



May 8, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

Dear Leaders Schumer and McConnell:

I write to share the National Retail Federation's opposition to S. 205/H.R. 7, the Paycheck Fairness Act (PFA). NRF and its members strongly believe that employees should be compensated equitably and without discrimination; however, this legislation would significantly limit legitimate, non-discriminatory pay differences and provide for unlimited compensatory and punitive damages in certain instances. **Please note that NRF will consider votes for and co-sponsorship of the Paycheck Fairness Act and related amendments as part of the Retail Opportunity Index for our voting scorecard.**

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

The PFA would amend the Equal Pay Act of 1963 (EPA) by requiring employers to provide non-gender, business reasons for any wage differential. It replaces the EPA's "factor other than sex" defense with a "bona fide factor" defense, requiring an employer to demonstrate that any wage disparity is (1) not based upon or derived from a sex-based differential in compensation; (2) related to the position in question; (3) consistent with business necessity; and (4) fully accounted for in the compensation at issue. The bill would also make retailers and other employers liable for unlimited punitive and compensatory damages under the FLSA and increase pay-based class action lawsuits against employers. Moreover, the legislation would limit employers' flexibility to compensate its employees based on a wide variety of factors, including differences based on geography, expertise, work responsibly and prior salary history. Finally, the PFA would impact employees as well by placing restrictions on the hiring process and greatly impede their ability to negotiate higher pay either before being hired or during employment.

Retailers are committed to ensuring their workplaces are free of discrimination of any kind, and two federal statutes currently bar gender-based pay discrimination. Both the Equal Pay

Act of 1963 and Title VII of the Civil Rights Act of 1964 prohibit unequal pay on the basis of sex and provide for substantial remedies in instances where gender-based pay differentials occur. In contrast, the Paycheck Fairness Act would prohibit many legitimate, non-discriminatory practices that retailers use to attract and retain talent and would create uncertainty under the law.

NRF stands ready to work with lawmakers on policies that promote workforce development and equal opportunity under the law. additional uncertainty and litigation. Unfortunately, this legislation misses the mark by creating additional uncertainty and litigation. For these reasons, NRF urges members to vote “Nay” on the Paycheck Fairness Act.

Sincerely,

A handwritten signature in black ink, appearing to read "David French".

David French
Senior Vice President
Government Relations