

January 7, 2009

NAME  
U.S. House of Representatives  
OFFICE  
Washington, D.C. 20510

Dear NAME:

We write to express our vigorous opposition to H.R. 12, the Paycheck Fairness Act. We strongly support equal employment opportunity and oppose unlawful discrimination. However, H.R. 12 would subject employers to unlimited liability under the Equal Pay Act (EPA) – even in cases where a plaintiff fails to show employer intent to discriminate. The bill also would make it easier for trial lawyers to file class action law suits and subject employers to legal challenges for legitimate business practices. Moreover, H.R. 12 reinstates a discredited survey and flawed statistical models and imposes other regulatory and record keeping burdens on law abiding employers. These radical alterations would waste valuable government and employer resources without helping to identify or discourage unlawful activity. In short, most of the provisions in H.R. 12 promote frivolous litigation and impose costly burdens without addressing the root causes of differentials in earnings. Therefore, we ask that you vote against H.R. 12.

Existing law already provides remedies for pay disparities. Both the EPA and Title VII of the Civil Rights Act of 1964 prohibit employers from paying employees different salaries because of their sex. Under both statutes, employees can recover back pay even where the employer did not intend to violate the law. If intentional discrimination occurs, employees can recover appropriate remedies, including capped punitive and compensatory damages.

H.R. 12, in contrast, would unfairly expose employers to unlimited liability, even when an employer acted with a reasonable belief that they did not violate the law. In addition, the bill would subject employers to liability for legitimate pay practices, if a plaintiff shows an alternative exists. Thus, employers could face liability for setting wages based on varying costs of living, work experience, education levels or other legitimate business criteria.

The bill also would reinstate the discredited Equal Opportunity Survey and impose debunked and flawed statistical methods for identifying discrimination. These changes would waste and misdirect valuable government and employer resources, undermining the goal of ending unlawful discrimination.

Finally, H.R. 12 would make it easier for trial lawyers to file large class action suits under the EPA. Currently, a plaintiff may join an EPA law suit by opting in. Under H.R. 12, a plaintiff would become party to the suit unless he or she opted out. By allowing the “opt out” method, the bill would encourage trial lawyers to initiate frivolous class action suits in an effort to win large judgments against employers. This is particularly troubling given unwarranted litigation is already an issue under current

discrimination laws. The Equal Employment Opportunity Commission reported that it found “reasonable cause” in only 5.0% of the over 82,000 charges of discrimination that it received in FY2007 and found “no cause” for discrimination in 59% of the charges (amounting to 42,979 “no cause” charges). A study of previous years yields similar results.

The undersigned represent a broad and diverse cross section of large and small employers in many facets of the economy who strongly support equal employment opportunity and unequivocally oppose unlawful discrimination. For the aforementioned reasons, we urge you to oppose H.R. 12 and seek alternative ways to accomplish our shared goals of eliminating discrimination in the workplace.

Thank you for your consideration.

Sincerely,

American Apparel & Footwear Association  
American Bakers Association  
American Hotel & Lodging Association  
American Supply Association  
Associated Builders and Contractors  
Associated General Contractors  
College and University Professional Association for Human Resources  
Food Marketing Institute  
HR Policy Association  
International Foodservice Distributors Association  
International Franchise Association  
International Public Management Association for Human Resources  
International Warehouse Logistics Association  
Metal Treating Institute  
National Association of Convenience Stores  
National Association of Manufacturers  
National Association of Wholesaler-Distributors  
National Council of Chain Restaurants  
National Restaurant Association  
NPES The Association for Suppliers of Printing, Publishing and Converting Technologies  
National Precast Concrete Association  
National Public Employer Labor Relations Association  
National Retail Federation  
National Roofing Contractors Association  
Non-Ferrous Founders' Society  
Printing Industries of America  
Society for Human Resource Management  
Textile Rental Services Association  
U.S. Chamber of Commerce

## Wisconsin Manufacturers and Commerce