

The Impact of the New Administration on Employment Compensation

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March 19, 2009



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Position of President-Elect Obama



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LILLY LEDBETTER FAIR PAY ACT OF 2009



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Lilly Ledbetter Fair Pay Act of 2009 – What It Does

- Expands the time limit within which an aggrieved person can bring a claim of unlawful wage discrimination
- Amends existing law to declare that an unlawful employment practice occurs when:
 1. a discriminatory compensation decision or other practice is adopted;
 2. an individual becomes subject to the decision or practice; or
 3. an individual is affected by application of the decision or practice, including – each time wages, benefits, or other compensation is paid.



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Lilly Ledbetter Fair Pay Act of 2009 – Back Pay Provision

- Allows an aggrieved person to obtain relief, including 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 practices that occurred outside the time for filing a charge.



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Lilly Ledbetter Fair Pay Act of 2009 – Retroactive Application

- Status – Signed into law January 29, 2009
- Effective Date – Retroactive to May 28, 2007



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Lilly Ledbetter Fair Pay Act of 2009 – What Now?

- Employers should evaluate their ability to defend against a claim of past pay discrimination
- Employers should re-think their document retention policies
- Can merit increases be replaced by bonuses that do not affect an employee's base pay rate from year to year?
- Compensation audits
- Develop specific criteria for compensation decisions



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Paycheck Fairness Act of 2009

What It Would Do

(H.R. 12 introduced 1/6/2009; S. 182 introduced 1/08/09)

- Would amend the Equal Pay Act to revise the Equal Pay Act's exceptions to the prohibition of wage rate differentials between men and women who perform substantially similar jobs



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Current Equal Pay Act Exception

- The “exception” clause of the current EPA prohibits an employer from paying wages to employees of one sex at a rate less than the rate at which he pays wages to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, **except**
- where such payment is made pursuant to
 - a seniority system;
 - a merit system;
 - a system which measures earnings by quantity or quality of production;
 - “any factor other than sex.”



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Paycheck Fairness Act of 2009 – Alternative Practice Standard

- Even if an employer is able to prove that a bona factor other than gender caused the pay differential, the Act would allow the employee bringing the claim to demonstrate that:
 1. an alternative employment practice exists that would serve the same business purpose without producing such differential; and
 2. the employer has refused to adopt such alternative practice.



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Paycheck Fairness Act of 2009 – Additional Provisions

- Prohibits employers from retaliating against employees who discuss their salaries with their co-workers
- Authorizes compensatory and punitive damages.
- Class Actions



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EMPLOYEE FREE CHOICE ACT (EFCA)



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Provisions of EFCA

- Requires the NLRB to certify union as representative based upon authorization card results
- Requires bargaining to commence within 10 days of initial request by union
- After 90 days of bargaining, union may request mediation
- 30 days after request for mediation, dispute goes to binding arbitration; arbitrator decides terms
- Initial contract binding for two years



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- Requires NLRB to seek court injunction against employers when employees are discharged or otherwise discriminated against, are threatened with such action, or otherwise significantly have their rights interfered with during a union organizing drive or prior to first contract
- Provides for back pay plus two (2) times back pay as liquidated damages for Section 8(a)3 (discrimination) violations of NLRA during an organizing campaign or prior to first contract
- \$20,000 for each willful violation by employers during union organizing campaign or prior to first contract



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Employers Should “Prepare
Themselves for the Inevitable Union
Organizing Tsunami to Come.”



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Remaining Union Free in The FACE of EFCA

- Compliance with NLRB rules
- Education of employees regarding unions and the disadvantages of unionization
 - Topics to be addressed
 - Means of providing



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Topics to be Addressed

- Your Company's position on unions
- Authorization cards/union solicitation process
- Hazards of cards
- Job security
- Examples of closings/layoffs/concessions at unionized companies
- Dues



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Topics to be Addressed (cont'd.)

- Union strike records (loss of pay/benefits; permanent replacements; violence)
- Union election and decertification records; loss of membership
- Your wages/benefit programs - compare to union



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Topics to be Addressed (cont'd.)

- Address impact of union on your business
- Negative provisions of union contracts
- Negative aspects of being a union member (By-laws/fines/assessments/trials/loss of control)
- Union financial statements
- Examples of illegal/corrupt activities of unions/union officials



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Topics to be Addressed (cont'd.)

- Scandals involving union pension, retirement and health funds
- Unions interested in *their* welfare – not the employee's
- EFCA and how unions will use it



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MINIMUM WAGE INCREASES

- Federal Minimum Wage
 - Currently \$6.55/hr.
 - Effective July 24, 2009, \$7.25/hr.
- Wisconsin Minimum Wage
 - Last month, the Senate passed an increase to the minimum wage of \$1.10 (and then annual increases based on inflation)
 - \$6.50/hr. → \$7.60/hr.



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HEALTHY FAMILIES ACT OF 2007

- Applies to employers with 15 or more employees for 20 weeks in a calendar
- Required to provide seven paid sick days to employees working 30 or more hours per week (or 1500 hours per year)
- Status
 - Introduced in 108th, 109th and 110th Congress



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New Form I-9

- Effective April 3, 2009
- Form available at www.uscis.gov
- Expired documents no longer acceptable for employment verification purposes



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COMPENSATION TRENDS



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