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Assignment Prompt Sheet

Lilly Ledbetter Fair Pay Act of 2009

Overview

Act Title: Lilly Ledbetter Fair Pay Act of 2009

Congress: 111th Congress (2009-2010)
Session/Sessions: 1

Statute No: 123 Stat. 5-7
Public Law No: 111 PL 2

Eid: 1110002
Gid: 213-019

Bill: [S 181](#)
Sponsor: Sen. [Barbara Mikulski](#) (D-MD)
House Committees: Education and Labor
Senate Committees: Health, Education, Labor, and Pensions

Companion Bill: [HR 11](#)
Related Bills: [HR 12](#); [S 3772](#); S 182; S 166
House Rules: [Hres 5](#); [Hres 87](#)
Past Bills: 110 HR 2831; 110 S 1843

Introduced Date- Law Date: January 8 – January 29, 2009
House Floor Days: 2
Senate Floor Days: 4

Roll Call Votes: 19 (2 in the House, 9 in the Senate on S 181; 1 on HR 11, 2 on Hres 5, 2 on Hres 87, 2 on HR 12 in the House; 1 in the Senate on S 3772)



(Above) Sen. Barbara Mikulski (D-MD). While only 4'11, Mikulski was known as an aggressive senator who former Majority Leader Harry Reid (D-NV) once asserted "everyone was afraid of."

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Legislative History Comments

The *Lilly Ledbetter Fair Pay Act of 2009* was written in response to a 2007 Supreme Court case, [Ledbetter v. Goodyear Tire & Rubber Co.](#) In a 5-4 decision, the majority invalidated a gender discrimination suit by Ledbetter by ruling that a statute of limitations applied to only the employees' first paycheck. The Act specified that the statute of limitations applied to each discriminatory paycheck. In a [New York Times](#) article President Obama, "describes the bill as part of a broader effort by his incoming administration to update the social contract, reinvigorate civil rights and close the pay gap between men and women." From a process standpoint, there are a few interesting aspects of this law, but it shouldn't be overtly difficult. This CRS report talks about the broader issue of gender pay equality (with a few references to the act):

- <https://fas.org/sgp/crs/misc/RL31867.pdf>

From a process standpoint, this bill is a bit odd. Specifically, this measure was two separate bills in the House (HR 11 which was a bit more narrow in overturning the Supreme Court decision and HR 12 which would have made it easier file sex discrimination cases in wage claims and made employers liable to both punitive and compensatory damages.) The House debated these bills separately but combined them under the provisions of Hres 5, a closed rule.

The Senate bill only contained one of the measures (HR 11). It passed HR 11 after adopting a cloture motion by a [61-36](#) vote. Instead of requesting a conference report, the House considered the Senate bill under Hres 87, another closed rule. The rule was adopted and the bill passed [250-177](#) on a near party-line vote and became law. A year and a half later, the Senate attempted to consider their version of HR 12, but a cloture motion on the bill failed [58-41](#).

The legislation was written in response to a 2007 Supreme Court case, *Ledbetter v. Goodyear Tire & Rubber Co.* In a 5-4 decision, the majority invalidated a gender discrimination suit by Ledbetter by ruling that a statute of limitations applied to only the employees' first paycheck. S 181 specified that the statute of limitations applied to each discriminatory paycheck.

Take a look at [CQ \(2009\)](#) and please don't hesitate to e-mail me with questions!

Assignments

For the sections below, you're going to want to answer the questions and write-up the process sections that correspond to your assigned number. Here they are:

#1.

#2.

#3.

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Background Questions

1. What does this act actually do? Who was pushing for it? Was it significantly altered during consideration? What were the problems it was trying to rectify? What did existing federal policy look like in this specific issue area? Why did reformers feel it needed to be changed?

How did HR 11 and HR 12 differ? Why did the Senate separate HR 12—the Paycheck Fairness Act—from the Ledbetter [legislation](#)?

Specifically, what happened in [Ledbetter v. Goodyear Tire & Rubber Co.](#)? How was that decision viewed by scholars?

2. What motivated consideration of this legislation in this specific Congress?¹ Was it in response to a specific event? Or was this a slower build over time? What happened in previous congresses regarding this? Had Congress considered comparable legislation?

You might want to contextualize this bill by discussing some of the other landmark laws relating to this issue.

