



For Immediate Release

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***ENZI CALLS PROPOSED LEDBETTER BILL AN UNREASONABLE  
OVERREACH  
BILL WOULD ELIMINATE STATUTE OF LIMITATIONS ON PAY  
DISCRIMINATION CASES***

**Washington, D.C.** – U.S. Senator Mike Enzi (R-WY), Ranking Member of the Senate Health, Education, Labor and Pensions (HELP) Committee, today said that legislation aimed at overturning the Supreme Court’s decision in a last year’s employment discrimination case, *Ledbetter v. Goodyear*, would effectively eliminate the statute of limitations for such cases guaranteed in the Civil Rights Act of 1964, and would create unreasonable new burdens for both employees and employers.

“A statute of limitations serves an important purpose, and that is fairness,” Enzi said. “The Fair Pay Restoration Act isn’t really about fairness. It effectively undermines the Title VII statute of limitations, and Congressional intent to fairly and expeditiously resolve employment discrimination claims.”

Following today’s HELP Committee hearing titled “The Fair Pay Restoration Act: Ensuring Reasonable Rules in Pay Discrimination Cases,” Enzi called the bill under consideration, S. 1843, “unfair and unreasonable.”

“Discrimination in the workplace, or elsewhere, is simply not acceptable. However, wholesale elimination of the statute of limitations does not serve the goals of employees or employers, though it will keep America’s trial lawyers and employment bar busy,” Enzi said.

“A fair statute of limitations ensures that employees who have faced discrimination receive prompt justice. The so-called Fair Pay Restoration Act would put an enormous and unnecessary burden on employers, and it would deprive employees of an incentive to resolve their claims quickly.”

Under current law, employees must file employment discrimination claims within either 180 days or 300 days, depending on the state in which the case is filed. But S.1843 would eliminate the statute and allow individuals to bring claims years or even decades

after the alleged discrimination occurred – even after the employee has left the workplace.

“If a case is filed decades after an employee claims discrimination occurred, evidence will have been lost, memories will have faded, and witnesses will have disappeared or passed away, making the case very difficult to resolve,” Enzi said. “The undeniable reality is that all evidence fades over time, and this is particularly true in our country’s extremely mobile workforce.”

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**Statement of Michael B. Enzi, Ranking Member**

**Senate Committee on Health, Education, Labor and Pensions**

**February 24, 2008**

Hearing On: **“The Fair Pay Restoration Act: Ensuring Reasonable Rules in Pay Discrimination Cases”**

Good morning. I want to thank Senator Kennedy for holding this hearing on employment discrimination; and the important procedural issue of filing limitations. The Title VII statute of limitations serves an important purpose, and that is fairness. The Fair Pay Restoration Act isn’t really about fairness. It effectively undermines the Title VII statute of limitations, and Congressional intent to fairly and expeditiously resolve employment discrimination claims.

Discrimination in the workplace, or elsewhere, is simply not acceptable in a free society. The work of the Congress in combating employment discrimination is one of the most notable chapters in the long history of this body.

Among the most important of our workplace discrimination statutes is Title VII of the Civil Rights Act of 1964. Title VII outlaws employment discrimination based on a number of factors, including gender. Since its enactment, Title VII has played a vital role in the effort to eradicate gender-based discrimination. Over the last five years the intake of gender discrimination cases at the Equal Employment Opportunity Commission has averaged around twenty-five thousand per year. Given this volume it should come as little surprise that Title VII generates a significant volume of litigation every year. Such cases invariably entail strongly held views and emotionally charged issues. Thus, regardless of their outcome, it is not uncommon that they create controversy. The case which has prompted this hearing is no exception.

Last year the U.S. Supreme Court handed down its decision in the case of Ledbetter v. Goodyear. The principal issue in the case involved the application of Title VII’s limitations period for the filing of claims. Title VII requires that claims of employment

discrimination be initiated within either 180 or 300 days, depending upon the state in which the claim arises.

Virtually all statutes that contemplate the possibility of court litigation contain a statute of limitations provision. Such provisions serve a variety of very important purposes. First, a statute of limitations encourages the prompt and vigorous pursuit of important protected rights. This is particularly true in instance of employment discrimination. None of us today; and, certainly none of the drafters of Title VII, wanted discrimination in the workplace go unaddressed one day longer than necessary. Accordingly, the drafters adopted a relatively short limitations period to ensure the quick eradication of discriminatory workplace practices. Statutes of limitation are designed to encourage the prompt resolution of contested claims; and, this is particularly important in the context of employment discrimination claims. An unresolved allegation or suspicion of discrimination is particularly corrosive in the workplace where the parties to a potential claim are in daily contact, and where the potential claim has effect, both direct and indirect, on everyone in the workforce. The drafters wisely determined that such matters cannot be allowed to fester, and should be addressed promptly and resolved as quickly as possible.

By ensuring that claims are promptly raised, a statute of limitations, serves to enhance the likelihood of voluntary resolution of claim. Claims that remain unaddressed for substantial periods of time can build significant financial liabilities that make voluntary resolution of a claim much more difficult and in some cases virtually impossible. Title VII was carefully crafted to encourage the voluntary resolution of discrimination claims and its statute of limitations is an integral part of that statutory framework. Further still, a statute of limitations serves the vital purpose of preserving a fair process for those claims that cannot be resolved, but must be adjudicated. If a claim is filed that is based on disputed facts that are ten or twenty years old, the likelihood of finding witnesses with clear memories, or even finding witnesses or documentary evidence at all, is remote. The undeniable reality is that all evidence fades over time, this is particularly true in the context of an extremely mobile workforce.

