

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 181

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## AN ACT

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Lilly Ledbetter Fair  
5 Pay Act of 2009”.

6 **SEC. 2. FINDINGS.**

7        Congress finds the following:

8            (1) The Supreme Court in *Ledbetter v. Good-*  
9 *year Tire & Rubber Co.*, 550 U.S. 618 (2007), sig-  
10 nificantly impairs statutory protections against dis-  
11 crimination in compensation that Congress estab-  
12 lished and that have been bedrock principles of  
13 American law for decades. The *Ledbetter* decision  
14 undermines those statutory protections by unduly re-  
15 stricting the time period in which victims of dis-  
16 crimination can challenge and recover for discrimi-  
17 natory compensation decisions or other practices,  
18 contrary to the intent of Congress.

19            (2) The limitation imposed by the Court on the  
20 filing of discriminatory compensation claims ignores  
21 the reality of wage discrimination and is at odds  
22 with the robust application of the civil rights laws  
23 that Congress intended.

24            (3) With regard to any charge of discrimination  
25 under any law, nothing in this Act is intended to

1 preclude or limit an aggrieved person’s right to in-  
2 troduce evidence of an unlawful employment practice  
3 that has occurred outside the time for filing a  
4 charge of discrimination.

5 (4) Nothing in this Act is intended to change  
6 current law treatment of when pension distributions  
7 are considered paid.

8 **SEC. 3. DISCRIMINATION IN COMPENSATION BECAUSE OF**  
9 **RACE, COLOR, RELIGION, SEX, OR NATIONAL**  
10 **ORIGIN.**

11 Section 706(e) of the Civil Rights Act of 1964 (42  
12 U.S.C. 2000e–5(e)) is amended by adding at the end the  
13 following:

14 “(3)(A) For purposes of this section, an unlawful em-  
15 ployment practice occurs, with respect to discrimination  
16 in compensation in violation of this title, when a discrimi-  
17 natory compensation decision or other practice is adopted,  
18 when an individual becomes subject to a discriminatory  
19 compensation decision or other practice, or when an indi-  
20 vidual is affected by application of a discriminatory com-  
21 pensation decision or other practice, including each time  
22 wages, benefits, or other compensation is paid, resulting  
23 in whole or in part from such a decision or other practice.

24 “(B) In addition to any relief authorized by section  
25 1977A of the Revised Statutes (42 U.S.C. 1981a), liability

1 may accrue and an aggrieved person may obtain relief as  
2 provided in subsection (g)(1), including recovery of back  
3 pay for up to two years preceding the filing of the charge,  
4 where the unlawful employment practices that have oc-  
5 curred during the charge filing period are similar or re-  
6 lated to unlawful employment practices with regard to dis-  
7 crimination in compensation that occurred outside the  
8 time for filing a charge.”.

9 **SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF**  
10 **AGE.**

11 Section 7(d) of the Age Discrimination in Employ-  
12 ment Act of 1967 (29 U.S.C. 626(d)) is amended—

13 (1) in the first sentence—

14 (A) by redesignating paragraphs (1) and  
15 (2) as subparagraphs (A) and (B), respectively;  
16 and

17 (B) by striking “(d)” and inserting  
18 “(d)(1)”;

19 (2) in the third sentence, by striking “Upon”  
20 and inserting the following:

21 “(2) Upon”; and

22 (3) by adding at the end the following:

23 “(3) For purposes of this section, an unlawful prac-  
24 tice occurs, with respect to discrimination in compensation  
25 in violation of this Act, when a discriminatory compensa-

1 tion decision or other practice is adopted, when a person  
2 becomes subject to a discriminatory compensation decision  
3 or other practice, or when a person is affected by applica-  
4 tion of a discriminatory compensation decision or other  
5 practice, including each time wages, benefits, or other  
6 compensation is paid, resulting in whole or in part from  
7 such a decision or other practice.”.

8 **SEC. 5. APPLICATION TO OTHER LAWS.**

9 (a) AMERICANS WITH DISABILITIES ACT OF 1990.—  
10 The amendments made by section 3 shall apply to claims  
11 of discrimination in compensation brought under title I  
12 and section 503 of the Americans with Disabilities Act of  
13 1990 (42 U.S.C. 12111 et seq., 12203), pursuant to sec-  
14 tion 107(a) of such Act (42 U.S.C. 12117(a)), which  
15 adopts the powers, remedies, and procedures set forth in  
16 section 706 of the Civil Rights Act of 1964 (42 U.S.C.  
17 2000e-5).

18 (b) REHABILITATION ACT OF 1973.—The amend-  
19 ments made by section 3 shall apply to claims of discrimi-  
20 nation in compensation brought under sections 501 and  
21 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791,  
22 794), pursuant to—

23 (1) sections 501(g) and 504(d) of such Act (29  
24 U.S.C. 791(g), 794(d)), respectively, which adopt  
25 the standards applied under title I of the Americans

1 with Disabilities Act of 1990 for determining wheth-  
2 er a violation has occurred in a complaint alleging  
3 employment discrimination; and

4 (2) paragraphs (1) and (2) of section 505(a) of  
5 such Act (29 U.S.C. 794a(a)) (as amended by sub-  
6 section (c)).

7 (c) CONFORMING AMENDMENTS.—

8 (1) REHABILITATION ACT OF 1973.—Section  
9 505(a) of the Rehabilitation Act of 1973 (29 U.S.C.  
10 794a(a)) is amended—

11 (A) in paragraph (1), by inserting after  
12 “(42 U.S.C. 2000e–5 (f) through (k))” the fol-  
13 lowing: “(and the application of section  
14 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims  
15 of discrimination in compensation)”; and

16 (B) in paragraph (2), by inserting after  
17 “1964” the following: “(42 U.S.C. 2000d et  
18 seq.) (and in subsection (e)(3) of section 706 of  
19 such Act (42 U.S.C. 2000e–5), applied to  
20 claims of discrimination in compensation)”.

21 (2) CIVIL RIGHTS ACT OF 1964.—Section 717 of  
22 the Civil Rights Act of 1964 (42 U.S.C. 2000e–16)  
23 is amended by adding at the end the following:

24 “(f) Section 706(e)(3) shall apply to complaints of  
25 discrimination in compensation under this section.”.

1           (3) AGE DISCRIMINATION IN EMPLOYMENT ACT  
2           OF 1967.—Section 15(f) of the Age Discrimination in  
3           Employment Act of 1967 (29 U.S.C. 633a(f)) is  
4           amended by striking “of section” and inserting “of  
5           sections 7(d)(3) and”.

6 **SEC. 6. EFFECTIVE DATE.**

7           This Act, and the amendments made by this Act, take  
8           effect as if enacted on May 28, 2007 and apply to all  
9           claims of discrimination in compensation under title VII  
10          of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.),  
11          the Age Discrimination in Employment Act of 1967 (29  
12          U.S.C. 621 et seq.), title I and section 503 of the Ameri-  
13          cans with Disabilities Act of 1990, and sections 501 and  
14          504 of the Rehabilitation Act of 1973, that are pending  
15          on or after that date.

          Passed the Senate January 22, 2009.

          Attest:

*Secretary.*

117TH CONGRESS  
1ST SESSION

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