

September 21, 2010

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, D.C. 20510

Dear Leaders Reid and McConnell:

We write on behalf of the undersigned organizations in opposition to S. 3772, the “Paycheck Fairness Act.” While our organizations and members are committed to ensuring equal employment opportunities and abhor unlawful discrimination, we vigorously oppose S. 3772.

S. 3772 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. 3772 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. 3772 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. 3772 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. 3772 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. 3772.

Sincerely,

American Bakers Association  
American Hotel & Lodging Association  
Associated Builders and Contractors  
College and University Professional Association for Human Resources  
Food Marketing Institute  
HR Policy Association  
Independent Electrical Contractors International Franchise Association  
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 Chain Restaurants  
National Council of Textile Organizations  
National Federation of Independent Business  
National Public Employer Labor Relations Association  
National Restaurant Association  
National Retail Federation  
National Roofing Contractors Association  
Printing Industries of America  
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