

# “What keeps you up at night?”

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## President Obama signs the Lilly Ledbetter Fair Pay Act of 2009

By Amy C. Foerster

As one of the first acts of the new Administration, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009 (Pub. L. No. 111-2) into law on January 29, 2009. The Act legislatively overturns the United States Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), by extending the time period during which an employee or former employee can file charges of discrimination under Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act. The change in employment law will be of particular interest to higher education institutions, which have faced a steady stream of gender equity cases in many areas, including compensation.

In its *Ledbetter* decision, the Supreme Court applied existing principles of law to conclude that a discriminatory act – in that case a compensation decision, rather than the effects of the act, starts the clock ticking for an employee to file charges of discrimination. The Lilly Ledbetter Fair Pay Act overturns that ruling by allowing each and every paycheck received by the employee to start the filing period anew, regardless of when the initial allegedly discriminatory compensation decision was made. Underscoring its disagreement with the Supreme Court, Congress made the Act retroactive to May 28, 2007, the day before the Court issued its *Ledbetter* decision.

This new law triggered a wave of national media attention on gender equity in wages and will inspire new challenges. In theory, an allegedly discriminatory pay decision made by a university when it hired an instructor in 1980 — several administrations ago — can still haunt the university when it pays that now-tenured professor in 2009. The disgruntled faculty member could now file a new Title VII employment discrimination claim challenging his or her salary as discrimination based upon race, gender, age or other protected characteristic. Similarly, the female swimming coach who in the past may have perceived her pay equity issues to be in the nature of Title IX or the Equal Pay Act claims may now turn to Title VII and its expanded filing opportunities. That being said, however, nothing about the Lilly Ledbetter Fair Pay Act waters down the existing defenses available to a university if subject to a discriminatory pay lawsuit — including its reliance on the impact of market forces when making pay decisions. Additionally, even if successful, the employee is still only entitled to seek two years worth of back wages.

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If you have any questions about the Lilly Ledbetter Fair Pay Act, please contact Amy Foerster at 717-257-7573 or [afoerster@saul.com](mailto:afoerster@saul.com), or Rob Duston, Co-Chair of Saul Ewing's Labor, Employment and Employee Benefits Practice Group, at 202-342-3415 or [rduston@saul.com](mailto:rduston@saul.com)

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