

Legislation Would Fix Supreme Court Decision Rolling Back Pay Discrimination Protections
Myths v. Realities: Opposition Arguments Unfairly Distort Proposed Ledbetter Legislation

The Supreme Court’s decision in *Ledbetter v. Goodyear* reversed decades of precedent and placed new limits on the ability of victims to pursue pay discrimination claims. Congress is now considering legislation to correct the decision. Despite myths by opponents, the reality is that the legislation is critical to ensure that individuals can file pay discrimination claims and put an end to unfair pay practices.

<i>Myth</i>	<i>Reality</i>
The bill eliminates the statute of limitations—anyone can take as long as they want to file a claim and employers will never get off the hook.	The bill does not change the current law’s 180-day charge-filing period and anyone with a claim must adhere to this timeframe. The bill merely clarifies the conduct that starts the 180-day clock. Under the bill, an employee must challenge pay discrimination by filing a claim within 180 days of the discriminatory conduct, such as the payment of a discriminatory wage. If the employee waits longer than 180 days, the clock will run out and the charge will be untimely. As in the past, the employer’s liability ends after the discrimination stops, 180 days after the last discriminatory act. The bill restores incentives for employers to identify and eliminate discrimination to avoid liability. Without this fix, employers likely will hide discriminatory pay decisions for 180 days in the hopes of avoiding detection and liability.
The bill encourages unfair delay to force employers to defend stale claims.	The bill does nothing to encourage delayed filing of claims. Few employees can or would delay receiving wages needed to make ends meet. Because the law already has a two-year limit on the recovery of back pay, an employee who delays loses the ability to recover lost wages beyond two years. Further, concerns about lost evidence and faded memories affect both claimants and employers. In fact, it is claimants – who bear the burden of proving their discrimination claims – that are most disadvantaged by old claims.
The bill would increase frivolous lawsuits and make it harder to resolve cases in a timely manner.	It is the <i>Ledbetter</i> decision itself that risks spurring litigation. Individuals who take the time to ask questions and gather accurate information to determine whether they have a claim, under <i>Ledbetter</i> , risk having their claims rejected as untimely. If employees are uncertain about whether discrimination has occurred, it is <i>Ledbetter</i> that instructs them to file first and ask questions later.
The bill goes beyond <i>Ledbetter</i> by addressing other forms of discrimination and by dramatically expanding who would be eligible to file a claim.	The bill simply makes clear that it is restoring the pre- <i>Ledbetter</i> standard for analyzing pay discrimination claims under Title VII of the Civil Rights Act of 1964 and other statutes that use the same analysis. Without such language, the bill could create the misimpression of intending different standards for different statutes. Further, the bill does not change who can file a claim. The bill mirrors language already included in Title VII to provide a narrow fix to the timing of pay discrimination claims.
The bill would reverse a long line of precedent and radically change the way the law has worked in the past.	This flatly misrepresents the law prior to <i>Ledbetter</i> . The bill would restore the pre- <i>Ledbetter</i> rule used by the vast majority of courts and the Equal Employment Opportunity Commission under Republican and Democratic administrations—pay discrimination claims are timely when based on the issuance of a discriminatory paycheck within the statutory time period.
The bill would create new burdens and liability for small businesses.	The bill does nothing to change which employers are covered by the law, nor does it impose any new burdens on employers that did not exist prior to <i>Ledbetter</i> . Employers, both large and small, would be under the same obligation to operate a workplace free of discrimination.