



# NATIONAL COMMITTEE ON PAY EQUITY

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July 30, 2008

Dear Representative:

On behalf of the National Committee on Pay Equity (a coalition of women's and civil rights organizations; labor unions; religious, professional, legal, and educational associations; commissions on women; state and local pay equity coalitions, and individuals), I urge you to support H.R. 1338, the Paycheck Fairness Act, when the House of Representatives takes up this bill. NCPE members further urge you to reject any weakening amendments that may be proposed on the floor and any motions to recommit the bill.

Although President Kennedy signed the Equal Pay Act (EPA)<sup>i</sup> into law 45 years ago, women today make on average only 77 cents for every dollar earned by men – the figures are worse for women of color. And unfortunately the way courts have interpreted the EPA is insufficient to remedy these persistent wage disparities, demonstrating the need for stronger laws to ensure that women are paid equal wages for equal work. The Paycheck Fairness Act would strengthen current laws against wage discrimination and require the federal government to be more proactive in preventing and battling wage discrimination.

Unfortunately, opponents of the bill have made arguments that do not reflect the actual language of the bill and that serve only to confuse any debate on the merits. Here are clarifications of the content of this important legislation:

### ♦ **The Paycheck Fairness Act Does Not Eliminate Caps On Damages**

Opponents argue that the Paycheck Fairness Act will eliminate the current caps on punitive and compensatory damages in claims made under the Equal Pay Act. But there never was a cap on damages under the Equal Pay Act. Moreover, the modest provisions for compensatory and punitive damages in the Paycheck Fairness Act simply bring remedies for victims of sex-based wage discrimination in line with those available for victims of wage discrimination based on race and national origin.

### ♦ **The Paycheck Fairness Act Does Not Expose Employers to Unlimited Damages.**

Opponents of the Paycheck Fairness Act argue that the bill will expose employers to unlimited punitive and compensatory damage awards, even where pay disparities are unintentional. But this argument flies in the face of the language in the bill. The Paycheck Fairness Act provides for compensatory and punitive damages only “as

appropriate,” and no further limitation or arbitrary cap is necessary. Courts will be bound by existing law in deciding when damages are “appropriate,” including the narrow standards the Supreme Court has set for punitive damages in *Kolstad v. American Dental Assoc.*<sup>ii</sup> Additionally, if a judge feels a jury award is excessive, the judge can reduce or vacate the amount. Finally, there are constitutional limitations on the amount of punitive damages that a plaintiff can receive.

◆ **The Paycheck Fairness Act Does Not Eliminate Employer Defenses For Pay Disparities.**

Opponents of the Paycheck Fairness Act argue that the Act will eliminate employer defenses under the Equal Pay Act. Again, this argument does not comport with the language in the bill. The Paycheck Fairness Act simply clarifies that, under the Equal Pay Act, when an employer defends itself against pay discrimination by showing that its pay practices are determined by a “factor other than sex,” that factor must truly be neutral. In other words, the bill will not allow employers to escape liability if their pay practices are, in fact, based on sex. This change does nothing more than restore Congress’ original intent in enacting the Equal Pay Act.

◆ **The Paycheck Fairness Act Does Not Prohibit Employers from Disciplining and Discharging Employees.**

Opponents of the Paycheck Fairness Act argue that the bill prohibits employers from taking action against employees who publicly disclose sensitive wage information. Again, this argument is simply inconsistent with the language of the bill. The Paycheck Fairness Act is designed to ensure that individuals will be protected from retaliatory action for alerting other colleagues to the possibility that they are being subject to pay discrimination. Moreover, the bill contains exceptions designed to protect employers’ concerns about proprietary information. For example, Human Resources professionals who have access to others’ wage data as a central part of their jobs are not protected if they disclose that information to others who do not have this access under the Paycheck Fairness Act.

To ensure the fair and full enforcement of the Equal Pay Act, **we urge you to vote to approve the Paycheck Fairness Act when it comes to the floor, and to oppose both any motion to recommit and any amendments that would weaken any provisions of the legislation.**

Sincerely,

*Michele Leber*

Chair  
National Committee on Pay Equity

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<sup>i</sup> 29 U.S.C. § 206(d).

<sup>ii</sup> 527 U.S. 526 (1999).