

HOUSE BILL 439

D5

8lr0453
CF 8lr0813

By: **Delegates Rosenberg, Doory, Benson, Kullen, Montgomery,
Nathan-Pulliam, Oaks, Pena-Melnyk, Pendergrass, and V. Turner**

Introduced and read first time: January 29, 2008

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Lilly Ledbetter Fair Pay Act of 2008**

3 FOR the purpose of authorizing the recovery of certain back pay where a certain
4 unlawful employment practice is similar or related to a certain other unlawful
5 employment practice; clarifying that a certain unlawful employment practice
6 occurs when a certain decision or practice is adopted, when an individual
7 becomes subject to a certain decision or practice, or when an individual is
8 affected by application of a certain decision or practice, including each time
9 certain compensation is paid under a discriminatory compensation decision or
10 practice; declaring the intent of the General Assembly; providing for the
11 application of this Act; and generally relating to unlawful discriminatory
12 compensation practices.

13 BY repealing and reenacting, with amendments,
14 Article 49B – Human Relations Commission
15 Section 11(e) and 11A(d)
16 Annotated Code of Maryland
17 (2003 Replacement Volume and 2007 Supplement)

18 BY adding to
19 Article 49B – Human Relations Commission
20 Section 11B(e-1) and 16(f-1)
21 Annotated Code of Maryland
22 (2003 Replacement Volume and 2007 Supplement)

23 Preamble

24 WHEREAS, The Supreme Court in Ledbetter v. Goodyear Tire & Rubber Co.,
25 No. 05-1074 (May 29, 2007), significantly impairs statutory protections against

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 discrimination in compensation that have been bedrock principles of fair employment
2 law for decades; and

3 WHEREAS, The Ledbetter decision undermines those statutory protections by
4 unduly restricting the time period in which victims of discrimination can challenge
5 and recover for discriminatory compensation decisions or other practices; and

6 WHEREAS, The limitation imposed by the Court on the filing of discriminatory
7 compensation claims ignores the reality of wage discrimination and is at odds with the
8 robust application of fair employment law; and

9 WHEREAS, The laws of Maryland governing employment discrimination have
10 been derived in large part from the statutory provisions enacted by Congress; now,
11 therefore,

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article 49B – Human Relations Commission**

15 11.

16 (e) (1) If, after reviewing all of the evidence, the administrative law judge
17 finds that the respondent has engaged in any discriminatory act within the scope of
18 this article, the administrative law judge shall so state the findings.

19 (2) The administrative law judge shall issue and cause to be served
20 upon the respondent an order requiring the respondent to cease and desist from the
21 discriminatory acts and to take affirmative action to effectuate the purposes of the
22 particular subtitle.

23 (3) If the respondent is found to have engaged in or to be engaging in
24 an unlawful employment practice charged in the complaint, the remedy may include:

25 (i) Enjoining the respondent from engaging in the
26 discriminatory act;

27 (ii) Ordering appropriate affirmative relief, including the
28 reinstatement or hiring of employees, with or without back pay;

29 (iii) Awarding compensatory damages; or

30 (iv) Ordering any other equitable relief the court considers
31 appropriate.

32 (4) Compensatory damages awarded under this subsection are in
33 addition to:

1 (i) Back pay or interest on back pay that the complainant may
2 recover under any other provision of law; and

3 (ii) Any other equitable relief that a complainant may recover
4 under any other provision of law.

5 (5) The sum of the amount of compensatory damages awarded to each
6 complainant under this section, for future pecuniary losses, emotional pain, suffering,
7 inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses, may
8 not exceed:

9 (i) \$50,000 if the respondent employs not fewer than 15 and not
10 more than 100 employees in each of 20 or more calendar weeks in the current or
11 preceding calendar year;

12 (ii) \$100,000, if the respondent employs not fewer than 101 and
13 not more than 200 employees in each of 20 or more calendar weeks in the current or
14 preceding calendar year;

15 (iii) \$200,000, if the respondent employs not fewer than 201 and
16 not more than 500 employees in each of 20 or more calendar weeks in the current or
17 preceding calendar year; and

18 (iv) \$300,000, if the respondent employs not fewer than 501
19 employees in each of 20 or more calendar weeks in the current or preceding calendar
20 year.

21 (6) In case of an award of back pay under paragraph (3) of this
22 subsection, interim earning or amounts earned with reasonable diligence by the
23 person or persons discriminated against shall operate to reduce the back pay
24 otherwise allowable.

