Impact of the Lilly Ledbetter Fair Pay Act of 2009
on Total Rewards Professionals

Background
On Jan. 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009. This law is designed to reverse the Supreme Court decision in the 2007 case *Ledbetter v. Goodyear Tire & Rubber Co.* that held that Ledbetter had waited too long to file a sex discrimination claim, holding that employees must file a claim within the statutory (in this case 180 day) timeframe after the initial discriminatory pay action occurred. The U.S. Supreme Court rejected the argument that each subsequent paycheck after a discriminatory pay decision restarts the statutory time clock. However, The Fair Pay Act of 2009 goes beyond the original sex discrimination case and amends the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act, along with Title VII of the Civil Rights Act of 1964.

Provisions of the Ledbetter Fair Pay Act
- Specifies that a discriminatory compensation decision or practice occurs with each paycheck that is lower due to the discriminatory decision or practice
- Establishes recovery of back pay for up to two-years preceding the filing of the claim “where unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.”
- Amends the laws enumerated above to say that an “unlawful employment practice” occurs when:
  - A discriminatory compensation decision or other practice is adopted
  - An individual becomes subject to a discriminatory compensation decision or other practice
  - An individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.
Effective Date
The Fair Pay Act is effective as if it were enacted on May 28, 2007, the day before the Supreme Court decision in the original Ledbetter case and applies to all claims of compensation discrimination that are pending on or after that date.

Range of Claims, Damages, and Potential Plaintiffs
There are a number of undefined terms that leave open the possibility that the impact of this law will be greater as discrimination cases are brought. For example, there is no definition for the provision that stipulates this law applies to anyone “affected by” an unlawful employment practice. Could this go beyond the claimant to include family members or others “affected by” the discrimination? In addition, The Ledbetter Fair Pay Act also applies to “discriminatory compensation decisions or other practices, including each time wages, benefits, or other compensation is paid.” Could this include incentive bonuses or pension payments? The scope of the impact of these provisions are not yet clear. Due to the high visibility of this issue in the Obama administration, it is expected there will be a higher level of pay discrimination claims than there has been in the past. Many of these issues will be further refined in the courts.

Implications for Total Rewards Professionals
The Fair Pay Act will have secondary considerations for most Total Reward Professionals. One of main goals of any compensation program is to be both fair and equitable, and the Fair Pay Act will re-enforce this goal. Since the timeframe for a discriminatory pay action has now increased it will be vital to maintain accurate records and documentation of compensation related decisions. Most compensation decisions generated out of the compensation department will be more on a large scale magnitude, such as market pricing of positions, salary structure decisions and variable pay calculations, although these do not specifically address individual discrimination, it is important to keep any documentation for an infinite period of time, in case the methods used become part of a discrimination case. It can also be advised to conduct an audit of current compensation practices to ensure there is no disparate treatment or current discrimination.

Additionally, it is important to work with others in human resources departments to ensure hiring/line managers are aware of the Fair Pay Act and the potential implications. Ensure that the hiring/line managers are trained and keep documentation on their specific hiring and compensation decisions.