3. Discuss the broader political context this bill was considered in. Who controlled the House? The Senate? By how many? Who was President? Was this part of the President's agenda? What other pieces of legislation were being considered/passed in this Congress? Why was this measure the first one pressed by President Obama and congressional Democrats?

The Stathis (2014) piece might worth a citation here.

Process Sections

Please write-up the sections that correspond to your number. Feel free to incorporate any notes I might have dumped in the margins.

#1. House Consideration of HR 11 & HR 12 (January 9, 2009)

Prior to consideration of HR 11 and HR 12, the House debated a rule (Hres 5) which governed their consideration. Hres 5 provided that all House rules for the 110th Congress be adopted for the 111th Congress. It also provided for consideration of HR 11 and HR 12 under closed rule and allocated one hour of debate on each bill. The rule specified that after the passage of both measures, the text of HR 12 will be appended at the end of HR 11, and HR 12 will be laid on the table. The previous question on Hres 5 was ordered without objection.

¹ It had. Specifically, Miller had sponsored a previous iteration of the act in the 110th Congress. That bill (HR 2831) passed the House 225-199 on July 31, 2007. However, on April 23, 2008, cloture on the motion to proceed in the Senate failed 56-42, and no further action was taken in the 110th Congress.

Commented [AJM1]: Some background on the two bills:

A House version of S 181, HR 11, was sponsored by Representative George Miller (D-CA). Like the Senate bill, the measure sought to overturn *Ledbetter v. Goodyear Tire & Rubber Co.*, by specifying that the statute of limitations on discrimination lawsuits be applied to each discriminatory paycheck. The Supreme Court ruling applied to the statute of limitations to only the first paycheck, thus invalidating a gender discrimination lawsuit by *Ledbetter* (see *Stern* 1.4.10).

HR 12 sought to make it easier to file sex discrimination cases in wage claims and made employers liable to both punitive and compensatory damages. That bill was introduced by Representative Rosa DeLauro (D-CT) on January 6, 2009. DeLauro had introduced a version of the bill in the last five congresses. The iteration introduced in the 110th Congress – HR 1338 – passed on July 31, 2008, 247-178. That bill was referred to the Senate Committee on Health, Education, Labor, and Pensions. No further action was taken in the 110th Congress.

The Senate opted to consider the two bills separately. The Paycheck Fairness Act, (S 3772) was introduced on September 13, 2010 by the majority leader. On September 22, it was placed on the calendar under Senate Rule XIV. An earlier version of the bill (S. 182) was introduced on January 8, 2009 by Senator Hilary Clinton (D-NY). Neither iteration of the bill was adopted by the Senate. S 3772 was pulled after cloture on the motion to proceed failed by a 58-41 vote on September 29, 2010.

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The House then defeated a motion to commit with instructions offered by the ranking member on Rules, Representative Dave Dreier (R-CA). Dreier's motion to commit primarily sought to restore the minority's right to offer a motion to recommit. Dreier's motion was defeated on a straight party-line vote 174-249. Hres 5 was then agreed to 242-181, with six Democrats joining all Republicans to vote [no](#).

After debate on HR 11, the measure was passed by voice vote. The bill sponsor, George Miller (D-CA) demanded the yeas and nays, and further proceedings were postponed under Hres 5. Debate then occurred on HR 12, and Representative Tom Price (R-GA) offered a motion to recommit. Price argued: "One of the distinctive changes being made today to the Equal Pay Act is the inclusion of unlimited compensatory and punitive damages in a lawsuit." This provided a "boondoggle for trial lawyers" and he sought to address this by capping hourly attorney fees at \$2,000 an hour (*Congressional Record*, 111th Congress, January 6, 2009, H126)."

The motion was defeated 178-240. HR 12 was then passed 256-163, with ten Republicans ayes and three Democrats voting nay. Pursuant to Hres 5, the text of HR 12 was appended to HR 11 and the bill was laid on the table. The amended HR 11 was then adopted 247-171 with three Republican ayes and five Democrats voting nay.

#2. Senate Consideration of S 181 (January 15, 21-22, 2009)

S 181 was introduced on January 9, 2009, by Senator Barbara Mikulski (D-MD) and placed on the Senate calendar the same day through Rule [XIV](#).

