



AMERICAN BENEFITS
COUNCIL

January 13, 2009

The Honorable Edward M. Kennedy
Chairman
Committee on Health, Education, Labor
and Pensions
430 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Michael B. Enzi
Ranking Republican Member
Committee on Health, Education, Labor
and Pensions
430 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Kennedy and Ranking Member Enzi:

I am writing today on behalf of the American Benefits Council to express both our appreciation for efforts to date to address concerns regarding the proposed legislation to overrule the Supreme Court's *Ledbetter v. Goodyear Tire and Rubber Co.* decision and to call attention to several important concerns.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans. The Council's expertise is in the employee benefit area, and accordingly we limit our letter to the possible effect of the proposed legislation on benefit programs.

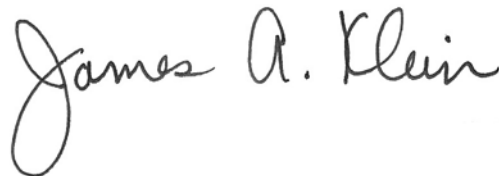
We appreciate that the legislation was modified during the 110th Congress to include a finding that the bill is not intended to change the current law treatment of when pension distributions are considered paid. We remain concerned that the legislation could be interpreted to allow an individual who has been retired for many years to file a charge or sue based on acts that occurred during his or her active service, but when few, if any, people involved in the alleged discrimination are available to discuss the facts and circumstances of the case. We believe the finding should be included in the statute to prevent confusion.

As you know, a judgment in favor of a plaintiff can raise many issues and questions that affect an employer's retirement programs and other participants in those plans, particularly when the suit is filed many years after the discrimination occurred. For example, if a company maintains a defined benefit plan that calculates benefits based on an employee's final average pay, would the plan need to recalculate the plaintiff's benefit based on the revised pay? What if the lawsuit is a class action, so that large numbers of plan participants could be making the same claim for much higher benefits?

Similar questions arise with respect to the possible effect of the proposed legislation on 401(k) plans, 403(b) plans (those maintained by schools and charities generally), and 457 plans maintained by state and local governments. To what extent would such plans have to recalculate benefits payable to plaintiffs? How would earnings and past forfeitures be handled?

It is important to have significant leeway to prevent the undermining of an employer's retirement plans as a result of a pay discrimination judgment, taking into account such important factors as the potential instability in pension and retirement programs and possible resulting harm to other participants and beneficiaries. We are very mindful of the concerns that led to drafting of this proposed legislation but feel compelled to call attention to these important issues to ensure the continued well being of the employer sponsored retirement system and the effective administration and operation of retirement plans.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive, flowing style.

James A. Klein
President

CC: The Honorable Harry Reid
Senate Majority Leader

The Honorable Mitch McConnell
Senate Minority Leader