

# KEY VOTE **ALERT!**



Congressional & Public Affairs  
U.S. Chamber of Commerce  
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January 14, 2009

TO THE MEMBERS OF THE UNITED STATES SENATE:

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, urges you to oppose S. 181, the "Lilly Ledbetter Fair Pay Act." This bill would amend Title VII of the Civil Rights Act of 1964 and several other civil rights laws by effectively abolishing the statute of limitations for the vast majority of discrimination cases.

The Chamber strongly supports equal employment opportunity and effective mechanisms to achieve this important goal. However, the Chamber opposes S. 181 on both substantive and procedural grounds. S. 181 is virtually identical to legislation that was marked-up by the House Education and Labor Committee in June, 2007. That bill was passed only days after it was first introduced and before stakeholders had any realistic opportunity to vet the legislation. Many legitimate concerns have since been raised about this bill, and the hasty attempt to pass it without considering these important issues only heightens the Chamber's concerns that this legislation would dramatically expand the number of frivolous and otherwise questionable cases that could be brought against employers. The Senate would be well served to further examine this bill and properly consider alternative approaches through the Committee process.

S. 181 purports to overturn the Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, which rejected the "paycheck theory" of compensation discrimination that would permit claims to be filed many years after an alleged act of discrimination occurs. The *Ledbetter* decision is a common sense result that should be supported.

Proponents of S. 181 claim legislative relief is necessary because the Court's decision would make it harder for people who do not know they are being discriminated against from obtaining their day in court. People who have been unlawfully discriminated against deserve effective remedies under civil rights laws, but S. 181 is an inappropriate response to the Court's decision. The bill ignores existing legal doctrines that protect unknowing victims and expands the law so that even people who know all relevant facts and fail to exercise their rights for years or even decades could have a viable claim. As an example of the bill's overreaching, not only would the Court's *Ledbetter* decision be overturned, but so would other longstanding decisions such as the

noncontroversial 1980 decision of the Supreme Court in *Delaware State College v. Ricks*, a case holding that the statute of limitations for a professor denied tenure begins running when tenure was denied, not when he found himself out of work a year later.

S. 181 also contains numerous technical problems, such as appearing to expand the class of individuals with standing to bring a claim, application to unintentional disparate impact claims, and the creation of new causes of action that could be brought when an individual receives retirement benefits. Some of these problems may be intentional while others may simply be the product of the rushed legislative process. Without a more deliberative process, there will be no opportunity for the Senate to examine these provisions in detail.

The Chamber strongly urges you to oppose S. 181 and any attempt to amend the bill to further expand civil rights laws, such as by including provisions from the Paycheck Fairness Act. **The Chamber may consider substantive and procedural votes on, or in relation to, this issue in our annual *How They Voted* scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with a large initial "R." and a long, sweeping underline.

R. Bruce Josten