The decision and drafting of a limitations provision in any statute always requires the weighing of often competing considerations. The reasons I have just noted favor the imposition of short limitation periods. However, that must be balanced against the fact that any limitations period also has the effect of closing the courthouse door to a claimant that may have a meritorious case. There is no question that the drafters of Title VII carefully considered these and many other competing factors in eventually arriving at the 180-300 day formulation in the statute.

Whenever we re-visit legislation enacted by a prior Congress, and contemplate changing that legislation because of a subsequent court decision, we need to proceed with considerable caution. If we are to have stability in our laws; and, if our laws are to reflect sound policy and not political happenstance, the bar for changing such laws must understandably be high. We should be very careful about doing so unless we conclude that the enacting Congress was wrong, the interpreting court was wrong, or that external

circumstances have changed in such a way that a change in law is warranted. I would hope that today's hearing will focus on whether or not these operative criteria have been met.

Whenever we as a Committee hold a hearing with respect to the technical aspects of a statute, or the circumstances of a particular case, I also believe it is essential that we exercise extreme care in accurately representing the important facts of such case, and the actual status of the law. Exaggeration, hyperbole, and plain old falsity may serve to advance political agendas, but it is an inexcusable departure from the fundamental responsibilities of this Committee. Our first responsibility is to get the facts right. Accuracy and candor should never be sacrificed to make political hay. There are, quite frankly, a number of misconceptions regarding the limitations period in Title VII and the essential facts of the Ledbetter case. I think two are worth noting up front.

First, proponents of the legislation before us claim that the limitations period under Title VII is totally inflexible. That simply isn't true. For example, we have been told that this legislation is necessary because the facts that would cause an employee to suspect discrimination, particularly regarding pay issues, may be unknown or even hidden from an employee. Yet, once the 180 days runs, that employee would lose his or her rights. This is a seemingly compelling argument except for one thing. It is not an accurate characterization of the way the law actually works right now. Under current law, the 180-day limitation period is not iron clad. To the contrary it is completely flexible, and is frequently, waived, tolled or suspended where fairness and circumstances require. It would certainly be suspended in the circumstances the proponents of the legislation so often cite. To those that continue to argue differently, I'd respectfully direct their attention to the Equal Employment Opportunity Commission's own Compliance Manual regarding the timeliness of claim filing under such circumstances. It reads, in relevant part, as follows:

**“Sometimes, a charging party will be unaware of a possible EEO claim at the time of the alleged violation. Under such circumstances, the filing period should be tolled until the individual has, or should have, enough information to support a reasonable suspicion of discrimination.”**

**Example 1 - On March 15, 1997, CP, an African-American man, was notified by Respondent that he was not hired for an entry-level accountant position. In February 1998, more than 300 days later, CP learned that the selectee, a white woman, was substantially less qualified for the position than CP. CP filed a charge of race and sex discrimination on March 15, 1998. The charge would be treated as timely because he filed promptly after acquiring information that led him to suspect discrimination.**

**Example 2 - On March 1, 1997, CP, a 55-year-old woman, learned that she was denied a promotion in the Office of Research and Development, and that the position was awarded to a 50-year-old man with similar qualifications. She subsequently applied for another promotion opportunity in the same office, and was**

**notified in January 1998 that the position was awarded to a 35-year-old woman with similar qualifications. The second rejection prompted CP to suspect that she was being discriminated against because she was an older woman, and she filed a charge five weeks later, in February 1998. Tolling should apply, and she can challenge both promotion denials.**

**Because an individual's ignorance must be excusable, the failure to act with "due diligence" in attempting to obtain vital information will preclude equitable tolling. The filing period is tolled until the individual has enough information to reasonably suspect that s/he has a valid EEO claim. In other words, the filing period begins to run when the individual realizes that s/he may have a claim even if s/he is not certain about the claim." (footnotes, omitted)]**

The supposed inflexibility of Title VII's limitations period is a myth. You don't need legislation to address the situations of fairness raised by this bill's proponents since it is already the law.

In the case we are reviewing today, it should be noted that the Plaintiff did have access to remedies. She could have pursued the claim she initially filed under the Equal Pay Act of 1963, which does not apply any statute of limitations. Yet this cause of action was inexplicably dropped during District court proceedings. The Plaintiff or any other individual who was subjected to discriminatory pay on the basis of sex can file an EPA claim years after the discrimination occurred.

Since we are being asked to take the case at hand as justification for sweeping changes in the law, I want to urge my colleagues who have not had the chance to read the decision in full to do so. They will see that part of the court's consideration was the Plaintiff's own admission that she did know of the pay discrepancy six years before she filed a complaint with the EEOC. Therefore, the court had no cause to suspend the statute of limitations for delayed discovery of the effect of discrimination. In fact, this case would have come out far better for all involved if the EEOC action had been filed promptly, within the statutory deadline. First, if discrimination was confirmed, the Plaintiff would have suffered far less harm in the way of lost wages. Also, the employer would have had a fuller opportunity to investigate the validity of the claim and make any necessary workplace changes to ensure no other employees suffered discrimination. Finally, the manager in question, who died before Ms. Ledbetter finally did file her claim, would have had an opportunity to defend himself.

In the case at hand, all parties would have been more fairly treated by the courts had it been honored. If the discrimination was not an isolated incident, other Goodyear employees would have been better protected, as well. The public policy consequences that would come of a wholesale elimination of the statute of limitations do not serve goals of employees or employers, though it will keep America's trial lawyers and employment bar busy. I urge my colleagues to review this legislation with all of these factors in mind.

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