

UNDERSTANDING THE LILLY LEDBETTER FAIR PAY ACT—

WHAT COMPANIES SHOULD KNOW

Summary

On January 29, 2009, The Lilly Ledbetter Fair Pay Act was signed into law by President Obama, effectively overturning a 2007 U.S. Supreme Court decision saying employees had only 180 days to file a pay-discrimination lawsuit. This means the statute of limitations for compensation and discrimination claims is effectively extended, and can be filed as long as the alleged pay disparity continues.

The Ledbetter Act also amends Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, which means it goes beyond gender discrimination and applies to pay discrimination based on race, religion, national origin, disability, or age.

Companies should also be aware the new legislation overturns a U.S. Supreme Court decision that only intentional discriminatory pay decisions were unlawful and therefore subsequent paychecks did not qualify as discriminatory under Title VII. The implication here is that being unaware of discriminatory practices, even if unintentional, increases your potential, financial liability.

MAJOR PROVISIONS OF THE ACT COMPANIES SHOULD BE AWARE OF ARE:

Expands Statute of Limitations & Extends to Family Members

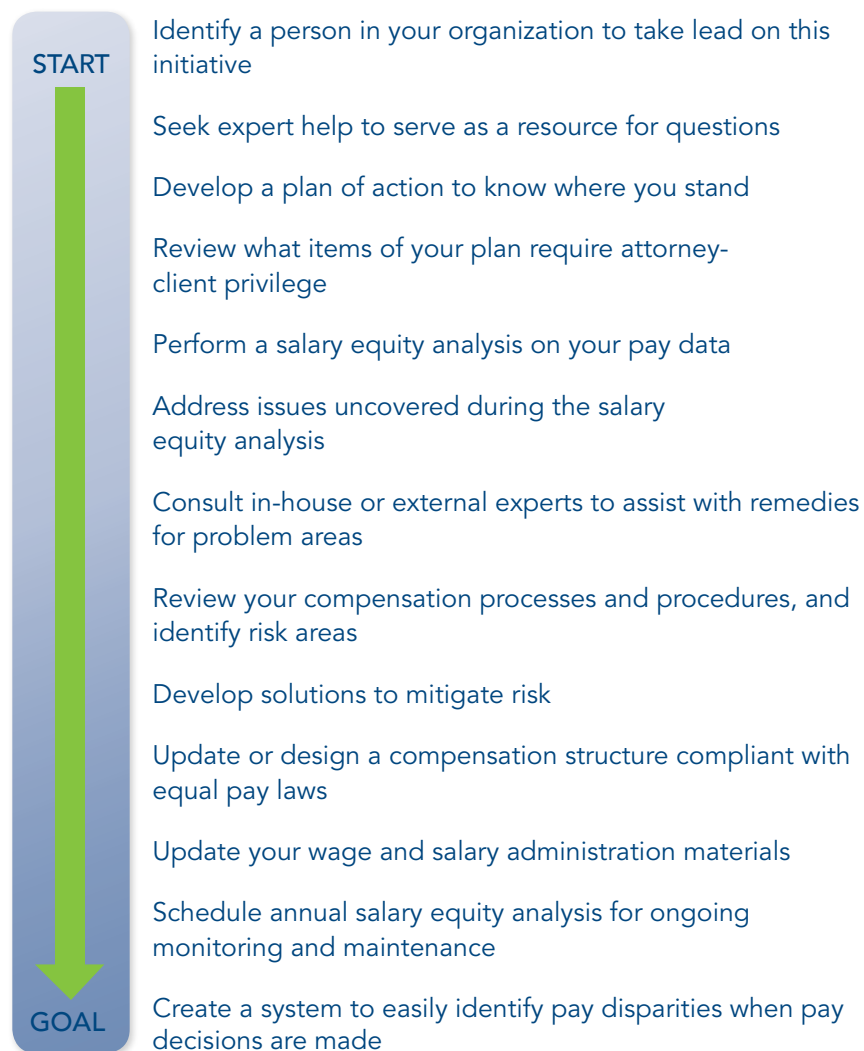
- Each paycheck restarts the time clock for an employee to file a claim
- Pay discrimination claims may be filed even after an employee retires, and the time clock for a retiree will restart with each annuity check
- Certain family members who were affected by the alleged discrimination may become plaintiffs and file a suit even after the aggrieved employee is deceased

The Ledbetter Act Applies to a Number of Anti-Discrimination Laws

- The Ledbetter Act is broad in scope, applying to pay discrimination claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990.

