

KEY VOTE ALERT!

July 31, 2008

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

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, strongly urges you to oppose H.R. 1338, the "Paycheck Fairness Act." This bill would, among other things, expand remedies under the Equal Pay Act (EPA) to include *unlimited* punitive and compensatory damages, significantly erode employer defenses for legitimate pay disparities, and imposes invalid tools for enforcement by the Labor Department.

The EPA 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 are available.

H.R. 1338 would also significantly erode the defenses available to employers under the EPA. For example, the bill permits 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. This provision will open up compensation and employment decisions to second guessing by courts and juries and will ultimately lead to an inefficient, cumbersome, and costly salary-setting process. In addition, the bill would modify existing rules concerning collective actions, making it easier for plaintiffs' attorneys to mount class action suits.

In addition, the bill makes 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 systemic compensation discrimination, would do nothing to combat discrimination and instead would waste both enforcement and employer resources.

Litigation in employment discrimination has exploded since 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. The only parties that benefit from this litigation are trial lawyers.

The Chamber urges you to oppose H.R. 1338 and may consider votes on, or in relation to, these issues in our annual *How They Voted* scorecard.

Sincerely,



R. Bruce Josten



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