Senator Lindsey Graham (R-SC) argued the bill created "a statutory statute of limitations that we have not seen before, that, quite frankly, does not make a whole lot of sense to me, if we pass the bill that came out of committee (*Congressional Record*, 111th Congress, January 22, 2009, S740)," and Senator George Voinovich (R-OH) claimed that "the Ledbetter legislation could allow for the filing of lawsuits long after someone knew they were subject to a discriminatory act, effectively eliminating the statute of limitations from title VII in many cases them (*Congressional Record*, 111th Congress, January 21, 2009, S396)."

#3. House Consideration of S 181 (January 27, 2009)

The House successfully ordered the previous question on Hres 87, which provided for consideration of S 181 under a closed rule, by a vote of 252-175. The rule was then agreed to 252-174.

The rule allowed for a motion to commit, which was offered by Rep. Buck McKeon (R-CA). McKeon argued that the "committee has never had a hearing on this bill," and that "There has not been a full and fair debate, regular order has not been followed, and it needs to be (*Congressional Record*, 111th Congress, January 27, 2009, H554)."²

² Miller (D-CA) objected to this argument, claiming:

[T]his motion to commit is clearly an effort to not only send this bill back to committee, but to kill this legislation...In the last Congress, [the bill] was subject to a full committee markup, which all Members

Commented [AJM2]: There's a kind of cool debate (cool being a relative term here) between Dreier, Rep. James McGovern (D-MA) and others over the motion to recommit and rules more generally (complete with the requisite complaints over restrictiveness). Dreier at one point argues that "process is substance (*Congressional Record*, 111th Congress, January 6, 2009, H6-H20)."

Commented [AJM3]: Rule XIV of the Senate's rules state that: "Every bill and joint resolution reported from a committee, not having previously been read, shall be read once, and twice, if not objected to, on the same day, and placed on the Calendar in the order in which the same may be reported; and every bill and joint resolution introduced on leave, and every bill and joint resolution of the House of Representatives which shall have received a first and second reading without being referred to a committee, shall, if objection be made to further proceeding thereon, be placed on the Calendar." The short of it is that the Senate does not have to refer bills to committee.

This is a fairly controversial topic today. There are a couple reasons as to why Rule XIV doesn't get used all the time: (1) You actually need the committee's input. Generally, rule XIV is used on bills that received substantial committee mark-ups in previous sessions or congresses (or when the Senate has already reported their own version of the bill to the floor). (2) You're trying to build a coalition and need minority/committee member support. Members hate it when the committee consideration is bypassed. They lose a substantial opportunity to influence the content of the measure. And you might lose some support if you opt to rule xiv a bill as opposed to send it to mark-up.

[Here is a CRS write-up on Rule XIV](#), and links to a couple smaller, new pieces about it. The first of these actually talks about the procedure's usage by LBJ:

<http://www.rollcall.com/news/policy/lbj-senate-gambit-set-stage-modern-maneuver>

http://www.politico.com/magazine/story/2014/01/effective-senators-congressional-moneyball-102146_Page2.html#_V2wXsvkrK70

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#3. *Senate Consideration of S 3772 (November 17, 2010)*

Sen. Mike Enzi (R-WY) dubbed it the “jobs for trial lawyers act,” arguing the measure would allow trial lawyers to “bring bigger class action lawsuits--which usually result in coupons for the people that were disadvantaged--without even getting the consent of the plaintiffs, and they will have the weapon of uncapped damages to force employers to settle lawsuits even when they know they have done nothing wrong (*Congressional Record*, 111th Congress, November 17, 2010, S7926).”³

Member Spotlight

Choose one of the following for your member spotlight:

#1. Rep. George Miller (D-CA); Rep. Dave Dreier (R-CA); Rep. James McGovern (D-MA); Rep. Tom Price (R-GA); Rep. Louise Slaughter (D-NY)

#2. Sen. Barbara Mikulski (D-MD); Sen. Harry Reid (D-NV); Sen. Lindsey Graham (R-SC); Sen. Kay Bailer Hutchison (R-TX); Sen. Johnny Isakson (R-GA)

#3. Sen. Hilary Clinton (D-NY); Rep. Buck McKeon (R-CA); Rep. Rosa DeLauro (D-CT); Sen. Mike Enzi (R-WY)

Commented [AJM4]: Should be a pretty short section.

