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## Lilly Ledbetter Fair Pay Act of 2009

On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009 ("Act"), which supersedes the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007). *Ledbetter* had required a compensation discrimination charge to be filed within 180 days of a discriminatory pay-setting decision (or 300 days in jurisdictions that have a local or state law prohibiting the same form of compensation discrimination).

The Act restores the pre-*Ledbetter* position of the EEOC that each paycheck that delivers discriminatory compensation is a wrong actionable under the federal EEO statutes, regardless of when the discrimination began. As noted in the Act, it recognizes the "reality of wage discrimination" and restores "bedrock principles of American law."

Under the Act, an individual subjected to compensation discrimination under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, or the Americans with Disabilities Act of 1990 may file a charge within 180 (or 300) days of any of the following:

- when a discriminatory compensation decision or other discriminatory practice affecting compensation is adopted;
- when the individual becomes subject to a discriminatory compensation decision or other discriminatory practice affecting compensation; or
- when the individual's compensation is affected by the application of a discriminatory compensation decision or other discriminatory practice, including each time the individual receives compensation that is based in whole or part on such compensation decision or other practice.

The Act has a retroactive effective date of May 28, 2007, and applies to all claims of discriminatory compensation pending on or after that date.

## *The Focus*

### **U.S. Department of Labor's OSHA proposes more than \$1.2 million penalty to St. Louis area chemical repackaging and Distribution Company**

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has cited St. Louis, Mo.-based G.S. Robins & Co., doing business as Ro-Corp Inc., for alleged willful, repeat and serious violations of federal workplace safety standards, proposing more than \$1.2 million in penalties for numerous violations relating to the handling of hazardous chemicals at the company's facility in East St. Louis.

OSHA began an inspection at the East St. Louis site after learning that employees had been admitted to several local hospitals after being contaminated with an unknown powder. The eight hospitalized individuals, OSHA later learned, were exposed to the chemical para-nitroaniline (PNA), a poison that causes methemoglobinemia, resulting in the reduction of the blood's ability to transport oxygen. The employees had been performing a chemical transfer operation at the East St. Louis worksite when chemical dust was released, settling on work surfaces and the employees.

"There are means available to safely handle deadly chemicals such as this, and those means were ignored," said Deputy Assistant Secretary of Labor for OSHA Donald G. Shalhoub. "Those who ignore safe practices and OSHA regulations are inviting tragedy into the lives of their employees and their families, and this cannot be tolerated."

PNA is highly toxic and can be fatal if swallowed, inhaled or absorbed through the skin. All the employees exposed showed ill effects from their exposure and recovered after treatment.

As a result of its investigation, OSHA issued 21 willful citations, 20 of which were cited on a per-instance basis, relating to eight instances of failing to provide employees with the correct personal protective equipment (PPE) for transferring PNA; four instances of failing to provide training on the use of PPE and on working with hazardous chemicals; three instances of failing to provide PPE training and training on specific PNA-transfer procedures; and five instances of failing to fit-test employees using respirators.

OSHA also issued a repeat citation for failing to provide an eyewash/shower in corrosive chemicals areas, and an additional 16 serious citations for hazards associated with the transfer of PNA and other workplace practices. OSHA defines a willful violation as one committed with intentional disregard of or plain indifference to the requirements of the Occupational Safety and Health Act. Repeat violations are issued when an employer has been previously cited for the same, or a substantially similar, violation within three years of the final order date.