discriminatory pay without recourse.**

## ***H.R. 2831 Restores Prior Law***

- ✓ Before *Ledbetter*, the law was clear in circuit after circuit: every discriminatory paycheck was a new violation of the law that restarted the clock for filing a claim. Only the 11<sup>th</sup> Circuit, in the *Ledbetter* appeal itself, strayed from this rule.
- ✓ The EEOC had adopted the rule that every discriminatory paycheck was a new violation of the law, using the rule in its own handbook on discrimination.
- ✓ Employers and employees had lived with and accepted this rule for years. While opponents of H.R. 2831 claim that the sky will fall if *Ledbetter* is reversed, the sky certainly had not fallen before *Ledbetter*.
- ✓ H.R. 2831 maintains the current 180/300 day statute of limitations. The clock will run out if the discriminatory pay stops – either because the employee left employment or the employer has started paying the employee fairly.
- ✓ H.R. 2831 creates no incentive for employees to sit on their rights. Title VII restricts back pay to just two years – the longer you wait to file, the less pay you will receive. H.R. 2831 does not change that. In the real world, employees subject to discrimination want and need their fair pay now – they have no reason to wait. In the odd case where an employee intentionally sits on her rights and files long after knowing she had a claim, the court can dismiss the case under the common law employer defense of laches.

## ***The Growing List of H.R. 2831 Supporters Includes:***

- ✓ Leadership Conference on Civil Rights
- ✓ NAACP Legal Defense Fund
- ✓ American Association of University Women
- ✓ AARP
- ✓ AFL-CIO
- ✓ Lawyers Committee for Civil Rights
- ✓ National Women's Law Center
- ✓ National Organization for Women
- ✓ National Partnership for Women and Families
- ✓ Feminist Majority
- ✓ People for the American Way
- ✓ Moms Rising
- ✓ American Civil Liberties Union
- ✓ National Employment Lawyers Association



***Rep. George Miller, CHAIRMAN  
Committee on Education and Labor***

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