

# Equal Pay and Beyond

Congress should not only fix the Supreme Court's *Ledbetter* mistake, but take further steps to erase wage discrimination

BY DEBRA S. KATZ AND JUSTINE ANDRONICI

**T**HANK GOODNESS FOR THE U.S. system of checks and balances. When bad laws are passed, the Supreme Court can right the wrong. And vice versa: When the Supreme Court makes bad decisions, Congress can repair the damage. This Congress needs to do that—and more—to protect women's rights at work.

Most notably, it should override the 2007 Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, which eviscerated decades of protective law by requiring victims of sexist pay discrimination to file complaints within just six months of their first discriminatory paycheck. Most employees are unable to realize discriminatory treatment that quickly, so employers often benefit from *years* of depriving women of their equitable pay.

Congress has already tried to correct *Ledbetter* with the Lilly Ledbetter Fair Pay Act, which passed the House in July 2007 but was held up in the Senate. Under that legislation, victims of pay discrimination could file Title VII claims within 180 days of *any* discriminatory paycheck, not just the original one, and therefore could sue for back pay. With a president who supports fair pay for women now in office, it looks hopeful that the bill will be reintroduced in the new Congress

and finally become law.

However, Congress can do even better. Title VII—the 1964 civil rights legislation that prohibits discrimination by race, sex, religion and national origin in employment—currently has caps on the amount of compensatory and punitive damages that victims of discrimination can recover. But those caps, set forth in 1991, are way too low in 2008 dollars: just \$300,000 for employers with over 500 employees and \$50,000 for employers with 15 to 100 employees (employers with fewer employees are not covered by Title VII). Those relatively small amounts are just a slap on the wrist to many corporate employers and thus won't deter discrimination; it's time to remove the caps.

Other areas of Title VII also could use amendments. For one, the law should permit employees to sue individual discriminators, not just the corporate entities they work for—as some state antidiscrimination statutes already permit. Additionally, the Equal Employment Opportunity Commission (EEOC) should be allowed to issue early right-to-sue letters, permitting employees to go straight to court instead of waiting for an EEOC investigation. This change would permit the backlogged EEOC to once again focus on high-impact discrimination cases rather

than get bogged down investigating smaller ones.

Another piece of legislation impacting women's employment rights is the Fair Pay Restoration Act, designed to strengthen the Equal Pay Act (which prohibits pay discrimination between men and women who perform the same jobs). It was held up in the Senate along with the *Ledbetter* act, and women's-rights advocates now hope to advance it as a *Ledbetter* companion bill.

Feminists also support passage of the Fair Pay Act, which has languished in the House and Senate. This bill would allow lawsuits for discriminatory pay in jobs that have been traditionally undervalued because they are typically performed by women or people of color. Unlike the Equal Pay Act and Title VII, the Fair Pay Act would allow women (and minority) employees to recover damages for pay discrimination in jobs that are not the same or similar to men's (or whites') but of equal *value*. If passed, it could be a major step toward helping alleviate discriminatory pay gaps. ■

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