

Employment, Benefits & Labor Alert

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The New Jersey Appellate Division Opts Not to Follow Federal Fair Pay Act

In a December 2009 decision, *Alexander v. Seton Hall Univ.*, the Appellate Division of the New Jersey Superior Court decided that it will *not* follow the recent Congressional Amendment to Title VII, known as the Lilly Ledbetter Fair Pay Act of 2009 (“FPA”), when interpreting the state anti-discrimination statute, the New Jersey Law Against Discrimination (“LAD”). Instead, it will apply the pre-FPA standard set forth by the U.S. Supreme Court in the matter of *Ledbetter v. Goodyear Tire & Rubber Co.* in determining the timeliness of pay discrimination claims under LAD. The issue in these cases is “whether and under what circumstances the plaintiff may bring an action alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period but is the result of intentionally discriminatory pay decisions that occurred outside of the limitations period.” The Court held that because an

employer’s decision to set an employee’s pay or salary is a “discrete act,” paychecks received as a result of discriminatory pay decisions occurring outside of the limitations period, which merely represented a continuing impact of those time-barred decisions, could not form the basis for the plaintiffs’ complaint. The Appellate Division’s decision makes clear, once again, that when dealing with employment issues, employers must be cognizant of differences in state and federal law, and cannot assume that a state court will necessarily follow the path of the federal government. That said, larger employers in New Jersey are still covered by and may be liable for the larger damages period established by the FPA.

If you have any questions regarding the *Alexander* decision, the FPA, and/or your Company’s pay policies and practices, please contact a member of Blank Rome LLP’s Employment, Benefits and Labor Practice Group. ■

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