

To: Members of the Business and Labor Committee
Cc: Senator Patty Pansing Brooks
From: Danielle Conrad, ACLU of Nebraska
Date: February 12, 2018
Re: LB 1014

Dear Honorable Senators,

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.



We thank Senator Pansing Brooks for her leadership on these critical gender equity issues and respectfully ask that this letter be included in the official public record and reflected on the committee statement as a proponent of LB 1014.

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The ACLU works to ensure that all women—especially those facing intersecting forms of discrimination—have equal access to employment free from gender discrimination, including discrimination based on sex stereotypes, pregnancy, and parenting; discrimination in the form of barriers to working in fields from which women have traditionally been excluded; and the systemic undervaluing of work traditionally performed by women.

Family work support programs like equal pay, family and sick leave, and accommodations for pregnant workers- are an emergent set of issues gaining strong support across the political spectrum in state legislatures and at the ballot box.¹ These programs include paid family leave, sick leave, equal pay, and accommodations for pregnant employees. In 2016, these issues were highlighted at both the Republican and Democratic National Conventions. Our own Senator Deb Fischer² has demonstrated considerable leadership on these issues on the federal level. These issues are critically important to defend and protect the civil rights of women in the workplace.

Over 50 years since the passage of the Equal Pay Act of 1963 women in Nebraska make only 78 cents for every dollar a man makes with African American women

¹ Connor Ahern, *Could Equal Pay, Paid Family Leave, and Pregnancy Protections Be the Issues That Bridge the Political Divide*, ACLU (July 29, 2016), <https://www.aclu.org/blog/speak-freely/could-equal-pay-paid-family-leave-and-pregnancy-protections-be-issues-bridge>; See also: Bryce Covert, *Millions of Workers Won Higher Pay and Paid Time Off Last Night*, ThinkProgress (November 9, 2016), <https://thinkprogress.org/minimum-wage-paid-sick-leave-win-a3981ee9eac4#.vzy9658qm>.

² *Fischer Reintroduces Equal Pay and Paid Leave Proposals*, Deb Fischer; United States Senator for Nebraska website (February 9, 2018), <https://www.fischer.senate.gov/public/index.cfm/news?ID=0F5AA0BC-8F28-4DCE-9BAA-04E867D538C6>.



earning only 63 cents and Latina women earning only 54 cents.³ In Nebraska, mothers make only 73 cents for every dollar a father makes or stated another way Nebraska mothers median income is \$38,500 to Nebraska fathers median income of \$54,713 for an annual wage gap of approximately \$14,500.⁴

Thanks to the increase of the minimum wage via citizen initiative and the leadership of Senators Cook, Mello and the legislature as a whole with LB 83 a few years ago Nebraska has made important gains in our comparative national ranking on equal pay over the last few years moving upward to 23 out of 51 jurisdictions.⁵ However, the persistent gender and racial disparities show us that we can, and we must do better to modernize our equal pay laws. Research show that if we wait for a private market correction Nebraska woman will not realize equal pay for equal work until 2066.⁶ That is unacceptable. We must continue to do all we can to make equal pay a reality.

Additional efforts on the federal level to ensure equal pay have been recently suspended⁷ placing even greater need for states like Nebraska to address these issues. Nebraska consistently ranks as one of the leading states for women's workforce participation, with about 81% of working mothers employed outside of the home.⁸ Recent cases in Nebraska courts with differing outcomes illustrate just how timely these issues remain.⁹ Additionally, according to the NEOC over the past 4 years on average about 23 equal pay complaints are filed.¹⁰ It is also important to note for opponents who frequently claim changes to workplace anti-discrimination protections will open the flood gates to litigation that has not been

³ National Women's Law Center, <http://nwlc.org/state/nebraska/> (last visited February 9, 2018).

⁴ *The Wage Gap for Mothers by Race, State by State*, National Women's Law Center (May 17, 2017), <https://nwlc.org/resources/the-wage-gap-for-mothers-state-by-state-2017/>.

⁵ *America's Women and the Wage Gap: Fact Sheet*, National Partnership for Women and Families (April 2017), <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/americas-women-and-the-wage-gap.pdf>.

⁶ *Status of Women in the States; Projected Year the Wage Gap will Close by State*, Institute for Women's Policy Research: #R476 (March 2017), <http://statusofwomendata.org/wp-content/uploads/2017/06/R476.pdf>.