Commented [AJM5]: S 3772 was an identical version of S 182, introduced by Reid roughly a year and half later. S 3772 required employers to demonstrate pay disparity was job-related and not based on gender (Kim and Gardner 11.24.10). This shifted the burden of proof in sex discrimination cases to employers, thus making it easier for women to file such cases. The measure also made employers liable to both punitive and compensatory damages.

Commented [AJM6]: https://www.washingtonpost.com/local/obituaries/rep-louise-slaughter-liberal-democrat-who-championed-womens-rights-dies-at-88/2018/03/16/7b7f7c3e-2865-11e8-bc72-077aa4dab9ef_story.html

Commented [AJM7]: <https://www.washingtonpost.com/archive/politics/1998/09/08/barbara-mikulski-fact-vs-fiction/1f5d57f3-c9ad-42f3-9a1b-7f82d3053133/>
<https://www.theatlantic.com/politics/archive/2015/03/barbara-mikulski-marks-the-end-of-an-era/446073/>

Commented [AJM8]: https://www.washingtonpost.com/local/obituaries/michael-enzi-dead/2021/07/27/6de3dec6-ecd2-11eb-bf80-e3877d9e5f06_story.html
<https://www.nytimes.com/2021/07/27/us/politics/senator-mike-enzi-dies.html>

could have offered as many amendments as they like. [The minority] offered two amendments. Those amendments were rejected. They could have offered more. They chose not to.

The bill went to the House floor, debated, and was passed on a bipartisan vote of 225-199 in June of 2007. The minority had an opportunity to offer a motion to recommit. They chose not to. The bill went to the Senate, where it was filibustered. Filibustered. And then the bill was reintroduced identical to what the House had already passed earlier this month.

On January 9 of this year, we passed the bill on the House floor again, 247-171, on another bipartisan vote. The minority had another opportunity to offer a motion to recommit. They chose not to. The bill went to the Senate, where it was subjected to amendment after amendment. The bill was passed on a bipartisan vote of 61-36. And now we are on the cusp of sending this bill to President Obama for his signature. That is what we should do (*Congressional Record*, 111th Congress, January 27, 2009, H555).

³ Enzi added: “The litigation bonanza this bill would create would extend even to the smallest of small businesses, only further hampering our economic recovery (*Congressional Record*, 111th Congress, November 17, 2010, S7926).”

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Aftermath Questions

1. How was this act viewed upon passage? What did the newspapers say? How did the final measure differ from the one reformers were pushing?
2. How has this law evolved over time? Has it been featured in any major Supreme Court cases? Significantly altered by subsequent legislation? What happened with the Paycheck Fairness Act? Was omitting it from this law a mistake?
3. How relevant is this law currently? Are there additional issues related to it that reformers have been pushing to change? Is the U.S. in a better position on gender equality than it used to be? What do scholars say?

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Suggested Sources

Scholarly Articles:

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Zisk, Nancy. "Lilly Ledbetter, Take Two: The Lilly Ledbetter Fair Pay Act of 2009 and the Discovery Rule's Place in the Pay Discrimination Puzzle." *Wm. & Mary J. Women & L.* 16 (2009): 1.

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Kim, Marlene. "Pay secrecy and the gender wage gap in the United States." *Industrial Relations: A Journal of Economy and Society* 54.4 (2015): 648-667.

Whitehouse, Gillian, and Meg Smith. "Equal pay for work of equal value, wage-setting and the gender pay gap." *Journal of Industrial Relations* 62.4 (2020): 519-532.

Hamidullah, Madinah F., Norma M. Riccucci, and Ivan P. Lee. "Citizens' perceptions of closing the gender pay gap: an experimental study." *Public Management Review* 23.7 (2021): 1032-1055.

Giapponi, Catherine C., and Sharlene A. McEvoy. "The legal, ethical, and strategic implications of gender discrimination in compensation: Can the Fair Pay Act succeed where the Equal Pay Act has failed?." *Journal of Individual Employment Rights* 12.2 (2005).

Roach, Bonnie L. "The Lilly Ledbetter Fair Pay Act: Paving The Way for Equal Pay Claims." *Journal of Academic Perspectives Volume 2* (2010): 1.

Lyons, Sarah. "Why the law should intervene to disrupt pay-secrecy norms: Analyzing the Lilly Ledbetter Fair Pay Act through the lens of social norms." *Colum. JL & Soc. Probs.* 46 (2012): 361.

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Newspaper Pieces:

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