25 **(7) IN ADDITION TO ANY OTHER RELIEF AUTHORIZED BY THIS**
26 **SUBSECTION, A COMPLAINANT MAY RECOVER BACK PAY FOR UP TO 2 YEARS**
27 **PRECEDING THE FILING OF THE COMPLAINT, WHERE THE UNLAWFUL**
28 **EMPLOYMENT PRACTICE THAT HAS OCCURRED DURING THE COMPLAINT FILING**
29 **PERIOD IS SIMILAR OR RELATED TO AN UNLAWFUL EMPLOYMENT PRACTICE**
30 **WITH REGARD TO DISCRIMINATION IN COMPENSATION THAT OCCURRED**
31 **OUTSIDE THE TIME FOR FILING A COMPLAINT.**

32 **[(7)] (8)** In cases of discrimination other than those involving
33 employment, in addition to the award of civil penalties as specifically provided in this
34 article, nonmonetary relief may be granted to the complainant, except that in no event
35 shall an order be issued that substantially affects the cost, level, or type of any
36 transportation services.

1 [(8)] (9) In cases involving transportation services which are
2 supported fully or partially with funds from the Maryland Department of
3 Transportation, no order may be issued which would require costs, level, or type of
4 transportation services different from or in excess of those required to meet U.S.
5 Department of Transportation regulations adopted pursuant to Section 504 of the
6 Rehabilitation Act of 1973, codified as 29 U.S.C. § 794, nor would any such order be
7 enforceable under § 12(a) of this subtitle.

8 11A.

9 (d) If the court finds that a discriminatory act took place, the court may
10 provide the remedies specified in § 11(e)(3) through [(6)] (7) of this subtitle.

11 11B.

12 **(E-1) IN ADDITION TO ANY OTHER RELIEF AUTHORIZED BY THIS SECTION,**
13 **A COMPLAINANT MAY RECOVER BACK PAY FOR UP TO 2 YEARS PRECEDING THE**
14 **FILING OF THE INITIAL COMPLAINT, WHERE THE UNLAWFUL EMPLOYMENT**
15 **PRACTICE THAT HAS OCCURRED DURING THE COMPLAINT FILING PERIOD IS**
16 **SIMILAR OR RELATED TO AN UNLAWFUL EMPLOYMENT PRACTICE WITH REGARD**
17 **TO DISCRIMINATION IN COMPENSATION THAT OCCURRED OUTSIDE THE TIME**
18 **FOR FILING A COMPLAINT.**

19 16.

20 **(F-1) (1) FOR PURPOSES OF THIS SECTION, AN UNLAWFUL**
21 **EMPLOYMENT PRACTICE OCCURS, WITH RESPECT TO DISCRIMINATION IN**
22 **COMPENSATION IN VIOLATION OF THIS SUBTITLE, WHEN:**

23 **(I) A DISCRIMINATORY COMPENSATION DECISION OR**
24 **OTHER PRACTICE IS ADOPTED;**

25 **(II) AN INDIVIDUAL BECOMES SUBJECT TO A**
26 **DISCRIMINATORY COMPENSATION DECISION OR OTHER PRACTICE; OR**

27 **(III) AN INDIVIDUAL IS AFFECTED BY APPLICATION OF A**
28 **DISCRIMINATORY COMPENSATION DECISION OR OTHER PRACTICE, INCLUDING**
29 **EACH TIME WAGES, BENEFITS, OR OTHER COMPENSATION IS PAID, RESULTING**
30 **WHOLLY OR PARTLY FROM THE DISCRIMINATORY COMPENSATION DECISION OR**
31 **OTHER PRACTICE.**

32 **(2) IN ADDITION TO ANY RELIEF AUTHORIZED BY THIS ARTICLE,**
33 **LIABILITY MAY ACCRUE AND AN AGGRIEVED PERSON MAY OBTAIN RELIEF AS**
34 **PROVIDED IN § 11(E) OF THIS ARTICLE, INCLUDING RECOVERY OF BACK PAY**
35 **FOR UP TO 2 YEARS PRECEDING THE FILING OF THE COMPLAINT, WHERE THE**

1 UNLAWFUL EMPLOYMENT PRACTICE THAT HAS OCCURRED DURING THE
2 COMPLAINT FILING PERIOD IS SIMILAR OR RELATED TO AN UNLAWFUL
3 EMPLOYMENT PRACTICE WITH REGARD TO DISCRIMINATION IN COMPENSATION
4 THAT OCCURRED OUTSIDE THE TIME FOR FILING A COMPLAINT.

5 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the
6 General Assembly that, with regard to any charges of discrimination under any law,
7 nothing in Article 49B of the Annotated Code of Maryland is intended to preclude or
8 limit an aggrieved person's right to introduce evidence of unlawful employment
9 practices that have occurred outside the time for filing a charge of discrimination.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to
11 all claims of discrimination in compensation under Article 49B of the Annotated Code
12 of Maryland pending on or after October 1, 2008.

13 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2008.