

LEGISLATIVE UPDATES

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H.R. 11: Lilly Ledbetter Fair Pay Act of 2009

The Lilly Ledbetter Fair Pay Act was signed into law on January 29, 2009. It was passed by a House vote of 250–177 and was promptly signed by President Obama, becoming Public Law No. 111-2. The Act amends Title VII of the Civil Rights Act of 1964 which prohibits discrimination in compensation on the basis of color, religion, sex or national origin. The Act provides that unlawful employment practice occurs when 1) a discriminatory compensation decision or other practice is adopted, 2) an individual becomes subject to the decision or practice, or 3) an individual is affected by the application of the decision or practice, including each time wages, benefits, or other compensation is paid.¹ The Act effectively overrules the Supreme Court's holding in *Ledbetter v. Goodyear Tire and Rubber Co.* In *Ledbetter*, in a 5–4 decision, the Court held that under Title VII, an employee may only seek redress against pay discrimination within 180 days of the alleged discriminatory act.² This meant that an employee could not bring an otherwise valid pay discrimination claim against an employer if he or she did not discover the initial discriminatory act within 180 days. The Court's decision failed to address that often times employees will not learn that they have been victims of discrimination until after 180 days from the time when the employer decides to take such action. Under the Court's ruling, an employee was left without recourse; the employer was then free to continue discriminating.

In her EEOC claim, Lilly Ledbetter argued that the 180-day statute of limitations should be renewed each time an employer issues an intentionally discriminatory wage or salary paycheck.³ Congress agreed with Mrs. Ledbetter, recognizing that the Court's decision "unduly restricted the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress."⁴ Proponents of the Act maintain that the Supreme Court's interpretation in the *Ledbetter* decision was unrealistic and unfair. The Court's interpretation ignored the real-world facts of discrimination and harmed thousands of women.⁵ Critics of the Act argue that it will encourage needless decades-old litigation against employers who may not have had committed the initial discriminatory act.⁶ However, the Act limits the amount of recovered back pay to those withheld within the two years preceding the filing of the complaint. This limitation discourages employees from delaying to bring their claims. The Act similarly amends provisions on the Age Discrimination Employment Act of 1967 and the American with Disabilities Act of 1990.⁷

H.R. 2: Children's Health Insurance Program Reauthorization Act of 2009

The State Children's Health Insurance Program Reauthorization Act of 2009, or SCHIP, was signed on January 14, 2009. It became Public Law 111-3 after passing the House with a vote

of 290–135. The Act will allow 7 million children to continue receiving health insurance while extending this same coverage to an additional 4.1 million uninsured children. The SCHIP will assist children in low-income households which earn too much to qualify for Medicaid but are still unable to afford health insurance.

The Act will extend Medicaid eligibility by changing the eligibility rules including documentation of citizenship. Rather than requiring documentation of citizenship, the Act gives States the option to verify an applicant's citizenship through their Social Security number. This will allow an applicant to obtain coverage while being in the process of securing citizenship documentation.⁸ The Act will also provide States with the option to assist legal immigrant children and pregnant women without the 5-year legal residence restriction.

The Bush Administration firmly opposed this legislation when it was first introduced in 2007, vetoing it on two separate occasions.⁹ Like the Bush Administration, critics of the Act argue that it will provide needless health insurance to an estimated 2.4 million children who would otherwise be covered by private health insurance.¹⁰ Sponsors of the Bill refute this claim by pointing to the estimated 4 million jobs which have reportedly been lost within the past year. The children within those households, in the end, will no longer receive private health insurance.¹¹ The Congressional Budget Office estimates the cost of expanding coverage under the Act to average around \$32.8 billion from 2009–2013.¹² Funding for the program will be provided through a 62-cent increase on cigarette tax which will raise the price of cigarettes \$1.01 a pack. It will also require an increase in tax for other tobacco products.¹³

H.R. 1064: "The Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education Act"

The Youth Promise Act seeks to provide alternatives to prosecution and incarceration which have proven to be more effective in reducing crime and violence in young offenders.¹⁴ The Act is a bipartisan effort which acknowledges that excessively punitive juvenile justice policies increase long-term crime risks. Instead, the Youth Promises Act is aimed at intervention and preventive measures targeting at-risk youths as well as their families. It proposes providing local communities with the resources necessary to develop all-inclusive plans designed primarily by representatives from local faith organizations, law enforcement, schools, community organizations, and health and social service providers.¹⁵ The objective behind these community-based programs is to develop crime prevention, research, and intervention services for gang members and at-risk youths. This evidence-based approach to juvenile delinquency will furnish grants for the research of adolescent development through methods responsive to the needs and strengths of individual communities, focusing on cultural and linguistic differences.

Proponents of the Act claim that this preventive approach will yield a greater decrease of recidivism of juvenile delinquents. Furthermore, this approach will be less costly than punishment-oriented approaches such as the Gang Abatement and Prevention Act. That Act seeks to deter criminal gang activity by imposing stricter criminal penalties on juvenile offenders.¹⁶ Groups such as the American Civil Liberties Union (“ACLU”), National Association for the Advancement of Colored People, and Human Rights Watch have applauded the Youth Promises Act after noting that incarcerated offenders disproportionately belong to low income and minority communities.¹⁷ The ACLU has acknowledged that the Bill is a step towards “breaking the vicious ‘school-to-prison pipeline’ wherein children, overwhelmingly children of color, in elementary, middle and high schools are pushed out of the classroom and into the juvenile and eventually adult criminal justice system.”¹⁸ The Bill was introduced by Robert C. Scott (D-VA) and Mike Castle (R-DE) with 69 original co-sponsors in the House of Representatives. An identical bill was introduced in the Senate, S. 435, by Rover Casey (D-PA) and Olympia Snow (R-ME).

