

January 21, 2009

U.S. Senate  
Washington, D.C. 20510

Dear Senator,

On behalf of HR Policy Association, I am writing in opposition to S. 181, the Lilly Ledbetter Fair Pay Act of 2009, and support for the Hutchison Amendment. This amendment would substitute S. 166, the Title VII Fairness Act, for S. 181.

HR Policy Association represents the senior human resource executives from more than 250 of the largest employers operating in the United States and globally. Collectively, these companies employ more than 18 million people worldwide, including more than 10 million in the United States.

Last year, our organization and others in the business community worked very closely with civil rights and disability rights groups in fashioning a consensus approach to amending the Americans with Disabilities Act. The end product, signed into law last September, achieved the stated goals of the legislation but, with substantial input from affected employers, avoided serious disruptions in the workplace at a time of severe economic instability. Unfortunately, up to this point the same cannot be said for this bill.

The Lilly Ledbetter Fair Pay Act (without amendment) would effectively eliminate the statute of limitations for filing claims of workplace discrimination, thus, enabling individuals to bring allegations of discrimination years or even decades after the discrimination takes place, despite the fact that statutes of limitations exist to avoid fact-finding when memories, documentation and witnesses have become inaccessible. By effectively removing the limitations period for filing claims, the bill would remove incentives for prompt filing of charges.

The Hutchison Amendment, however, would require aggrieved employees to file claims as soon as they have reasonable suspicion of unlawful discrimination. Where individuals do not know about discrimination or where an employer attempts to escape liability by covering up discrimination until the statutory filing period expires, employees would still be able to file a charge of discrimination. The limitations period would begin once an employee discovered information giving rise to suspicion that he or she had been subjected to unlawful discrimination. In short, under the Hutchison Amendment employees must file a charge of discrimination within the limitations period once they become aware that they may have been subjected to discrimination. They would not be penalized or lose their claim if they had no knowledge of the unlawful discrimination. Thus, the Hutchison Amendment maintains the important balance of ensuring employees have an adequate opportunity to seek redress for alleged discrimination and the need that such claims be filed as quickly as possible to stop potential on-going discrimination and at the same time preserve a limitations period, which is an important policy objective.

S. 181 also contains other technical problems such as expanding the pool of potential discrimination plaintiffs by including merely "affected" parties other than applicants, employees, and former employees. In addition, it would expose employee benefit programs to endless litigation threats based on claims of reduced pension benefits caused by discrimination that occurred well before retirement. These overly-expansive provisions are not part of the Hutchison Amendment.

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For these reasons, we strongly urge you to oppose S. 181, the Lilly Ledbetter Fair Pay Act, and vote in favor of the Hutchison Amendment. However, if it is the will of the Senate that the Supreme Court's *Ledbetter* decision be rejected, we would urge you to vote in favor of the Specter Amendment, which would reverse the decision in a more responsible, targeted manner than the current version of the legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Yager", with a stylized flourish extending to the right.

Daniel V. Yager,  
Chief Policy Officer & General Counsel