



January 6, 2009

United States House of Representatives
Washington, DC 20515

ACLU Urges Representatives to Vote Yes on H.R. 11, the Lilly Ledbetter Fair Pay Act and H.R. 12, the Paycheck Fairness Act

Dear Representative:

On behalf of the American Civil Liberties Union (ACLU), its over half a million members, fifty-four affiliates nationwide, and countless additional supporters and activists, we urge you to vote in favor of H.R. 11, the Lilly Ledbetter Fair Pay Act and H.R. 12, the Paycheck Fairness Act and to oppose any motions to recommit. Passing both bills is critical to the goal of achieving pay equity for all. In this time of economic belt-tightening, the House of Representatives must help our nation's employees receive the wages rightfully due them. Taking strong steps toward pay equity will play a supporting role in the effort to stimulate the economy and ensure self-sufficiency for American workers and their families.

Both bills passed with bipartisan support in the 110th Congress, and we understand that the House is expected to take up the bills again as soon as this Wednesday. Because of the bills' critical roles in promoting fairness for American workers, the ACLU intends to score the votes.

Lilly Ledbetter Fair Pay Act

The Lilly Ledbetter Fair Pay Act rights the wrong done by the Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.* With this bill, people who have suffered pay discrimination can seek vindication without facing unduly and unfairly restrictive deadlines.

In 2007, the Supreme Court made it virtually impossible for victims of pay discrimination to seek a remedy in court. According to the 5-4 decision, the majority held that Ms. Ledbetter did not have a valid claim of wage discrimination because she had not filed her complaint within 180 days of Goodyear's initial discriminatory pay decision, even though she did not become aware of the unlawfully lower wages until years after the discrimination began. Ms. Ledbetter was not only unaware of the date the pay discrimination began, but her employer kept it secret, thereby making it impossible for her to access the information necessary to file a complaint within 180 days of the original discriminatory decision. The Court immunized the employer's illegal behavior by overturning the then-widely recognized legal precedent that employees should be able to challenge any discriminatory paycheck they receive.

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The Lilly Ledbetter Fair Pay Act corrects the Court's decision by clarifying that wage discrimination is not a one-time occurrence starting and ending with a pay decision. Rather, each paycheck lessened by discrimination represents a continuing violation by the employer. It only makes sense that, as long as the discrimination continues, a worker's ability to challenge it should continue as well.

This bill does not impose a new rule on employers, as some have suggested. Legislation reversing the *Ledbetter* decision merely restores the law that prevailed in the majority of federal circuits and the policy of the EEOC under both Democratic and Republican administrations before the Supreme Court's ruling. Moreover, the bill does not change the 2-year limit on back pay damages that is currently part of Title VII of the Civil Rights Act of 1964.

Critically, this legislation will ensure employers do not profit from years of discrimination simply because their employees were unaware of it for a few months. American workers should know that they are protected from wage discrimination and are able to challenge such discrimination as long as their employer is unjustly keeping their earnings.

Paycheck Fairness Act

Since becoming law over four decades ago, loopholes and weak remedies have made the Equal Pay Act less effective in combating wage discrimination. The Paycheck Fairness Act would strengthen and improve the effectiveness of the Equal Pay Act.

There should be little doubt that such improvements are necessary. According to the U.S. Census Bureau women who work full time still earn, on average, only 78 cents for every dollar men earn.¹ The figures are even worse for women of color. Despite arguments to the contrary, this wage disparity is not simply a result of women's education levels² or life choices.³

The consequences of this discrimination are severe and predictable. The pay disparity forces single-mother households and families dependent on two wage-earners to live on less than they rightfully deserve, while simultaneously reducing women's retirement earnings. In short, unfair pay disparities perpetuate women's economic dependence and deprive them of economic opportunity and equal protection of the laws. Moreover, women tend to be hurt first and worst during economic downturns.⁴

The Paycheck Fairness Act makes several common sense changes to strengthen the Equal Pay Act. It requires employers to demonstrate that wage differentials between men and women, who hold the same position and do the same work, stem from factors other than sex; prohibits

¹ See U.S. CENSUS BUREAU AND THE BUREAU OF LABOR STATISTICS, ANNUAL DEMOGRAPHIC SURVEY, TABLE PINC-05, WORK EXPERIENCE IN 2007 (August 2008), http://pubdb3.census.gov/macro/032008/perinc/new05_000.htm.

² See U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, 1993/2003 BACCALAUREATE AND BEYOND LONGITUDINAL STUDY, <http://nces.ed.gov/surveys/B&B/>.

³ BUREAU OF LABOR STATISTICS, EMPLOYMENT STATUS OF WOMEN BY PRESENCE AND AGE OF YOUNGEST CHILD, MARITAL STATUS, RACE, AND HISPANIC OF LATINO ETHNICITY (2004), <http://www.bls.gov/cps/wlf-table6-2005.pdf>.

⁴ See Dean Baker, *Unemployment Jumps to 6.1 Percent, Women Hit Hardest*, Jobs Byte, Center for Economic and Policy Research, Sept. 5, 2008, <http://www.cepr.net/index.php/data-bytes/jobs-bytes/unemployment-jumps-to-6.1-percent,-women-hit-hardest/>.

retaliation against workers who inquire about their employers' wage practices or disclose their own wages; and allows women to receive the same remedies for sex-based discrimination that are currently available for race and national origin discrimination. It also authorizes additional training for EEOC staff and requires the U.S. Department of Labor to reinstate important activities, such as directing educational programs to assist women in the workforce, providing technical assistance to employers, recognizing the achievements of businesses that address the wage gap, and collecting wage-related data.

Conclusion

Together, these bills will help to create a climate where wage discrimination is not tolerated, allow employees to bring home every dollar they deserve, and give the new administration the enforcement tools it needs to make real progress on pay equity. As the 111th Congress begins, we need concrete action to improve the economic security of working families. We urge you to support the Lilly Ledbetter Fair Pay Act and the Paycheck Fairness Act and oppose any motions to recommit.

If you have any questions on either of these bills, please contact Deborah J. Vagins at (202) 715-0816 or dvagins@dcaclu.org.

Sincerely,



Caroline Fredrickson
Director



Deborah J. Vagins
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