H.R. 738: “Deaths in Custody Reporting Act of 2009”

The Act requires States to report to the Attorney General information regarding the death of any person who is detained, under arrest, or being arrested, in a State-run prison or State-run detention center (including immigration and juvenile detention facilities).¹⁹ Among the information required by the Act

are 1) a description of the person, 2) the date, time and location of the death, 3) the law enforcement agency under which the death occurred, and 4) a brief description of the circumstances surrounding the death.²⁰ The Act addresses certain deficiencies within the “Deaths in Custody Reporting Act of 2000.” The 2000 Act, for instance, required only reporting from State-run and not federal detention facilities. It directed States to make only an initial report to the Attorney General concerning the death of a detainee. The proposed 2009 Act, in addition to this initial report, directs the Attorney General to conduct a study to “examine the relationship, if any, between the number of such deaths and the actions of management of such jails, prisons, and other specified facilities.”²¹ Such a requirement will reject vague descriptions such as “unresponsive” or “undetermined” as reasons behind a person’s death.²² Proponents of the Act assert it will ensure transparency and accountability by requiring proper documentation and inquiry into a person’s death while in government hands.²³ The Act comes at a time of mounting concern over the questionable deaths and alleged neglect occurring within federal-run immigrant detention facilities.²⁴ Reports of the reprehensible treatment of immigrant detainees have resulted in increasing support for this Act by groups such as the ACLU.²⁵

Compliance with the Act shall be enforced through eligibility for federal funding. The Bureau of Justice as well as facilities currently receiving federal government funding will lose 10% of such funding if they fail to provide details regarding the death of a detainee in a timely manner.²⁶ States in compliance with the program would receive this funding. The bill, introduced by Representative Robert Scott (D-VA), has been referred to the Senate Committee after passing through the House with a 407–1 vote.

ENDNOTES

¹ Lilly Ledbetter Fair Pay Act of 2009, H.R. 11, 11th Cong. (2009).

² Ledbetter v. Goodyear Tire and Rubber Co., 127 S. Ct. 2162 (2007).

³ *Id.* at 2164.

⁴ H.R. 11.

⁵ 155 CONG. REC. H116-H117 (statements of Rep. Mazie Hirono and Rep. Steny Hoyer).

⁶ 155 CONG. REC. H117 (statement of Rep. Howard McKeon).

⁷ H.R. 11.

⁸ *SCHIP Reauthorization in 2009: An Update on the Debate and Side-by-Side of Key Bills Under Consideration*, Georgetown University of Health Policy Institute Center for Children and Families, Jan. 29, 2009.

⁹ Christopher Lee, *Bush: No Deal on Children’s Health Plan*, WASH. POST, July 19, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/18/AR2007071801434.html?referrer=emailarticle>.

¹⁰ *Id.* See also 155 CONG. REC. H256 (statement of Rep. John Boehner).

¹¹ 155 CONG. REC. H256 (statement of Rep. Edward Markey).

¹² CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, H.R. 2, Children’s Health Insurance Program Reauthorization Act of 2009 (Feb. 11, 2009).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Youth Promises Act, H.R. 1064, 111th Cong. (2009).

¹⁶ *Human Rights Watch Calls on Congress to Support the “Youth PROMISE Act,”* H.R. 3846, April 6, 2008, available at <http://www.hrw.org/en/news/2008/04/06/human-rights-watch-calls-congress-support-youth-promise-act-hr-3846>.

¹⁷ *Id.* See also Letter from Caroline Fredrickson, Director, and Jesselyn McCurdy, Legislative Counsel, American Civil Liberties Union, to Congress in Support of H.R. 3846, the Youth PROMISE Act, December 17, 2007, available at <http://bobbyscott.house.gov/pdf/ACLU.071217.pdf>.

¹⁸ Letter from Caroline Fredrickson, Director, and Jesselyn McCurdy, Legislative Counsel, American Civil Liberties Union, to Congress in Support of H.R. 3846, the Youth PROMISE Act, December 17, 2007, available at <http://bobbyscott.house.gov/pdf/ACLU.071217.pdf>.

¹⁹ Death in Custody Reporting Act of 2009, H.R. 738, 111th Cong. (2009).

²⁰ *Id.*

²¹ *Id.*

²² Immigration and Customs Enforcement Report, *Detainee Deaths 2004–November 2007*, available at http://graphics8.nytimes.com/packages/pdf/nyregion/ICE_FOIA.pdf. See also Nina Bernstein, *Few Details on Immigrants Who Died in Custody*, N.Y. TIMES, May 5, 2008, available at http://www.nytimes.com/2008/05/05/nyregion/05detain.html?_r=1.

²³ 155 CONG. REC. H887 (statement of Rep. Michael Honda).

²⁴ Nina Bernstein, *U.S. Issues Scathing Report on Immigrant Who Died in Detention*, N.Y. TIMES, Jan. 16, 2009, at A14, available at <http://www.nytimes.com/2009/01/16/us/16detain.html>. See also Nina Bernstein, *Ill and in Pain, Detainee Dies in U.S. Hands*, N.Y. TIMES, August 13, 2008, available at <http://www.nytimes.com/2008/08/13/nyregion/13detain.html>.

²⁵ American Civil Liberties Union, *House Passes Bill to Expand Reporting of Immigrant Deaths in Detention*, Feb. 4, 2009, available at <http://www.aclu.org/immigrants/gen/38668prs20090204.html>.

²⁶ H.R. 738.