



May 4, 2011

The Honorable Harry Reid
Majority Leader
S-221
U.S. Senate
Washington, D.C. 20510

The Honorable John Boehner
Speaker
H-232
U.S. House of Representatives
Washington, D.C. 20510

Dear Majority Leader Reid and Speaker Boehner:

On behalf of the National Small Business Association (NSBA), the nation's oldest nonpartisan small business advocacy group reaching more than 150,000 small businesses nationwide, I am writing in opposition to the Paycheck Fairness Act of 2011 (S. 797/H.R. 1519).

NSBA opposes the Paycheck Fairness Act because it would inflict a significant regulatory burden and impose major costs on small businesses. Under the proposed legislation, employers of all sizes will be exposed to potential frivolous lawsuits and unnecessary oversight. Furthermore, the legislation would require employers to show that any wage discrepancy is caused by a "bona fide" factor other than sex that is "job related" and "consistent with business necessity."

Even more alarming, the bill removes the Equal Pay Act (EPA) caps on punitive and compensatory damages and would apply punitive damages to all cases, even if pay discrimination was unintentional. By removing caps on monetary damages, the Paycheck Fairness Act would have a direct impact on employer cost of doing business.

The legislation would discourage employer ability to reasonably compensate valuable employees for fear of unwarranted wage discrimination lawsuits. This dynamic would be exacerbated by giving employees the right to inquire about and discuss their pay with co-workers and supervisors without disciplinary action from the employer.

In addition, it would authorize and make class action law suits easier under the Federal Rules of Civil Procedures by requiring participants to "opt-out" of equal pay class-action lawsuits. This change would force small businesses to defend against potentially unjustified claims that would simply put them out of business.

It also requires the Equal Employment Opportunity Commission (EEOC) to issue regulations with respect to the collection of pay information from employers and would require the Office of Federal Contract Compliance Programs to use its "full range of investigatory tools" to dig up evidence of possible compensation discrimination.

However, a 2007 Department of Labor study cautioned against aggressive use of the EPA without additional analysis of possible reasons for pay discrepancies: “the raw wage gap continues to be used in misleading ways to advance public policy agendas without fully explaining the reasons behind the gap.”

NSBA is also concerned that the Paycheck Fairness Act will have a significant negative impact on America’s small businesses during a time they already face myriad challenges in the current economy. In the an updated report on the regulatory impact on small business, *The Impact of Regulatory Costs on Small Firms*, small business continues to get disproportionately impacted by new regulatory requirements. Since the last update to this research in 2005, the total cost of federal regulations has increased as has the cost per employee. In the last five years, the per-employee cost for all regulations for the smallest businesses (those with fewer than 20 employees) has increased from \$7,647 to \$10,585. Unfortunately, the Paycheck Fairness Act would add to this increasing burden on small businesses.

Congress should carefully consider the effects the Paycheck Fairness Act would have on our nation’s goal of economic recovery, growth and job creation. The Paycheck Fairness Act undermines these goals by inflicting a significant regulatory burden and imposing major costs on small businesses.

I urge your support of our nation’s small businesses by opposing the Paycheck Fairness Act in the House of Representatives and the Senate.

Sincerely,



Todd O. McCracken
President

Cc:

U.S. Senate Minority Leader Mitch McConnell
U.S. House of Representatives Minority Leader Nancy Pelosi
Representative Rosa DeLaura
Senator Barbara Mikulski