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CONGRESS OVERTURNS SUPREME COURT'S LEDBETTER DECISION

INSIDE THIS ISSUE

- 1 Congress Overturns Supreme Court's Ledbetter Decision
- 2 New Study Shows Business Benefits of Employee Accommodation
- 3 *What Color Is Your Paradigm?*
- 3 Potpourri
- 4 OFCCP Uses 27 Questions to Determine "Single Entity" Status
- 4 Subscriptions...

On January 29, 2009, President Obama signed Senate Bill 181 amending several pieces of federal civil rights legislation. Specifically, the new law updates provisions in:

- Title VII of the Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1967
- Americans with Disabilities Act of 1990
- Rehabilitation Act of 1973

Known as the *Lilly Ledbetter Fair Pay Act of 2009*, this law changes each of the previous laws by providing protection against discriminatory employment practices when 1) Compensation decisions are made or adopted, 2) An individual becomes subject to the decision or practice, or 3) An individual is affected by application of the decision or practice, including each time wages, benefits, or other compensation is paid.

The law allows employer liability to accrue and provides for up to two years of back pay relief where unlawful practices have been followed.

Ledbetter brought suit against the Goodyear Tire and Rubber Company because she claimed she was paid less than her co-workers. Several years elapsed between the compensation decision and the time she filed her complaint with the Equal Employment Opportunity Commission (EEOC). Her lawsuit went to the U.S. Supreme Court in 2007 and the Court said that she had indeed failed to file her complaint within the 180-day time limit as required. She argued that each time she was paid less than her co-workers, she should be entitled to file a complaint, not just at the time of the original compensation decision.

[Go to Ledbetter on Page 2](#)

Ledbetter continued from Page 1

The new law reinforced a limit of 2-years for back pay awards in cases that are shown to require it.

Congress has clearly sent the message that employees will be protected for a much longer period of time than was originally assumed. This is a major change for employers and will extend their liability nearly indefinitely when compensation decisions are involved. If employees can show that the original decision was to pay someone differently based on race, color, sex, age, national origin, religion, or disability their employers will be subject to the two-year penalty provisions of this 2009 legislation.

Each time a paycheck is delivered to an employee that contains an amount arrived at by an illegal compensation decision, the time limit for filing a complaint begins again.

Passage in the Senate was by a 61 – 36 vote. The House of Representatives passed its own version of this legislation on January 9, 2009, by a vote of 247 – 171. Since the provisions were nearly identical in each bill, the Senate moved its legislative version through the process for the President's signature.

It will be important for all HR professionals to consult with their management attorneys for a discussion of the ways in which this new civil rights legislation will impact their organization. Don't wait too long. It is unclear yet whether or not the new complaint filing requirements will be applied retroactively to existing cases. Your legal advisor can help with those types of questions.

President Obama made this his first piece of legislation signed by him in the White House. You can read his remarks and those of Lilly Ledbetter and the First Lady who both attended the signing ceremony by going to http://www.whitehouse.gov/blog_post/a_wonderful_day

You can get a copy of the three-page Ledbetter law at <http://www.management-advantage.com/media/LedbetterLaw1-29-2009.pdf>

NEW STUDY SHOWS BUSINESS BENEFITS OF EMPLOYEE ACCOMMODATION

The U.S. Department of Labor Office of Disability Employment Policy (ODEP) along with the Job Accommodation Network (JAN) have published a 2-page document that summarizes recent study input about the value of hiring and retaining people with disabilities. It is interesting that employers reported 46% of the time, accommodations cost "absolutely nothing." 45% experienced a one-time cost. The median one-time cost for employers was only \$500.

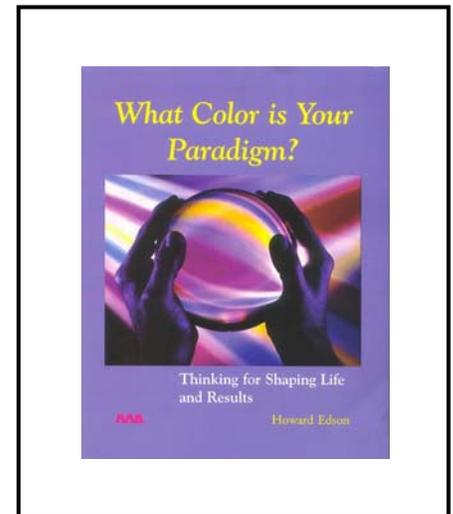
Benefits of making job accommodations included: Retaining a valued employee (86%); Increasing the employee's productivity (71%); and Eliminating the costs associated with training a new employee (56%).

<http://www.dol.gov/odep/pubs/publicat.htm#accommodations>

What Color is Your Paradigm?

The first half of the book makes real the phrase "*life's illusions I recall/I really don't know life at all,*" illustrating the various ways in which we *make stuff up* to determine our experience. It offers insights and options to shift beyond our own automatic programming. The second half of the book notes flaws in our *normal* societal paradigms and offers up *natural* empowering paradigms to simultaneously be commercially successful and improve the quality of your thinking for shaping life and results.

<http://www.management-advantage.com/products/Paradigm.htm>



POTPOURRI

I-9 Form Changes Postponed

On January 30, 2009, the U.S. Customs and Immigration Service (USCIS) issued a notice that it will not require use of the new I-9 Form on February 2, 2009, as planned. Instead, it has extended the implementation date by 60 days until **April 3, 2009**. During the interim employers **should be using the June 5, 2007 version of the I-9 Form**. If you have questions about this government shell game, call your management attorney.

http://www.uscis.gov/files/nativedocuments/FR_Notice_I-9_30jan08.pdf

Register Now to Be Ready for Filing 2009 EEO-1 and VETS-100

This is a good time to register your company to obtain the identification numbers you will require for filing both the EEO-1 and VETS-100 reports next September. All U.S. employers with 100 or more workers, and all employers with federal contracts that have 50 or more workers are required to submit these reports each year. For the EEO-1 Report registration process you can begin at <https://apps.eeoc.gov/eeo1/register.jsp> For the VETS-100 registration process, go to <https://vets100.vets.dol.gov/HowCompanyNumber.pdf>

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OFCCP Uses 27 Questions to Determine "Single Entity" Status

Is your "division" of the enterprise captured under the federal contractor requirements or not? That jurisdictional question is most often addressed by an OFCCP list of 27 questions. Even though your division may not have any involvement in the federal contracts serviced by other parts of the company, if your portion of the organization is controlled sufficiently by the umbrella group, you may well have to respond to requirements for affirmative action plans. Often, companies try to isolate their "lines of business" with different tax ID numbers (Federal Employer Identification Number). According to the Office of Federal Contract Compliance Programs (OFCCP), that is not sufficient to cause organizational segments to be treated separately from Department of Labor (DOL) requirements. More telling, is the commonality of personnel policies, officers and directors, and centralized administrative support. If you are wondering if you can win the jurisdictional argument, take a look at the list of OFCCP's test questions and draw your own conclusion.

<http://www.dol.gov/elaws/esa/ofccp/assessment.asp>

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