⁷ *What You Should Know: Statement of Acting Chair Victoria A. Lipnic about OMB Decision on EEO-1 Pay Data Collection*, Equal Employment Opportunity Commission,

<https://www.eeoc.gov/eeoc/newsroom/wysk/eo1-pay-data.cfm>. See also: Danielle Paquette, *Trump's White House Froze Equal-Pay Rule. Women are Fighting to Save it*, Wash. Post: Wonkblog (October 2, 2017),

https://www.washingtonpost.com/news/wonk/wp/2017/10/02/trumps-white-house-froze-an-equal-pay-rule-women-are-fighting-to-save-it/?utm_term=.05e415509a1b.

⁸ Aimee Blanchette, *Minnesota has second-highest rate of working mothers*, Star Trib.: Data Drop (May 5, 2016), <http://www.startribune.com/minnesota-has-second-highest-rate-of-working-mothers-in-the-nation/377808151/>.

⁹ Press Release, EEOC, *Nebraska Bank Ordered to Pay Woman More Than \$30,000 Following Equal Pay Lawsuit*. 10/11 Now (July 12, 2017),

<http://www.1011now.com/content/news/Nebraska-bank-order-to-pay-woman-more-than-30000-following-equal-pay-lawsuit-433950443.html>. and Paul Hammel, *Nebraska Supreme Court upholds dismissal of equal pay suit against NU Law School*, Omaha World Herald (September 2, 2017), http://www.omaha.com/news/nebraska/nebraska-supreme-court-upholds-dismissal-of-equal-pay-suit-against/article_6e0891e8-8e2d-5382-84ad-fe1dba0b0c1c.html.

¹⁰ State of Nebraska Equal Opportunity Commission, *Annual Report: Fiscal Year 2016/2017*, <http://www.neoc.ne.gov/reports/pdf/AnnualReport16-17.pdf>.



the experience in Nebraska in recent years. Despite recent positive changes to strengthen our equal pay laws the most recent NEOC report illustrates overall case filings are down and equal pay case filings are down in the relevant period.¹¹

The comprehensive approach presented today in this legislation is grounded in diligent work over the interim led by Senators Pansing Brooks and Kolowski¹² to identify emerging best practices identified in other jurisdictions to strengthen equal pay laws and is a logical next step for Nebraska. This approach is rooted in comprehensive models recently adopted in Massachusetts and California with strong bipartisan political support and strong support from the business community as well because businesses know that equal pay is good for the bottom line. The Greater Boston Chamber of Commerce, the Massachusetts Business Roundtable and the Associated Industries of Massachusetts all supported the final bill.¹³ And in California, CalChamber President and CEO Allan Zarembler noted “Equal pay for equal work, regardless of gender, shouldn’t be an issue in California. We applaud the Governor and a bipartisan vote in the legislature for establishing this fundamental tenet in statute and providing guidance to employers to determine appropriate wages for non-gender related reasons that allow employers to effectively manage their workforce.”¹⁴ This legislation provides significant positive incentives to private sector employers willing to proactively review pay practices and address gender inequities in good faith. Additionally, the legislation addresses head on complaints from the private sector in recent years about whether equal pay for equal work is the true standard by providing specific clarity and best practices to ensure equal pay for comparable work. Finally, this legislation is a common sense no cost¹⁵ solution that provides meaningful evolution of our well-established equal pay provisions.

We look forward to collaboratively addressing these issues with Nebraska policymakers, business leaders, and all stakeholders who know that ensuring equal pay is good for business, good for women, good for families, and good for the economy. In closing, we thank you for your service and your consideration. If we can be of any additional assistance, please contact us at your convenience.

¹¹ Id.

¹² Leg. Res. 143, 105 Leg., 1st Sess. (Neb. 2017), <https://nebraskalegislature.gov/FloorDocs/105/PDF/Intro/LR143.pdf>.

¹³ U.S. Department of Labor, *Massachusetts: Leading the Way on Equal Pay*, U.S. Dept. of Labor Blog: Women (August 4, 2016), <https://blog.dol.gov/2016/08/04/massachusetts-leading-the-way-on-equal-pay>.

¹⁴ Jennifer Barrera, *Senator Signs Cal Chamber-Supported Gender Equity Pay Bill*, Cal Chamber Advocacy (October 7, 2015), <https://advocacy.calchamber.com/2015/10/07/governor-signs-calchamber-supported-gender-equity-pay-bill/>.

¹⁵ L.B. 1014, 105th Leg., 2d Sess: Fiscal Note (Neb. 2018), https://nebraskalegislature.gov/FloorDocs/Current/PDF/FN/LB1014_20180209-121442.pdf.