NOW WHAT? WHERE SHOULD YOU START?

The Lilly Ledbetter Fair Pay Act and the pending Paycheck Fairness Act increases an employer's risk for pay-related lawsuits and claims. The new law is cause to invest time and resources in auditing your pay practices. Taking the time to put the right processes and procedures in place could save you time, money, and even your company's reputation in the end. Berkshire experts recommend starting with identifying a person in your organization that can work with an expert to get your organization on the right track. The ultimate goal is to create a process where pay inequities can be easily identified, avoided, or explained, significantly reducing your risk of costly lawsuits.



WHAT CAN BERKSHIRE DO TO HELP?

With no time limits on filing a claim, Berkshire's experts have put together a list of services to help you safeguard your company from the potential effects of the Lilly Ledbetter Fair Pay Act. We specialize in building a balanced workforce so companies can protect against discrimination-based lawsuits and claims, and focus on building their business. Our services are comprehensive and can include the following:

- Consult with you to identify the scope of your needs; including whether you will need to proceed under attorney-client privilege
- Assist you in identifying what data you may need to collect

Where You Stand—Analyzing Pay Practices

- We will conduct a preliminary salary equity analysis, using your existing pay data, to identify statistically significant pay disparities. This will give you an idea of potential problems.
- Our experts can perform a standard cohort analysis on groups (e.g. pay grades) that are too small for statistical analysis
- We will also advise you on what data to gather to support differences in pay, i.e. non-discriminatory variable such as prior years of experience, education level, time in job, time in grade, etc.
- We can even conduct a multiple regression analysis to determine if the non-discriminatory variable are significant predictors of pay

The Right Path to Safeguarding Your Company

- Once we have performed your analyses and uncovered any potential problem areas, Berkshire will recommend remedies to correct pay disparities that are unexplainable before they balloon into costly lawsuits.
- All compensation administration and policy materials should also be reviewed to address any areas of potential liability. Our experts can conduct a thorough review of your materials, and if necessary develop policies and materials for you.
- Berkshire can also help you review your job descriptions to ensure accuracy.
- So you remain on the right path to reducing re-occurrences of pay disparities, Berkshire will develop a compensation model that will help you standardize and monitor your pay practices. In return, you'll have a system of continuous monitoring and management.

BUILD A CULTURE OF FAIR PAY

Building a Culture of Fair Pay to Reduce Potential Liability

The last step in keeping your compensation practices from being vulnerable to lawsuits, is putting together a program to easily spot pay disparities before they become a problem. There are plenty of tools on the market today to make ongoing monitoring easy and manageable. Considering the needs of your company and the information we have collected up to this point, we will guide you on how to continuously monitor pay decisions and practices including:

- Creating a Communications Plan on how to communicate new policies and procedures to staff
- Proactively scheduling annual internal pay equity analyses by race and gender; and adopting routine internal pay equity analysis as a best practice for HR
- Training on salary equity software for ongoing monitoring and compensation design; after you are finished evaluating your compensation, [BALANCEpay](#) software is the ideal solution for ongoing maintenance

Flexible Services to Suit Your Needs

Our services are flexible and can be tailored to meet your level of need. As experts, our goal is to be a resource to help you overcome the challenges that this new legislation presents. Although most companies consider Fair Pay a matter of good business, it should also be treated as a matter of law and not left unattended. Berkshire has been helping companies for over 25 years strike a balance of complying with government regulations while still meeting organizational and business goals. For more information please contact us at 800.882.8904, bai@berkshireassociates.com or [click here](#) to submit a request for more details on Ledbetter Act solutions.

“ We specialize in helping you build a balanced workforce, so you can focus on building your business...”