

March 11, 2010

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor, and
Pensions
United States Senate
Washington, D.C. 20510

The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and
Pensions
United States Senate
Washington, D.C. 20510

Dear Chairman Harkin and Ranking Member Enzi:

We write on behalf of the undersigned organizations in opposition to S. 182, the “Paycheck Fairness Act.” While our organizations and members are committed to ensuring equal employment opportunities and abhor unlawful discrimination, we vigorously oppose S. 182.

S. 182 would impose unprecedented government control over how employees are paid at even the nation’s smallest businesses. The flawed legislation could outlaw many legitimate practices that employers currently use to set employee pay rates, even where there is no evidence of intentional discrimination. Common practices that a court could find unlawful under S. 182 include premium pay for professional experience, education, shift differentials or hazardous work, as well as pay differentials based on local labor market rates or an organization’s profitability.

Furthermore, S. 182 would:

- threaten employee bonus or incentive pay that, by definition, provides some employees a higher wage than others,
- prohibit employees from negotiating higher pay either before being hired or during employment,
- allow employees’ wages to be disclosed to peers, friends, family and competitors,
- require employers to submit pay data on their employees to the Federal government,
- force the Labor Department to reinstate a flawed and duplicative pay grade survey that has proven ineffective at enforcing civil rights laws among federal contractors,
- make it easier for trial lawyers to file large class actions against employers, and
- establish unlimited punitive and compensatory liability under the Equal Pay Act against employers of every size.

In sum, S. 182 would jeopardize employee incentive pay and employee privacy, and promote costly litigation against even well-intentioned employers – all while doing little to prevent actual wage discrimination. As you know, two federal laws already protect employees from being paid lower wages on the basis of sex: the Lilly Ledbetter Fair Pay Act-amended Civil Rights Act of 1964 and the Equal Pay Act of 1963. Both statutes prohibit unequal pay based on sex and both make available substantial remedies to employees for gender-based pay differentials. But as the *Washington Post* editorial board stated, adding S. 182 to these existing laws “risks tilting the scales too far against employers and would remove, rather than restore, a sense of balance.”

For these reasons, we urge you to oppose S. 182.

Sincerely,

American Bakers Association
American Hotel and Lodging Association
Associated Builders and Contractors
College and University Professional Association for Human Resources
Food Marketing Institute
HR Policy Association
Independent Electrical Contractors
International Foodservice Distributors Association
International Franchise Association
International Public Management Association for Human Resources
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Council of Textile Organizations
National Federation of Independent Business
National Public Employer Labor Relations Association
National Retail Federation
National Roofing Contractors Association
Retail Industry Leaders Association
Small Business & Entrepreneurship Council
Society for Human Resource Management
U.S. Chamber of Commerce

CC: Members of the United States Senate