



AMERICAN BENEFITS
COUNCIL

June 26, 2007

The Honorable George Miller
Chairman, Committee on Education and Labor
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable Buck McKeon
Ranking Member, Committee on Education and Labor
House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

I am writing today on behalf of the American Benefits Council to express concern regarding proposed legislation (H.R. 2831) to overrule the Supreme Court's *Ledbetter v. Goodyear Tire & Rubber Co.* decision.

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 area of expertise is in the employee benefits area, and accordingly we limit our letter to the possible effect of the proposed legislation on benefit programs.

Under the proposed legislation, each payment of compensation or benefits that is lower because of past discrimination is arguably a separate act of discrimination. Under this interpretation of the proposed legislation, an employee could file a charge or sue within the required period (180 days in the *Ledbetter* case) after each payment, without regard to when the actual act of discrimination that caused the compensation or benefits to be lower occurred. That actual act could have occurred 30 or 40 or more years earlier.

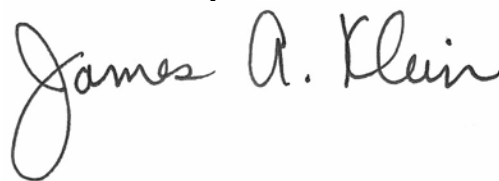
This proposed legislation could possibly raise very serious retirement plan issues. For example, assume that the actual act of discrimination occurred 30 years ago. Assume further that the individuals who allegedly discriminated are all deceased, and the claim of discrimination is based purely on oral statements. In that case, the company may have no effective way to defend the case, which hardly seems fair. Our question is: how would a judgment in favor of the plaintiff affect the company's retirement plan? If the 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, which could be substantially higher? 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? In that case, the plan could become woefully underfunded, undermining the retirement security of thousands of other plan participants.

We also note that, under the proposed legislation, a claim could arguably be made by an individual who retired many years ago and is now claiming an increased pension based on a plan benefit formula that has not been in effect for a long time. The burdens of recreating both old data and old benefit formulas in order to recalculate that individual's benefits would be immense, yet would arguably be required by the legislation.

We have other questions regarding the possible effect of the legislation on 401(k) plans, 403(b) plans (generally maintained by schools and charities), and 457 plans maintained by state and local governments. To what extent would such plans have to recalculate benefits payable to the plaintiffs? If the employer needs to fund enormous additional benefits for the plaintiffs, would the employer be effectively forced to reduce or eliminate contributions for others?

We are writing to ask you not to act until the possible ramifications of the bill are fully understood. We understand the concerns that led to the drafting of this proposed legislation. On the other hand, we are also very mindful of the severe practical problems created by the legislation in its current form. We strongly urge you to fully explore the practical, technical and policy issues before moving forward on legislation that could have far-reaching and unintended consequences.

Sincerely,

A handwritten signature in cursive script that reads "James A. Klein". The signature is written in black ink and is positioned above the printed name and title.

James A. Klein
President