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February 25, 2023

House File 1625 (Her)/Senate File 1885 (Kupec)

Dear Representative Her and Senator Kupec,

The National Federation of Independent Business (NFIB) represents 10,000 small businesses across Minnesota. Our average member employs 10 people; 90% of our members have fewer than 20 employees. Our mission is to advocate for the best interests of Main Street.

NFIB Minnesota appreciates the opportunity to comment on SF 1885/HF 1625. This proposal prohibits employers from inquiring about, considering or requiring disclosure of a job applicant's past pay during the hiring process. It deems any such action an unfair discriminatory practice under the Minnesota Human Rights Act, shifting the burden of proof onto the employer and exposing small businesses to severe penalties.

The penalties for this new violation are steep: a civil penalty to the state as determined by an Administrative Law Judge; payment of three times actual damages plus punitive damages to the complainant; and, potentially, additional punitive damages and attorney's fees up to \$25,000.

Our members believe in working hard, playing fair, and taking care of their employees and communities. Unfair employment discrimination is anathema to small business values.

Over 75% of all businesses in the state are very small, with fewer than 10 employees. Most small businesses do not have human resources offices to aid in compliance with employment regulations, or litigators on retainer or in-house counsel to defend against employment claims. Shifting the burden of proof from complainant to respondent and requiring small employers to disprove discrimination sets them up for ruinous penalties for singular mistakes.

We urge lawmakers to better balance the interests of small employers and applicants by developing a graduated penalty structure – one that recognizes not all violations of this proposal are discriminatory in nature and deserving of ruinous penalties.

Sincerely,

A handwritten signature in black ink, appearing to read 'John L. Reynolds', is written over a light blue horizontal line.

John L. Reynolds
Minnesota State Director
National Federation of Independent Business
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