



**Legislative Bulletin.....July 30, 2007**

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**H.R. 2831—Ledbetter Fair Pay Act**

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**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs: 0**

**Total Cost of Discretionary Authorizations: \$0**

**Effect on Revenue: \$0**

**Total Change in Mandatory Spending: \$0**

**Total New State & Local Government Mandates: 0**

**Total New Private Sector Mandates: 0**

**Number of *Bills* Without Committee Reports: 0**

**Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0**

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**H.R. 2831—Ledbetter Fair Pay Act (*Miller, D-CA*)**

**Order of Business:** The bill is scheduled to be considered on Monday, July 30<sup>th</sup>, subject to a closed rule ([H.Res. 579](#)), which waives all points of order against the consideration of the bill, except those regarding PAYGO and earmarks. The rule provides for one motion to recommit, with or without instructions, and allows the Speaker to postpone consideration of the bill at any time during debate.

**Background:** Lilly Ledbetter sued the Goodyear Company for nineteen years of alleged sex-based salary discrimination (a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e to 2000e-17). During her career at Goodyear in Alabama, in which Ledbetter worked at various positions, she was frequently given low ranks in her annual performance reviews and

consequently received lower raises and less pay than her male coworkers. Goodyear argued that 42 U.S.C. 2000e-5(e)(1) requires a person to file a wage-discrimination complaint with the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged illegal employment practice, which would make most of Ledbetter's nineteen year long claim inapplicable. According to Goodyear, the only employment decision that could properly be the focus of Ledbetter's complaint was the annual review that occurred within 180 days prior to her EEOC complaint.

The U.S. Court of Appeals (11<sup>th</sup> Circuit) agreed with Goodyear, holding that an employee's complaint can include only the last action that affected her salary within 180 days before the complaint.

On May 29, 2007, the Supreme Court of the United States concurred with the appeals court's opinion, ruling 5-4, in *Ledbetter v. Goodyear Tire & Rubber Co.* (No. 05-1074), that a plaintiff may only bring an action under Title VII of the Civil Rights Act of 1964 alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period (irrespective of whether the disparate pay is the alleged result of intentionally discriminatory pay decisions that occurred outside of the limitations period). In other words, an EEOC complaint cannot "reach back" to time periods outside the legal timeframe.

<http://www.law.duke.edu/publiclaw/supremecourtonline/certgrants/2006/ledvgoo.html>

To read the *Ledbetter* decision, visit this webpage:

<http://www.supremecourtus.gov/opinions/06pdf/05-1074.pdf>.

**Summary:** H.R. 2831 would negate the *Ledbetter* decision and change current law to allow wage-discrimination claims based on sex **PLUS** race, color, religion, or national origin "when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or 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.**" (emphasis added) This change would allow for EEOC complaints (and damages) for actions outside the statutory timeframe of 180 days.

In addition to any damages already allowed by law, H.R. 2831 would allow for the recovery of 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."

In other words, if H.R. 2831 had been in effect for the *Ledbetter* case, *Ledbetter* would have been able to have collected damages for 19 years of alleged discrimination *plus* two years of back-pay at a non-discriminatory level (which is presumably the highest pay level for someone doing related work to hers).

The bill would also apply this change in wage-discrimination claims to the respective laws regarding discrimination based on age, disability, and rehabilitation.

Note: This legislation would be deemed effective as of May 28, 2007—the day prior to the Ledbetter decision.

**RSC Bonus Fact:** The jury in district court initially awarded Ledbetter \$3,514,417 in total damages. <http://www.law.duke.edu/publiclaw/supremecourtonline/certgrants/2006/ledvgo.html>

**Committee Action:** On June 22, 2007, the bill was referred to the Education and Labor Committee, which, five days later, marked up and ordered the bill reported to the full House by a party-line vote of 25-20.

**Possible Conservative Concerns:** Some conservatives may be concerned, as the statement of minority views from the committee report notes, that H.R. 2831 “virtually eliminates the statute of limitations with respect to almost every claim of discrimination available under federal law, and potentially broadens the scope and application of civil rights laws to entirely new fact patterns, practices, and claims. It is no exaggeration to say that H.R. 2831 represents the most comprehensive revision to our nation’s civil rights laws to be given serious consideration by the Committee in almost two decades.” The committee Republicans further assert that the bill would “allow an employee--or any individual who can arguably claim to be ‘affected’ by an allegedly discriminatory decision relating to compensation, wages, benefits--or any other practice--to sue for discrimination that may have occurred years or even decades in the past.” Some conservatives may be seriously concerned about such a prospect.

Note this statement from the National Association of Manufacturers: “We do not believe removing incentives for prompt resolution of discrimination claims benefits the employee or the employer. Instead, alleged discrimination could go undetected for many years, subjecting an increasing number of employees to wrongful actions. At the same time, employers would be forced to defend against an avalanche of decades-old, frivolous claims. The anticipated increase in legal and recordkeeping costs could be staggering.”

Associated Builders and Contractors reports that, “the Equal Employment Opportunity Commission reported that it found reasonable cause in only 5.3% of the over 75,000 charges of discrimination that it received in FY2006 and found absolutely no cause for discrimination in over 60% of the charges (amounting to 45,500 “no cause” charges).” Conservatives may be concerned that H.R. 2831 would only increase these numbers in future years, since older claims are more subject to faded memories, missing documents, unfound witnesses, and businesses that have changed hands or no longer exist.

**Administration Position:** The Administration is opposed to H.R. 2831. As written in the Statement of Administration Policy (SAP) for the bill, “H.R. 2831 constitutes a major change in, and expanded application of, employment discrimination law. The change would serve to impede justice and undermine the important goal of having allegations of discrimination expeditiously resolved. Furthermore, the effective elimination of any statute of limitations in this area would be contrary to the centuries-old notion of a limitations period for all lawsuits. If H.R. 2831 were presented to the President, his senior advisors would recommend that he veto the bill.”

To read the complete SAP, visit this webpage:

<http://www.whitehouse.gov/omb/legislative/sap/110-1/hr2831sap-r.pdf>.

**Cost to Taxpayers:** CBO estimates that this bill “would not significantly increase costs to the EEOC or to the federal courts over the 2008-2012 period.”

**Does the Bill Expand the Size and Scope of the Federal Government?:** No, but the bill would significantly expand the application of current anti-wage-discrimination law.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The Education and Labor Committee, in [House Report 110-237](#), asserts that, “H.R. 2831 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.”

**Constitutional Authority:** The Education and Labor Committee, in [House Report 110-237](#), cites constitutional authority in the Equal Protection Clause (14<sup>th</sup> Amendment, Section 1), the Commerce Clause (Article I, Section 8, Clause 3), and the Due Process Clause (14<sup>th</sup> Amendment, Section 1).

**Outside Organizations:** The National Association of Manufactures and the Associated Builders and Contractors (ABC) issued statements in strong opposition to H.R. 2831. ABC has indicated that it may score this vote in its annual ratings of Congress.

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