

# KEY VOTE **ALERT!**

January 7, 2009

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, strongly urges you to oppose H.R. 12, the "Paycheck Fairness Act," which the House is scheduled to consider this week. The Chamber strongly supports equal employment opportunity and appropriate mechanisms to achieve this important goal. However, this bill would, among other things, expand remedies under the Equal Pay Act (EPA) to include *unlimited* punitive and compensatory damages, significantly erode employer defenses for legitimate pay disparities, and impose invalid tools for enforcement by the Labor Department.

The EPA does not provide for compensatory and punitive damages, nor should it. The EPA is a strict liability statute in that there is no requirement that the employer intend to act unlawfully. It strains logic to mandate that damages conceived and designed to punish and deter wrongful conduct should apply to claims of inadvertent, unintentional conduct that has the effect of violating the EPA. If a plaintiff can demonstrate that a wage disparity is due to intentional discrimination, then he or she should bring a claim under Title VII of the Civil Rights Act of 1964, under which punitive and compensatory damages are available.

H.R. 12 would also significantly erode the defenses available to employers under the EPA. For example, the bill would permit plaintiffs to challenge otherwise legitimate employer pay decisions by showing that some other employment practice might achieve the same business purpose without creating the disparity. This provision would open up compensation and employment decisions to second guessing by courts and juries and would ultimately lead to an inefficient, cumbersome, and costly salary-setting process. In addition, the bill would modify existing rules concerning collective actions, which would make it easier for plaintiffs' attorneys to mount class action suits.

H.R. 12 would also make a number of regulatory changes at the Labor Department related to equal employment opportunity requirements for federal contractors. Re-imposing the flawed Equal Opportunity Survey and requiring use of dubious statistical models for determining whether employers engage in systemic compensation discrimination would do nothing to combat discrimination and instead would waste both enforcement and employer resources.



Congressional & Public Affairs  
U.S. Chamber of Commerce  
1615 H Street, N.W.  
Washington, D.C.  
20062-2000

202/463-5600

Litigation in employment discrimination has exploded since compensatory and punitive damages were included under Title VII; yet the Equal Employment Opportunity Commission finds reasonable cause for discrimination in only 5-6% of charges filed. However, employers must respond to each charge filed, whether frivolous or not. Further increasing the opportunity for frivolous litigation would only further serve to undermine America's civil rights laws.

**The Chamber urges you to oppose H.R. 12 and may consider votes on, or in relation to, these issues in our annual *How They Voted* scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" being the most prominent parts.

R. Bruce Josten