

PUBLICATION

Eternity in Purgatory or Payment for Past Sins: The Lilly Ledbetter Fair Pay Act of 2009 in Action

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As most employers know, the newly-enacted Lilly Ledbetter Fair Pay Act of 2009 (Fair Pay Act) increases the potential liability for employers for past wage discrimination, whether intentional or unintentional. Two recent cases illustrate how far back an employer's potential liability may reach.

In the recent Southern District of Mississippi case of *Gentry v. Jackson State University*, the court found that a professor's 2004 denial of tenure qualified as a "compensation decision" or "other practice" affecting compensation under the Fair Pay Act. 2009 WL 1097818 (S.D. Miss. April 17, 2009). Because Gentry's denial of tenure included a denied salary increase, the court refused to grant summary judgment even though Gentry failed to file a timely charge of discrimination within 180 days of the decision. Here, Gentry did not complain of the **2004** decision until **2006**. In reaching its decision, the court relied upon two wage discrimination opinions in New York, where the courts also found the lawsuits timely notwithstanding the passage of two and four years respectively.

Even more forgiving was the Middle District of Florida case, *Bush v. Orange County Corr. Dep't.*, 597 F. Supp. 2d 1293 (M.D. Fla. 2009). *Bush* involved four employees who brought suit in **2007** for alleged pay discrimination in the form of an "unwitting" demotion that occurred in **1990**. Even though these alleged acts took place more than 16 years prior to the filing of the suit, the court noted that the Fair Pay Act applies to all Title VII pay discrimination claims pending on or after May 28, 2007. As such, the employer's argument that these claims were barred as untimely no longer held true, and the case could proceed.

As evidenced by these cases, the Fair Pay Act's tendrils are long, obliging employers to expansively assess potential liability for past compensation decisions. As the right of any current employee to file suit over such decisions arguably extends with the issuance of each new paycheck, employers are best advised to conduct a thorough audit for statistical and anecdotal discrepancies that can otherwise be used as fodder for future litigation. To that end, Baker Donelson stands ready to assist you in preparing for these and other employment-related challenges. For assistance, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys in the Firm's Labor & Employment Department, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*