

## **THE HUTCHISON ALTERNATIVE TO THE LILLY LEDBETTER FAIR PAY ACT IS NO ALTERNATIVE AT ALL**

Senator Hutchison (R. TX) has introduced a bill, S. 166, that purports to remedy the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, the case that prevents employees from challenging pay discrimination unless they complain within six months of the date they receive the very first discriminatory paycheck. But like the *Ledbetter* decision, Senator Hutchison's bill would completely cut off a woman's right to challenge ongoing pay discrimination – this time, not only when a woman has, but also when she “should be expected to have,” enough information to suspect discrimination. This newly invented approach not only fails to restore equal pay law to where it has been for decades; it also leaves women and others subject to pay discrimination with new hurdles to overcome.

- ❑ **The Hutchison bill weakens pay discrimination law, rather than restoring it to where it has been for decades.**

Prior to the Supreme Court's *Ledbetter* decision, both the Equal Employment Opportunity Commission and nine of the ten federal appellate courts to consider the question had for two decades recognized a simple proposition: that when an employer fails to pay a woman equally, she has a legal right to fix that wrong for the future, and to get two years of back pay she is owed once she files a government complaint. The Hutchison bill throws out that basic protection; under the bill, a woman who fails to challenge pay discrimination at the first instant when she “should have” suspected it forfeits any right to equal pay from her employer in the future.

- ❑ **The Hutchison bill forces women to file pay discrimination complaints any time a male co-worker takes an extravagant vacation or buys an expensive car.**

Because the Hutchison bill requires employees to immediately file pay discrimination complaints anytime they “should be expected to have” a suspicion of discrimination, a woman who hears a male coworker bragging about his overtime pay or making an expenditure she feels she could not afford would be forced to file a government complaint right away. If instead she waited to try to confirm her suspicions, or to work things out amicably with her employer, she would run the substantial risk of forfeiting her claim altogether and having to endure unequal pay for the rest of her employment.

- ❑ **The Hutchison bill rewards employers, who know they are paying less, and penalizes women, who have to guess.**

The Hutchison bill would protect employers who, week in and week out, give paychecks to women that are lower than those they give to men performing the same jobs. Although employers have all the information necessary to identify and root out pay discrimination – since they, in contrast to the employees themselves, know what all their employees are being paid – the Hutchison bill would give them a free pass for, and a windfall from, continuing their pay

discrimination. At the same time, the bill would penalize women, who usually lack any access to information about their employers' decision-making or about comparative salaries, unless the women guess right about when they first "should have" suspected discrimination.

□ **The Hutchison bill encourages time-consuming and expensive lawsuits.**

Because a woman won't know when an employer will claim that she "should have" known it was discriminating, the Hutchison bill would force her to file a preemptive claim to avoid forfeiting her rights. Not only would this increase the number of lawsuits that are brought – these lawsuits would also be excessively costly and burdensome because courts would have to first resolve when a woman should have filed her claim before determining the fundamental issue that should have been the focus to begin with: whether an employer has paid unequal wages for equal work.

□ **The Hutchison bill creates vast uncertainty for employees about their rights and for employers about their obligations when it comes to equal pay.**

By creating an entirely new legal standard for pay discrimination claims, the Hutchison bill would raise thorny factual and legal questions that would take years, if not decades, for the Supreme Court to authoritatively resolve. Should a woman, for example, be expected to do her own investigation of the possibility of discrimination when a coworker brags about his inflated paycheck? How will an employer be required to respond if a woman does raise concerns about her pay? While these types of questions are wending their way through the courts, employers would likely be subject to conflicting obligations in different parts of the country.

□ **The Lilly Ledbetter Fair Pay Act is the only bill that will provide women with equal pay for equal work.**

The Ledbetter Fair Pay Act is the only bill that restores the law and gives women a real remedy for pay discrimination. It is the only bill that provides a time-tested, clear, workable and fair rule – one that gives employees time to evaluate their suspicions of discrimination, holds employers accountable for continuing to pay unequal wages, and limits the likelihood of litigation. It restores the clear and predictable rule applied nationwide before the Supreme Court's *Ledbetter* decision.

**The Lilly Ledbetter Fair Pay Act is the bill that restores the right to equal pay for equal work. Congress must pass the Ledbetter Fair Pay Act promptly.**