



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 456

130th General Assembly
(As Introduced)

Reps. Pillich, Antonio, Bishoff, Boyd, Clyde, Driehaus, Fedor, Heard, Phillips, Reece, Ramos, R. Hagan, Foley, Stinziano, Barborak, Sheehy, Lundy

BILL SUMMARY

- Provides that for the purpose of filing a charge of unlawful discriminatory practice in compensation with the Ohio Civil Rights Commission, the practice is committed when: (1) a discriminatory compensation decision or other practice is adopted, (2) an individual becomes subject to such a decision or practice, or (3) an individual is affected by application of a discriminatory compensation decision, including each time compensation is paid, resulting from a discriminatory compensation decision or other practice.
- Provides that liability may accrue and the complainant may obtain relief if the unlawful discriminatory practice in compensation that occurred during the charge filing period is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a charge.
- States the General Assembly's findings that the United States Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), significantly impaired statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law.
- Declares the General Assembly's intent in clarifying that an unlawful discriminatory compensation decision occurs each time compensation is paid pursuant to that decision to protect the safety and general welfare of the people of Ohio by codifying at the state level the "Lilly Ledbetter Fair Pay Act of 2009."
- Provides that the amendments made by the bill are remedial and not punitive in nature and take effect as if enacted on May 28, 2007, and apply to claims of discrimination in compensation pending on or after that date.

CONTENT AND OPERATION

Unlawful discriminatory practice; filing of charge

The Ohio Civil Rights Law provides that it is an unlawful discriminatory practice, among others, for any employer, because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.¹ Any person may file a charge with the Ohio Civil Rights Commission alleging that another person has engaged or is engaging in an unlawful discriminatory practice. In the case of a charge alleging an unlawful discriminatory practice by an employer, the charge must be in writing and under oath and must be filed with the Commission within six months after the alleged unlawful discriminatory practice was committed.² The bill provides that, for purposes of the above provision on the filing of a charge, an unlawful discriminatory practice in compensation is committed when one of the following occurs:³

- A discriminatory compensation decision or other practice is adopted.
- An individual becomes subject to a discriminatory compensation decision or other practice.
- 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 a discriminatory compensation decision or other practice.

The bill further provides that in relation to an unlawful discriminatory practice relating to compensation, liability may accrue and the complainant may obtain relief, including recovery of back pay for up to two years preceding the filing of the charge, if the unlawful discriminatory practice that occurred during the charge filing period, i.e., within six months after the alleged unlawful discriminatory practice was committed, is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a charge.⁴

¹ R.C. 4112.02(A), not in the bill.

² R.C. 4112.05(B)(1).

³ R.C. 4112.05(B)(1).

⁴ R.C. 4112.05(G)(3).



General Assembly findings and intent

The bill states that the General Assembly determines and declares that it recognizes and finds all of the following:⁵

- The United States Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), significantly impaired statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades. The *Ledbetter* decision undermined those statutory protections by unduly restricting the time period in which victims of discrimination could challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.
- The limitation imposed by the Court on the filing of discriminatory compensation claims ignored the reality of wage discrimination and was at odds with the robust application of the Civil Rights Laws that Congress intended.

The bill further states that the General Assembly declares that, in amending R.C. 4112.05 to clarify that a discriminatory compensation decision that is unlawful under the Ohio Civil Rights Law occurs each time compensation is paid pursuant to that decision, it is the General Assembly's intent to protect the safety and general welfare of the people of this state by codifying at the state level the "Lilly Ledbetter Fair Pay Act of 2009," Pub. Law No. 111-2, 123 Stat. 5. Consequently, the amendments made by the bill, if enacted, are remedial and not punitive in nature and take effect as if enacted on May 28, 2007, and apply to all claims of discrimination in compensation under R.C. Chapter 4112. that are pending on or after that date.⁶

Background

In the *Ledbetter* decision, the United States Supreme Court relied on its prior decisions that clearly instruct that the Equal Employment Opportunity Commission (EEOC) charging period is triggered when a discrete unlawful practice takes place, i.e., "a discrete act or single occurrence" that takes place at a particular point in time. The Court declared that "[a] new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination."⁷ But, as the Court noted, if an

⁵ Section 3(A).

⁶ Section 3(B).

⁷ *Ledbetter, supra*, at p. 628.



employer engages in a series of separately actionable intentionally discriminatory acts, then a fresh violation takes place when each act is committed.⁸

The "Lilly Ledbetter Fair Pay Act of 2009," among other provisions, amended section 706(e) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(e), by adding at the end the following:

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, 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.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), 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 unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

The "Lilly Ledbetter Fair Pay Act of 2009" also provided that the Act takes effect as if enacted on May 28, 2007, and apply to all claims of discrimination in compensation under the Civil Rights Act of 1964 and other specified federal laws that are pending on or after that date.⁹

⁸ *Id.*

⁹ Pub.L. 111-2, Sec. 6.

HISTORY

ACTION

DATE

Introduced

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