September 9, 2014

Re: ABA Urges Passage of the Paycheck Fairness Act

Dear Senator:

On behalf of the American Bar Association, I am writing to urge you to allow a Senate vote on S. 2199, the Paycheck Fairness Act, which would update the Equal Pay Act of 1963, the law passed by Congress over 50 years ago to prohibit gender-based pay inequality. This legislation has the overwhelming support of working men and women across the country who want this nation to live up to its expressed commitment to equal pay for equal work.

We would like to address some prevalent misperceptions regarding this important legislation:

**Enactment of this bill will not compel businesses to pay their female workforce substantially more money to eliminate the existing wage gap.** The sole purpose of this bill is to update the Equal Pay Act, which was enacted over 50 years ago to assure that employers pay men and women equal wages for equal work unless there is a legitimate reason for the differential.

**Enactment of this bill will not make employers liable for any and every wage differential.** An employer will still have four affirmative defenses and will not be guilty of wage discrimination if a pay differential is based on (i) seniority, (ii) merit, (iii) a system that measures quantity or quality of production, or (iv) a “factor other than sex.”

**Amendment of the “factor other than sex” defense will not eviscerate legitimate use of the defense.** The amendment would make sure that courts and litigants know that in order to justify unequal pay, a “factor other than sex” must be based on bona fide job-related factors that are consistent with business necessity. This is the same standard that the Civil Rights Act of 1991 uses.

**Enactment of this bill will not dictate to employers how to set the pay of their workers.** The Paycheck Fairness Act does not tell employers what factors to use to set pay; it only requires that pay decisions are not based on gender.

**Enactment of this bill will not encourage more lawsuits and enormous verdicts against employers that will bankrupt businesses and harm the economy.** The bill is designed to increase employer compliance with the Equal Pay Act, not to encourage more lawsuits. Men and women who are paid fairly have no incentive to jeopardize their jobs and sue their employers.
We urge you to demonstrate your commitment to equal pay for equal work by voting for the Paycheck Fairness Act.

Sincerely,

Thomas M. Susman