

Defending the “Acceptable Business Reason” Requirement of the Equal Pay Act: A Response to the Challenges of *Wernsing v. Department of Human Services*

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ABSTRACT

Since its enactment in 1963, the majority of Circuits have required employers seeking to defend their discriminatory payment practices against Equal Pay Act litigation to provide an “acceptable business reason” for their conduct. In 2005, the Seventh Circuit, in *Wernsing v. Department of Human Services*, joined the outlier Eighth Circuit in holding that a discriminatory payment practice that is not based on sex is not a violation of the Equal Pay Act, regardless of whether it makes business sense. This Note responds to the Seventh Circuit’s criticism of the “acceptable business reason” requirement, explaining that the requirement is supported by the legislative history of the Equal Pay Act. It also argues that social science research demonstrates that an expansive interpretation of which payment practices the Equal Pay Act proscribes is in the best interest of corporations. The Note concludes by explaining that corporate governance can be improved through increasing the number of female board members and that adopting the “acceptable business reason” requirement is consistent with this goal. Therefore, until the holding in *Wernsing* is reversed, corporations in the Seventh and Eight Circuits should voluntarily adopt policies and practices prohibiting all forms of gender-wage discrimination.