



April 1, 2014

## Co-Sponsor the Fair Employment Protection Act

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights and the undersigned organizations, we urge you to co-sponsor “The Fair Employment Protection Act” (FEPA), S. 2133, recently introduced by Senators Tammy Baldwin and Tom Harkin. FEPA is a response to the Supreme Court’s decision in *Vance v. Ball State University*, which narrowed protections for employees facing harassment in the workplace. This bill will provide clear legal standards to employers and ensure that an employee harassed by someone with the authority to direct the employee’s daily work activities, but who does not have the power to hire and fire, does not have insufficient legal protections.

We are co-sponsoring a briefing on the bill this Thursday April 3, 2014 at 3:30 pm in The Capitol, Room HC-8. We hope you can join us. The invitation is attached to the email.

The Fair Employment Protection Act would ensure strong protections against harassment based on sex, race, national origin, religion, disability, age or genetic information by making clear that, in hostile work environment harassment cases, an employer is vicariously liable for harassment by both those with the power to make decision about hiring, firing, promotions, reassignment, pay, or a significant change in benefits, and those with authority to direct daily work activities, but who do not have the power to hire or fire.

**Harassment is still very pervasive in the American workplace.** In FY 2011, the combined total number of harassment charges filed with the Equal Employment Opportunity Commission and state fair employment practices agencies numbered more than 30,000.<sup>i</sup> According to a national poll, nine percent of men and 25 percent of women report experiencing sexual harassment at work.<sup>ii</sup>

**The Fair Employment Protection Act restores critical protections against workplace harassment that the Supreme Court stripped away in the 5-4 decision in *Vance v. Ball State University*.** This bill is important because in *Vance*, the Supreme Court created an artificial distinction between two groups of harassers – those with the power to take actions like hiring and firing their subordinates – and those who direct daily work activities like setting schedules, assigning work, and telling employees when they can take breaks. After *Vance*, employees need to prove not only that harassment occurred; they also must prove that the employer was negligent in controlling the working conditions that allowed harassment to occur and in responding to the harassment. This bill provides a targeted solution to the artificial distinction created in *Vance* between harassers with the authority to hire and fire and harassers who direct daily work activities.

**In the already tough job market, watered down protections from harassment are especially detrimental to people in low-wage jobs.** Many people in these jobs have little or no contact with the person who has power to hire and fire. But they interact regularly with

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the person who has the power to make their schedule, give them time off, or decide whether they work the cash register or clean the toilet. Under *Vance*, it will be harder to hold employers responsible for harassment by those employees who direct daily work.

**FEPA leaves standing the affirmative defense to employer liability for harassment that is committed by employees with the power to take tangible employment actions and those who direct daily work activities.** The bill preserves existing defenses available under the law, and would make clear that employers who take certain proactive steps to prevent and remedy harassment may use the affirmative defense in hostile work environment cases.

**The reality today is that employees with the authority to direct daily work activities are a common part of the American workplace, and often the only person in a position of authority that an employee has regular contact with, particularly in industries employing low-wage workers.** FEPA addresses the mismatch between workplace realities and current law. The bill will create clarity for both employees and employers by providing one consistent standard.

We hope you can join us for the briefing on Thursday, and we urge you to support and co-sponsor the Fair Employment Protection Act, which will help prevent harassment in the workplace and restore critical protections to employees. To become a co-sponsor, please contact Nick DiCarlo in Senator Baldwin's office at [Nick\\_DiCarlo@baldwin.senate.gov](mailto:Nick_DiCarlo@baldwin.senate.gov). If you have any questions, feel free to contact Lisa Bornstein, Legal Director at The Leadership Conference at [Bornstein@civilrights.org](mailto:Bornstein@civilrights.org) or (202) 263-2856.

Thank you for your consideration of this important legislation.

Sincerely,

Adhikaar  
African American Ministers In Action  
Alliance for Justice  
American Association for Affirmative Action  
American Association of University Women  
American Civil Liberties Union  
American Federation of Government Employees, AFL-CIO  
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)  
American Federation of State, County and Municipal Employees  
American Federation of Teachers  
CASA de Maryland  
Coalition of Labor Union Women  
Coalition on Human Needs  
Communications Workers of America  
Employment Justice Center  
Equal Rights Advocates  
Farmworker Justice  
Garment Worker Center  
Gender Justice  
Hadassah, The Women's Zionist Organization of America, Inc.  
Institute for Science and Human Values

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America  
(UAW)  
Labor Project for Working Families  
Lawyers' Committee for Civil Rights Under Law  
The Leadership Conference on Civil and Human Rights  
Legal Momentum  
MALDEF  
Maryland Law Disability Center  
MomsRising  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National Center for Lesbian Rights  
National Consumers League  
National Council of Jewish Women  
National Council of La Raza (NCLR)  
National Domestic Workers Alliance  
National Education Association (NEA)  
National Employment Law Project  
National Fair Housing Alliance  
National Organization for Women  
National Partnership for Women & Families  
National Women's Law Center  
National Women's Health Network  
New Jersey Citizen Action  
Pathways PA  
People for the American Way  
Restaurant Opportunities Centers United  
Sikh American Legal Defense and Education Fund (SALDEF)  
UNITE HERE  
United Food and Commercial Workers  
UNITED SIKHS  
Wider Opportunities for Women  
Women's Law Project  
Working America

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<sup>i</sup> U.S. Equal Employment Opportunity Commission, Harassment Charges: EEOC & FEPAs Combined: FY 1997 - FY 2011 (last visited Nov. 26, 2013), *available at* <http://www.eeoc.gov/eeoc/statistics/enforcement/harassment.cfm>.

<sup>ii</sup> 60 Minutes/Vanity Fair Poll, Aug, 2010. Retrieved Nov-25-2013 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut, *available at* [http://www.ropercenter.uconn.edu.proxy.lib.umich.edu/data\\_access/ipoll/ipoll.html](http://www.ropercenter.uconn.edu.proxy.lib.umich.edu/data_access/ipoll/ipoll.html). Survey conducted by CBS News August 3-5, 2010 and based on 847 telephone interviews from a national adult sample.