



1201 F St NW #200
Washington, D.C. 20004

1-800-552-5342
NFIB.com

March 24, 2021

The Honorable Bobby Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Scott and Ranking Member Foxx:

On behalf of NFIB, the nation's leading small business advocacy organization, I write in opposition to H.R. 7, the *Paycheck Fairness Act*. This legislation will add significant burdens to small businesses and potentially expose them to frivolous lawsuits.

NFIB and its members believe in equal pay for equal work. However, NFIB does not believe that this legislation is the solution. H.R. 7 will make legitimate business-related pay differences difficult to defend in court, invite frivolous lawsuits against small business owners by allowing unlimited compensatory and punitive damages in equal pay lawsuits, and significantly increase small business paperwork burdens.

This legislation would make it nearly impossible for a small employer to defend against claims where an "alternative employment practice" exists and could serve the same business purpose without producing a wage differential. Even if an employer were to demonstrate that a legitimate factor such as education, training, or experience accounted for a wage differential, an employee could claim that an "alternative employment practice" existed and that the employer refused to adopt such a practice. For example, an employee of a small, local hardware store would be able to sue an employer for refusing to adopt a business practice that a much larger company uses to address wage discrepancies. Forcing one-size-fits-all legislation on small, independent businesses puts them at a significant disadvantage relative to their larger competitors. A small business may have legitimate reasons for not adopting the practices of a large business. However, if an employee can prove that the independent business refused to adopt the "alternative employment practice" of a large competitor, the small business automatically loses the suit.

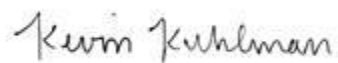
This legislation also prohibits an employer from asking a prospective employee about wage history and prohibits an employer from relying on wage history in determining wages. These prohibitions create a very difficult situation for small business owners. A person's written resume is only one aspect of the application process; a person's salary history is another essential part of gauging

professional growth and development. If the needs of a prospective employee and the wants of a business do not match, the prospective employee and the business should be able to discern this sooner rather than later to avoid wasting each party's time and energy. By eliminating salary history, the hiring process becomes less precise and more difficult for small employers.

This bill also puts significant paperwork burdens on small business owners. It requires the Equal Employment Opportunity Commission (EEOC) to issue regulations providing for the collection of employers' compensation data. Most small business owners do not have a human resources department or a full-time staff member in charge of reporting and compliance. NFIB members find unreasonable government regulations to be their sixth biggest problem and federal paperwork to be their 15th biggest problem when ranking their top 75 problems and priorities.¹

NFIB strongly opposes H.R. 7, the *Paycheck Fairness Act*, urges the committee to oppose the legislation in its current form.

Sincerely,

A handwritten signature in black ink that reads "Kevin Kuhlman". The signature is written in a cursive, slightly slanted style.

Kevin Kuhlman
Vice President, Federal Government Relations
NFIB

¹ Holly Wade and Andrew Heritage, *Small Business Problems and Priorities*, NFIB Research Center, August 2020, <https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf>.