

KEY VOTE ALERT



June 8, 2021

TO THE MEMBERS OF THE UNITED STATES SENATE:

The U.S. Chamber of Commerce strongly opposes H.R. 7, the “Paycheck Fairness Act.” This bill would significantly erode employer defenses for legitimate pay disparities, expand remedies under the Equal Pay Act (EPA) to include unlimited punitive and compensatory damages, and impose invalid tools for enforcement by the Labor Department. **The Chamber will consider including votes on this legislation in our “How They Voted” scorecard.**

While we strongly support equal employment opportunity and appropriate enforcement of the EPA and Title VII of the Civil Rights Act of 1964, the Paycheck Fairness Act is the wrong remedy to address compensation concerns. This bill would eliminate legitimate distinctions in compensation based on factors like experience, education, location, shift work, or skill.

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 America’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



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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 the Paycheck Fairness Act, the Chamber supports as an alternative H.R. 2491, the "Wage Equity Act," which would give employers a reason to proactively find compensation disparities through wage audits and take corrective actions. The Wage Equity Act would also preserve legitimate reasons why employees may be compensated differently thus allowing employees who contribute more to the business to be paid more.

The Chamber strongly opposes the Paycheck Fairness Act and urges you to vote against this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Howard".

Jack Howard
Senior Vice President
Government Affairs
U.S. Chamber of Commerce

