independent women's forum

GET THE FACTS: On the Lilly Ledbetter Fair Pay Act

The Lilly Ledbetter Fair Pay Act (S. 181) was introduced by Sen. Barbara Mikulski, passed the House and Senate on nearly party-line votes, and signed into law by President Barack Obama on 1/29/09.

Who is Lilly Ledbetter?

Lilly Ledbetter worked for Goodyear Tire and Rubber Co. for about 19 years. During that time, she discovered that her pay was less than that of her male counterparts. She decided to sue for workplace discrimination, but the Supreme Court ruled that she had no standing because her claim was made six years after she discovered the alleged discrimination was taking place. The statute of limitations for such a claim was 180 days.

What does the Lilly Ledbetter Fair Pay Act do?

The Lilly Ledbetter Fair Pay Act changes equal pay laws, restarting the statute of limitations for many discrimination claims any time compensation affected by discrimination, including pension benefits, is paid to an employee. Note that the Act is not about equal pay; it's about when and under what terms someone can sue an employer.

What are the consequences of this legislation?

This law, although intended to protect women, has some serious real world consequences that will ultimately stifle employment and encourage frivolous lawsuits. The Lilly Ledbetter Act:

- Increases employer costs, especially for small businesses, further discouraging job creation.
- Allows a third party such as a spouse or dependent who might have been affected by the lower compensation to bring a claim (including after the employee's death), even if the employee never thought she was a victim of discrimination. Without the employee as a witness such cases could be decided on the slimmest of evidence.
- Forces employers to keep extremely detailed employment records, a costly administrative burden.
- Encourages employers to stop linking pay to performance, which would make companies less competitive and less efficient.
- Endangers salary-linked pensions if they are faced with numerous claims.
- Allows an employee to delay a claim as part of a litigation strategy, allowing workplace discrimination to continue or get worse, even though she should seek immediate restitution.
- Makes cases more difficult to decide because facts may be from many years, even decades, ago. The truth is harder to uncover if witnesses become unavailable, memories fade, or records are lost.
- Allows employees to bring claims years after the people responsible for discrimination are gone, punishing new leaders for the wrongs of the previous management.
- Ultimately discourages employers from hiring women, because of the increased risk of lawsuits and the administrative burden of recording justification for compensation decisions over years of work.

Ultimately, women don't benefit from this law. The real benefit goes to trial lawyers who can now go on offense against well-meaning employers. In the end, employers – and the women and men they hire – will suffer because of this increased exposure and the costs that come with it.