

110TH CONGRESS
1ST SESSION

S. 1843

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to clarify that an unlawful practice occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2007

Mr. KENNEDY (for himself, Mr. SPECTER, Mr. HARKIN, Mrs. CLINTON, Ms. SNOWE, Ms. MIKULSKI, Mr. OBAMA, Mr. DURBIN, Mr. DODD, Mr. LEAHY, Mrs. MCCASKILL, Mr. WHITEHOUSE, Mrs. BOXER, Ms. STABENOW, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to clarify that an unlawful practice occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Pay Restoration
5 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The Supreme Court in *Ledbetter v. Good-*
4 *year Tire & Rubber Co.*, No. 05–1074 (May 29,
5 2007), significantly impairs statutory protections
6 against discrimination in compensation that Con-
7 gress established and that have been bedrock prin-
8 ciples of American law for decades. The *Ledbetter*
9 decision undermines those statutory protections by
10 unduly restricting the time period in which victims
11 of discrimination can challenge and recover for dis-
12 criminatory compensation decisions or other prac-
13 tices, contrary to the intent of Congress.

14 (2) The limitation imposed by the Court on the
15 filing of discriminatory compensation claims ignores
16 the reality of wage discrimination and is at odds
17 with the robust application of the civil rights laws
18 that Congress intended.

19 (3) With regard to any charge of discrimination
20 under any law, nothing in this Act is intended to
21 preclude or limit an aggrieved person’s right to in-
22 troduce evidence of an unlawful employment practice
23 that has occurred outside the time for filing a
24 charge of discrimination.

25 (4) Nothing in this Act is intended to change
26 the law in effect as of May 28, 2007, concerning the

1 treatment of when pension benefits are considered
2 paid.

3 **SEC. 3. DISCRIMINATION IN COMPENSATION BECAUSE OF**
4 **RACE, COLOR, RELIGION, SEX, OR NATIONAL**
5 **ORIGIN.**

6 Section 706(e) of the Civil Rights Act of 1964 (42
7 U.S.C. 2000e–5(e)) is amended by adding at the end the
8 following:

9 “(3)(A) For purposes of this section, an unlawful em-
10 ployment practice occurs, with respect to discrimination
11 in compensation in violation of this title, when a discrimi-
12 natory compensation decision or other practice is adopted,
13 when an individual becomes subject to a discriminatory
14 compensation decision or other practice, or when an indi-
15 vidual is affected by application of a discriminatory com-
16 pensation decision or other practice, including each time
17 wages, benefits, or other compensation is paid, resulting
18 in whole or in part from such a decision or other practice.

19 “(B) Liability may accrue and (in addition to any re-
20 lief authorized by section 1977A of the Revised Statutes
21 (42 U.S.C. 1981a)), an aggrieved person may obtain relief
22 as provided in subsection (g)(1), including recovery of
23 back pay for up to 2 years preceding the filing of the
24 charge, in an action under this title concerning an unlaw-
25 ful employment practice with regard to discrimination in

1 compensation, where the unlawful employment practice
 2 that has occurred during the charge filing period is similar
 3 or related to an unlawful employment practice with regard
 4 to discrimination in compensation that occurred outside
 5 the charge filing period.”.

6 **SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF**
 7 **AGE.**

8 Section 7(d) of the Age Discrimination Act of 1967
 9 (29 U.S.C. 626(d)) is amended—

10 (1) in the first sentence—

11 (A) by redesignating paragraphs (1) and

12 (2) as subparagraphs (A) and (B), respectively;

13 and

14 (B) by striking “(d)” and inserting

15 “(d)(1)”;

16 (2) in the third sentence, by striking “Upon”

17 and inserting the following:

18 “(2) Upon”; and

19 (3) by adding at the end the following:

20 “(3) For purposes of this section, an unlawful prac-

21 tice occurs, with respect to discrimination in compensation

22 in violation of this Act, when a discriminatory compensa-

23 tion decision or other practice is adopted, when a person

24 becomes subject to a discriminatory compensation decision

25 or other practice, or when a person is affected by applica-

1 tion of a discriminatory compensation decision or other
2 practice, including each time wages, benefits, or other
3 compensation is paid, resulting in whole or in part from
4 such a decision or other practice.”.

5 **SEC. 5. APPLICATION TO OTHER LAWS.**

6 (a) AMERICANS WITH DISABILITIES ACT OF 1990.—
7 The amendments made by section 102 shall apply to
8 claims of discrimination in compensation brought under
9 title I and section 503 of the Americans with Disabilities
10 Act of 1990 (42 U.S.C. 12111 et seq., 12203), pursuant
11 to section 107(a) of such Act (42 U.S.C. 12117(a)), which
12 adopts the powers, remedies, and procedures set forth in
13 section 706 of the Civil Rights Act of 1964 (42 U.S.C.
14 2000e-5).

15 (b) REHABILITATION ACT OF 1973.—The amend-
16 ments made by section 102 shall apply to claims of dis-
17 crimination in compensation brought under sections 501
18 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791,
19 794), pursuant to—

20 (1) sections 501(g) and 504(d) of such Act (29
21 U.S.C. 791(g), 794(d)), respectively, which adopt
22 the standards applied under title I of the Americans
23 with Disabilities Act of 1990 for determining wheth-
24 er a violation has occurred in a complaint alleging
25 employment discrimination; and

1 (2) paragraphs (1) and (2) of section 505(a) of
2 such Act (29 U.S.C. 794a(a)) (as amended by sub-
3 section (c)).

4 (c) CONFORMING AMENDMENTS.—

5 (1) REHABILITATION ACT OF 1973.—Section
6 505(a) of the Rehabilitation Act of 1973 (29 U.S.C.
7 794a(a)) is amended—

8 (A) in paragraph (1), by inserting after
9 “(42 U.S.C. 2000e–5 (f) through (k))” the fol-
10 lowing: “(and the application of section
11 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims
12 of discrimination in compensation)”; and

13 (B) in paragraph (2), by inserting after
14 “1964” the following: “(42 U.S.C. 2000d et
15 seq.) (and in subsection (e)(3) of section 706 of
16 such Act (42 U.S.C. 2000e–5), applied to
17 claims of discrimination in compensation)”.

18 (2) CIVIL RIGHTS ACT OF 1964.—Section 717 of
19 the Civil Rights Act of 1964 (42 U.S.C. 2000e–16)
20 is amended by adding at the end the following—

21 “(f) Section 706(e)(3) shall apply to complaints of
22 discrimination in compensation under this section.”.

23 (3) AGE DISCRIMINATION ACT OF 1967.—Sec-
24 tion 15(f) of the Age Discrimination in Employment
25 Act of 1967 (29 U.S.C. 633a(f)) is amended by

1 striking “of section” and inserting “of sections
2 7(d)(3) and”.

3 **SEC. 6. EFFECTIVE DATE.**

4 This Act, and the amendments made by this Act, take
5 effect as if enacted on May 28, 2007 and apply to all
6 claims of discrimination in compensation under title VII
7 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.),
8 the Age Discrimination in Employment Act of 1967 (29
9 U.S.C. 621 et seq.), title I and section 503 of the Ameri-
10 cans with Disabilities Act of 1990, and sections 501 and
11 504 of the Rehabilitation Act of 1973, that are pending
12 on or after that date.

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