

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
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April 13, 2021

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce strongly opposes H.R. 7, the “Paycheck Fairness Act.” We strongly support equal employment opportunity and appropriate enforcement of the Equal Pay Act (EPA) and Title VII of the Civil Rights Act of 1964. However, this bill would, among other things, significantly erode employer defenses for legitimate pay disparities, expand remedies under the EPA to include unlimited punitive and compensatory damages, and impose invalid tools for enforcement by the Labor Department.

H.R. 7 would significantly erode the defenses available to employers under the EPA by requiring that a given explanation for a pay disparity be driven by “business necessity,” defined as a something required to keep the business operating. Eliminating legitimate distinctions in compensations such as experience, education, location, shift work, and skill would mean many employees would not be compensated for their actual contributions to their employer.

The EPA, while allowing recovery for lost back pay, does not provide for compensatory and punitive damages, nor should it. The EPA is a strict liability statute that requires no employer intent to act unlawfully for a violation to be found. If a plaintiff can demonstrate that a wage disparity is due to intentional discrimination, then he or she should bring a claim under Title VII of the Civil Rights Act of 1964, where punitive and compensatory damages (capped at certain levels) are available.

In addition, this bill would modify existing rules concerning collective actions, making it easier for plaintiffs’ attorneys to mount class action suits by reducing the criteria necessary for employees to join a class action, thereby increasing the chances that plaintiffs would not be “similarly situated.” Litigation in employment discrimination has exploded since the inclusion of compensatory and punitive damages under Title VII, resulting in increased costs associated with attorneys’ fees and employment investigations as employers must respond to each charge filed, whether frivolous or not. Further increasing the opportunity for frivolous litigation would only further serve to undermine our nation’s civil rights laws.

This bill also would make a number of regulatory changes at the Labor Department related to equal employment opportunity requirements for federal contractors. The bill gives joint enforcement authority to the Office of Federal Contract Compliance Programs and EEOC with regard to the EPA’s application to federal contractors. The expansion of OFCCP enforcement to include EPA would present a challenge and burden of redundant and overlapping government agencies and enforcement, which would create confusion for contractors without improving compliance with the EPA.

Finally, the bill would revive and codify EEOC's revised EEO-1 survey to include the compensation data component. When EEOC instituted this requirement in 2016, the Chamber opposed it vigorously as being inconsistent with the Paperwork Reduction Act since it imposed a significant burden that would generate data with no utility and EEOC had no ability to protect the confidential nature of the data submitted. All of those problems would still exist under the bill's provision to bring back this data collection.

Instead of H.R. 7, the Chamber favors the Wage Equity Act, to be offered by Rep. Stefanik as an amendment in the nature of a substitute. The Wage Equity Act would provide employers with an incentive to conduct wage audits and correct problems, while still preserving legitimate reasons why employees may be compensated differently.

The Chamber strongly opposes H.R. 7 and urges you to vote against this bill.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley