

ALI-ABA Teleseminar and Audio Webcast
Employment Law Update: Spring 2009

April 29, 2009

**Employment Law Update
(Presentation Slides)**

By

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by

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Lilly Ledbetter Fair Pay Act of 2009

Pub. L. No. 111-2 (2009)

- “For purposes of this section, an unlawful employment practice occurs, with respect to discrimination compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice” *Id.* § 3(a)
- “This Act, and the amendments by this Act, take effect as if enacted on May 28, 2007” *Id.* § 6
- *Bush v. Orange County Corr. Dep’t*, 2009 U.S. Dist. LEXIS 7156 (M.D. Fla. Feb. 2, 2009)
- *Gilmore v. Macy’s Retail Holdings*, 2009 U.S. Dist. LEXIS 4937 (D.N.J. Jan. 20, 2009)

Americans With Disabilities Act

- ADA Amendments Act of 2008, Pub. L. No. 110-325 (2008)
- *Kellogg v. Energy Safety Servs. Inc.*, 544 F.3d 1121, 2008 U.S. App. LEXIS 21567 (10th Cir. 2008) (driving is a major life activity)
- *Adams v. Rice*, 531 F.3d 936, 2008 U.S. App. LEXIS 15295 (D.C. Cir. 2008) (sexual relations is a major life activity)

Americans With Disabilities Act

- *Desmond v. Mukasey*, 530 F.3d 944, 2008 U.S. App. LEXIS 13803 (D.C. Cir. 2008) (sleeping is a major life activity)
- Archive ADA: The Path to Equality, www.archiveADA.org (last visited February 27, 2009)

Retaliation Claims: The Tail is Wagging the Dog

- The number of retaliation charges filed with the EEOC increased from 1997 at 22.6% to 29.8% of all charges filed in 2006. Sylvia A. Bier, American Bar Ass'n, *Protect Against the Surge of Employee Retaliation Claims: Understanding Title VII and Its Application to Recent EEOC Cases*, 36 *The Brief* 3, at 15 (Spring 2007)
- *Crawford v. Metropolitan Gov't of Nashville and Davidson County*, 129 S. Ct. 846, 2009 U.S. LEXIS 870 (2009)
- Michael J. Zimmer, *A Pro-Employee Supreme Court? – Retaliation Decisions*, 60 *S.C. L. Rev.* (forthcoming 2009), available at <http://ssrn.com/abstract=1333778>

Litigation Under New Whistleblower Laws

- Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314, 15 U.S.C. § 2087 (2008) (CPSIA whistleblower rights to private sector workers connected with the manufacture, importing, distribution, labeling, or retail sale of consumer products under the jurisdiction of the Consumer Product Safety Commission)
- McCaskill Amendment (S.Amdt. 196) to the American Recovery and Reinvestment Act of 2009, H.R. 1, 111th Cong. (2009)
- See also whistleblower amendment to the Surface Transportation Assistance Act 49 U.S.C. § 31105, the Federal Rail Safety Act (49 U.S.C. § 20109), the National Transit Systems Security Act (6 U.S.C. § 1142) and section 846 of the National Defense Authorization Act for Fiscal Year 2008 (10 U.S.C. § 2409) (amending whistleblower protection for employees of DOD contractors and grantees)