

117TH CONGRESS
1ST SESSION

H. R. 738

To require employers to pay essential pay to health care employees during public health emergencies, and to provide a tax credit for the cost of such pay.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2021

Mrs. WATSON COLEMAN (for herself, Ms. NORTON, Mrs. HAYES, Ms. BARRAGÁN, Mr. CARSON, Mr. COHEN, Mr. LAWSON of Florida, and Mr. SAN NICOLAS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require employers to pay essential pay to health care employees during public health emergencies, and to provide a tax credit for the cost of such pay.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Essential Pay for Es-
5 sential Workers Act”.

1 **SEC. 2. MANDATORY ESSENTIAL PAY FOR HEALTH CARE**
2 **EMPLOYEES DURING PUBLIC HEALTH EMER-**
3 **GENCIES.**

4 (a) EMPLOYER REQUIREMENT.—During an emer-
5 gency period, an employer of an essential employee shall
6 pay the employee at a rate equal to the sum of the regular
7 rate of pay of the employee and \$15.

8 (b) ENFORCEMENT.—A violation of subsection (a)
9 shall be deemed a violation of section 7 of the Fair Labor
10 Standards Act of 1938 (29 U.S.C. 206) and unpaid
11 amounts shall be treated as unpaid overtime compensation
12 for the purposes of sections 15 and 16 of such Act (29
13 U.S.C. 215 and 216).

14 (c) DEFINITIONS.—In this Act:

15 (1) FLSA TERMS.—The terms “employer” and
16 “employ” have the meanings given the terms in sec-
17 tion 3 of the Fair Labor Standards Act of 1938 (29
18 U.S.C. 203).

19 (2) ESSENTIAL.—The term “essential em-
20 ployee” means an employee identified as an essential
21 critical infrastructure worker in the memorandum
22 entitled, “Advisory Memorandum on Identification
23 of Essential Critical Infrastructure Workers During
24 COVID–19 Response” issued by the Director of the
25 Cybersecurity and Infrastructure Agency on March
26 28, 2020, or a successor memorandum.

1 (3) EMERGENCY PERIOD.—The term “emer-
 2 gency period” has the meaning given such term in
 3 section 1135(g) of the Social Security Act.

4 (4) REGULAR RATE.—The term “regular rate”
 5 has the meaning given the term in section 7 of the
 6 Fair Labor Standards Act of 1938 (29 U.S.C. 207).

7 **SEC. 3. PAYROLL CREDIT FOR CERTAIN MANDATORY ES-**
 8 **SENTIAL PAY.**

9 (a) IN GENERAL.—In the case of an employer, there
 10 shall be allowed as a credit against the tax imposed by
 11 section 3111(a) of the Internal Revenue Code of 1986 for
 12 each calendar quarter an amount equal to 100 percent of
 13 the qualified essential pay wages paid by such employer
 14 with respect to such calendar quarter.

15 (b) LIMITATIONS AND REFUNDABILITY.—

16 (1) CREDIT LIMITED TO CERTAIN EMPLOYMENT
 17 TAXES.—The credit allowed by subsection (a) with
 18 respect to any calendar quarter shall not exceed the
 19 tax imposed by section 3111(a) of such Code for
 20 such calendar quarter (reduced by any other credits
 21 allowed against such tax for such quarter) on the
 22 wages paid with respect to the employment of all
 23 employees of the employer.

24 (2) REFUNDABILITY OF EXCESS CREDIT.—

1 (A) IN GENERAL.—If the amount of the
 2 credit under subsection (a) exceeds the limita-
 3 tion of paragraph (1) for any calendar quarter,
 4 such excess shall be treated as an overpayment
 5 that shall be refunded under sections 6402(a)
 6 and 6413(b) of such Code.

7 (B) TREATMENT OF PAYMENTS.—For pur-
 8 poses of section 1324 of title 31, United States
 9 Code, any amounts due to an employer under
 10 this paragraph shall be treated in the same
 11 manner as a refund due from a credit provision
 12 referred to in subsection (b)(2) of such section.

13 (c) QUALIFIED ESSENTIAL PAY WAGES.—For pur-
 14 poses of this section, the term “qualified essential pay
 15 wages” means wages (as defined in section 3121(a) of the
 16 Internal Revenue Code of 1986) paid by an employer
 17 which are required to be paid by reason of section 2.

18 (d) SPECIAL RULES.—

19 (1) DENIAL OF DOUBLE BENEFIT.—For pur-
 20 poses of chapter 1 of such Code, the gross income
 21 of the employer, for the taxable year which includes
 22 the last day of any calendar quarter with respect to
 23 which a credit is allowed under this section, shall be
 24 increased by the amount of such credit.

1 (2) ELECTION NOT TO HAVE SECTION APPLY.—

2 This section shall not apply with respect to any em-
3 ployer for any calendar quarter if such employer
4 elects (at such time and in such manner as the Sec-
5 retary of the Treasury (or the Secretary's delegate)
6 may prescribe) not to have this section apply.

7 (3) CERTAIN TERMS.—Any term used in this
8 section which is also used in chapter 21 of such
9 Code shall have the same meaning as when used in
10 such chapter.

11 (e) REGULATIONS.—The Secretary of the Treasury
12 (or the Secretary's delegate) shall prescribe such regula-
13 tions or other guidance as may be necessary to carry out
14 the purposes of this section, including—

15 (1) regulations or other guidance to prevent the
16 avoidance of the purposes of the limitations under
17 this section;

18 (2) regulations or other guidance to minimize
19 compliance and record-keeping burdens under this
20 section;

21 (3) regulations or other guidance providing for
22 waiver of penalties for failure to deposit amounts in
23 anticipation of the allowance of the credit allowed
24 under this section;

1 (4) regulations or other guidance for recap-
2 turing the benefit of credits determined under this
3 section in cases where there is a subsequent adjust-
4 ment to the credit determined under subsection (a);
5 and

6 (5) regulations or other guidance to ensure that
7 the wages taken into account under this section con-
8 form with the wages required under section 2.

9 (f) TRANSFERS TO FEDERAL OLD-AGE AND SUR-
10 VIVORS INSURANCE TRUST FUND.—There are hereby ap-
11 propriated to the Federal Old-Age and Survivors Insur-
12 ance Trust Fund and the Federal Disability Insurance
13 Trust Fund established under section 201 of the Social
14 Security Act (42 U.S.C. 401) amounts equal to the reduc-
15 tion in revenues to the Treasury by reason of this section
16 (without regard to this subsection). Amounts appropriated
17 by the preceding sentence shall be transferred from the
18 general fund at such times and in such manner as to rep-
19 licate to the extent possible the transfers which would have
20 occurred to such Trust Fund had this section not been
21 enacted.

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