



RETAIL INDUSTRY LEADERS ASSOCIATION

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June 21, 2023

The Honorable Bernie Sanders
Chairman
Committee on Health, Education,
Labor, and Pensions
U.S. Senate
Washington, DC 20510

The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education
Labor, and Pensions
U.S. Senate
Washington, DC 20510

Dear Chair Sanders and Ranking Member Cassidy:

The Retail Industry Leaders Association (RILA) and our members believe employees should be compensated equitably and without discrimination. RILA and its members are committed to ensuring gender pay equity and it is our commitment that compels us to write to you outlining our concerns with S. 728, the Paycheck Fairness Act.

RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

The Paycheck Fairness Act is unequivocally the wrong approach to address the gender wage gap. As drafted the legislation would prohibit many legitimate, non-discriminatory practices that employers use to attract and retain the best qualified employees. The legislation simply goes too far in eliminating factors employers can legally use to explain pay differences. The bill, if enacted, also harms workers by forcing business compensation practices to limit pay options to protect the company from baseless pay discrimination claims. For example, under S. 728, a court could find pay discrimination when the differences in pay are based on 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. 728 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, and;

- Make it easier for trial lawyers to file large class actions against employers by reducing the criteria for plaintiffs to opt-in to a mass action, thereby expanding these actions to include plaintiffs not truly "similarly situated."

Our concerns with the Paycheck Fairness Act are substantial, but we do think there is room for bipartisan support to address pay equity. RILA strongly supports the WAGE Equity Act, championed by Congresswoman Elise Stefanik (R-NY). This proposal addresses pay equity issues through commonsense policies --many of which have been adopted by Republican and Democratic statehouses in Alabama and Massachusetts. Specifically, the WAGE Equity Act would:

- Prohibit employers from asking a candidate about their pay history while maintaining the opportunities to openly discuss pay expectations.
- Make it unlawful for employers to prohibit an employee from inquiring, discussing, or disclosing their wages or the wages of another employee who has voluntarily disclosed their wages, or from requesting from the employer an explanation of pay differentials.
- Provide businesses that undergo pay audits to identify gender-based pay disparities and take action to address any such disparities as an affirmative defense under the Equal Pay Act; and
- Requires the Department of Labor (DOL) in coordination with the Department of Education (ED) to integrate negotiation skills education into existing DOL and ED programs to promote confidence to push for higher wages during the hiring process.

Leading retailers are committed to building a 21st Century Retail workforce that is diverse, innovative, and skilled. Adopting fair and equitable hiring and pay practices supports this mission and improves outcomes for all stakeholders, including workers and employers. For these reasons, we urge the Senate to oppose the Paycheck Fairness Act and instead pass the WAGE Equity Act.

Sincerely,



Evan Armstrong
Vice President, Workforce Policy
Retail Industry Leaders Association (RILA)

