

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
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September 12, 2014

TO THE MEMBERS OF THE UNITED STATES SENATE:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly opposes S. 2199, the "Paycheck Fairness Act." The Chamber strongly supports 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, expand remedies under the EPA to include unlimited punitive and compensatory damages, significantly erode employer defenses for legitimate pay disparities, and impose invalid tools for enforcement by the Labor Department.

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 in that there is no requirement that the employer intend to act unlawfully. It strains logic to mandate that damages conceived and designed to punish and deter wrongful conduct should apply to claims of inadvertent, unintentional conduct that has the effect of violating the EPA. 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.

S. 2199 would also significantly erode the defenses available to employers under the EPA. For example, this bill would permit plaintiffs to challenge otherwise legitimate employer pay decisions by showing that some other employment practice might achieve the same business purpose without creating the disparity. Further, the employment decision in question must also be proven to be required by "business necessity." These provisions would open up compensation and employment decisions to limitless review by courts and juries and would ultimately lead to an inefficient, cumbersome, and costly salary-setting process. In addition, this bill would modify existing rules concerning collective actions, making it easier for plaintiffs' attorneys to mount class action suits.

This bill also would make a number of regulatory changes at the Labor Department related to equal employment opportunity requirements for federal contractors. Re-imposing the flawed Equal Opportunity Survey and requiring use of dubious statistical models for determining whether employers engage in systematic compensation discrimination would do nothing to combat discrimination and instead would waste both enforcement and employer resources.

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.

The Chamber strongly opposes S. 2199 and urges you to vote against this bill. **The Chamber may consider including votes on, or in relation to, S. 2199 (including cloture votes) in our annual *How They Voted* scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

R. Bruce Josten