



January 14, 2009

United States Senate
Washington, DC 20510

**ACLU Urges Senators to Vote Yes on Cloture and Final Passage of S. 181,
The Lilly Ledbetter Fair Pay Act**

Dear Senator:

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On behalf of the American Civil Liberties Union (ACLU), and its hundreds of thousands of members, activists, and fifty-four affiliates nationwide, we urge you to vote in favor of cloture and final passage of S. 181, The Lilly Ledbetter Fair Pay Act and to oppose weakening amendments. Because of the critical importance of this bill to America's working families, the ACLU intends to score this vote.

As soon as tomorrow, the Senate is expected to take up the Lilly Ledbetter Fair Pay Act, overwhelmingly passed by the House of Representatives last week. This bill addresses a Supreme Court decision that undermines protections against discrimination in compensation that have been bedrock principles of civil rights laws for decades. In this time of economic belt-tightening, we need the Senate to help our nation's employees bring home every dollar of rightfully earned wages.

On May 29, 2007, the Supreme Court ruled in *Ledbetter v. Goodyear* that workers may not have any remedies for ongoing wage discrimination. According to the 5-4 decision, the majority held that Ms. Ledbetter did not have a valid claim of wage discrimination because she had not filed her complaint within 180 days of Goodyear's initial discriminatory pay decision, even though she did not become aware of the unlawfully lower wages until years after the discrimination began. The decision overturned the common-sense and broadly recognized legal precedent that each paycheck diminished by discrimination carries forward an employer's unlawful wage decisions. For Ms. Ledbetter, not only was she unaware of the date the pay discrimination began, but her employer also kept it secret, thereby preventing her from gathering the information that would have been necessary to file a complaint within 180 days of the original discriminatory decision.

The Supreme Court's decision to limit sharply workers' opportunities to challenge wage discrimination undermines the fundamentally just principle that as long as an employer continues to discriminate against an employee, so too should the employee's ability to have her day in court. The decision is also at odds with the realities of the workplace. As Supreme Court Justice Ruth Bader Ginsburg discussed in her dissent, the realities of the workplace may prevent employees from detecting pay discrimination when it first occurs.

Indeed, the majority of workers may never know the salaries of their coworkers. According to a workplace study, only one in ten private sector employers has adopted a pay openness policy. And many employers instruct employees not to share financial information at all.

S. 181 clarifies that pay discrimination is not a one-time occurrence starting and ending with a pay decision, but that each paycheck lessened due to discrimination represents a continuing violation by the employer. Critically, this legislation will ensure employers do not profit from years of discrimination simply because their employees were unaware of it for a few months. Employers should be assured, however, that the bill does not impact the 2-year limit of back pay damages that is currently part of Title VII of the Civil Rights Act of 1964.

The Senate has a proud history of passing our major civil rights laws with strong bipartisan majorities. From the Civil Rights Act of 1964, which passed with 73 votes, to the Civil Rights Act of 1991, which passed with 93 votes, the Senate has repeatedly come together to do the right thing. Far from imposing a new rule on employers, legislation reversing the *Ledbetter* decision would restore the law that prevailed in the majority of federal circuits and the policy of the EEOC under both Democratic and Republican administrations before the Supreme Court's ruling. This bill restores Congress' original legislative intent and reaffirms the fundamental principle that both parties have agreed to in the past – that our civil rights protections are intended to have a broad remedial purpose and should make people whole for injuries suffered because of unlawful employment discrimination.

This bill is a modest and logical fix. American workers should know that they are protected from wage discrimination and are able to secure the wages they have rightfully earned. Taking strong steps toward eliminating pay discrimination will play a supporting role in the effort to stimulate the economy and ensure self-sufficiency for American workers and their families. As the 111th Congress begins, we need concrete action to improve the economic security of working families. The ACLU strongly urges all Senators to support cloture and final passage of this legislation and oppose all weakening amendments.

If you have any questions please contact Deborah J. Vagins at (202) 715-0816 or dvagins@dcaclu.org.

Sincerely,



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