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H. R. 4135

To keep Americans working by strengthening and expanding short-time compensation programs that provide employers with an alternative to layoffs.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2009

Ms. DELAURO (for herself, Mr. HARE, Mr. HASTINGS of Florida, Mr. TONKO, Ms. NORTON, Ms. WOOLSEY, Ms. LINDA T. SÁNCHEZ of California, Mr. NADLER of New York, Mr. CAPUANO, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To keep Americans working by strengthening and expanding short-time compensation programs that provide employers with an alternative to layoffs.

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 “Keep Americans Work-
5 ing Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to keep Americans working
8 by strengthening and expanding short-time compensation

1 programs that provide employers with an alternative to
2 layoffs.

3 **SEC. 3. TREATMENT OF SHORT-TIME COMPENSATION PRO-**
4 **GRAMS.**

5 (a) IN GENERAL.—Section 3306 of the Internal Rev-
6 enue Code of 1986 is amended by adding at the end the
7 following new subsection:

8 “(v) SHORT-TIME COMPENSATION PROGRAM.—For
9 purposes of this chapter, the term ‘short-time compensa-
10 tion program’ means a program under which—

11 “(1) the participation of an employer is vol-
12 untary;

13 “(2) an employer reduces the number of hours
14 worked by employees through certifying that such
15 reductions are in lieu of temporary layoffs;

16 “(3) such employees whose workweeks have
17 been reduced by at least 10 percent are eligible for
18 unemployment compensation;

19 “(4) the amount of unemployment compensa-
20 tion payable to any such employee is a pro rata por-
21 tion of the unemployment compensation which would
22 be payable to the employee if such employee were to-
23 tally unemployed;

24 “(5) such employees are not expected to meet
25 the availability for work or work search test require-

1 ments while collecting short-time compensation bene-
2 fits, but are required to be available for their normal
3 workweek;

4 “(6) eligible employees may participate in an
5 employer-sponsored training program to enhance job
6 skills if such program has been approved by the
7 State agency;

8 “(7) beginning on the date which is 2 years
9 after the date of enactment of this subsection, the
10 State agency shall require an employer to certify
11 that continuation of health benefits and retirement
12 benefits under a defined benefit pension plan (as de-
13 fined in section 3(35) of the Employee Retirement
14 Income Security Act of 1974) is not affected by par-
15 ticipation in the program;

16 “(8) the State agency shall require an employer
17 (or an employer’s association which is party to a col-
18 lective bargaining agreement) to submit a written
19 plan describing the manner in which the require-
20 ments of this subsection will be implemented and
21 containing such other information as the Secretary
22 of Labor determines is appropriate;

23 “(9) in the case of employees represented by a
24 union, the appropriate official of the union has
25 agreed to the terms of the employer’s written plan

1 and implementation is consistent with employer obli-
2 gations under the National Labor Relations Act; and

3 “(10) the program meets such other require-
4 ments as the Secretary of Labor determines appro-
5 priate.”.

6 (b) ASSISTANCE AND GUIDANCE IN IMPLEMENTING
7 PROGRAMS.—

8 (1) ASSISTANCE AND GUIDANCE.—

9 (A) IN GENERAL.—In order to assist
10 States in establishing, qualifying, and imple-
11 menting short-time compensation programs, as
12 defined in section 3306(v) of the Internal Rev-
13 enue Code of 1986 (as added by subsection
14 (a)), the Secretary of Labor (in this section re-
15 ferred to as the “Secretary”) shall—

16 (i) develop model legislative language
17 which may be used by States in developing
18 and enacting short-time compensation pro-
19 grams and shall periodically review and re-
20 vise such model legislative language;

21 (ii) provide technical assistance and
22 guidance in developing, enacting, and im-
23 plementing such programs;

24 (iii) establish biannual reporting re-
25 quirements for States, including number of

1 averted layoffs, number of participating
2 companies and workers, and retention of
3 employees following participation; and

4 (iv) award start-up grants to State
5 agencies under subparagraph (B).

6 (B) GRANTS.—

7 (i) IN GENERAL.—The Secretary shall
8 award start-up grants to State agencies
9 that apply not later than September 30,
10 2010, in States that enact short-time com-
11 pensation programs after the date of en-
12 actment of this Act for the purpose of cre-
13 ating such programs. The amount of such
14 grants shall be awarded depending on the
15 costs of implementing such programs.

16 (ii) ELIGIBILITY.—In order to receive
17 a grant under clause (i) a State agency
18 shall meet requirements established by the
19 Secretary, including any reporting require-
20 ments under clause (iii). Each State agen-
21 cy shall be eligible to receive not more than
22 one such grant.

23 (iii) REPORTING.—The Secretary may
24 establish reporting requirements for State
25 agencies receiving a grant under clause (i)

1 in order to provide oversight of grant
2 funds used by States for the creation of
3 short-time compensation programs.

4 (iv) FUNDING.—There are appro-
5 priated, out of any moneys in the Treasury
6 not otherwise appropriated, to the Sec-
7 retary, such sums as the Secretary certifies
8 as necessary for the period of fiscal years
9 2010 and 2011 to carry out this subpara-
10 graph.

11 (2) TIMEFRAME.—The initial model legislative
12 language referred to in paragraph (1)(A) shall be
13 developed not later than 60 days after the date of
14 enactment of this Act.

15 (c) REPORTS.—

16 (1) INITIAL REPORT.—Not later than 4 years
17 after the date of enactment of this Act, the Sec-
18 retary shall submit to Congress and to the President
19 a report or reports on the implementation of this
20 section. Such report or reports shall include—

21 (A) a study of short-time compensation
22 programs;

23 (B) an analysis of the significant impedi-
24 ments to State enactment and creation of such
25 programs; and

1 (C) such recommendations as the Sec-
2 retary determines appropriate.

3 (2) SUBSEQUENT REPORTS.—After the submis-
4 sion of the report under paragraph (1), the Sec-
5 retary may submit such additional reports on the
6 implementation of short-time compensation pro-
7 grams as the Secretary deems appropriate.

8 (3) FUNDING.—There are appropriated, out of
9 any moneys in the Treasury not otherwise appro-
10 priated, to the Secretary, \$1,500,000 to carry out
11 this subsection, to remain available without fiscal
12 year limitation.

13 (d) CONFORMING AMENDMENTS.—

14 (1) INTERNAL REVENUE CODE OF 1986.—

15 (A) Subparagraph (E) of section
16 3304(a)(4) of the Internal Revenue Code of
17 1986 is amended to read as follows:

18 “(E) amounts may be withdrawn for the
19 payment of short-time compensation under a
20 short-time compensation program (as defined in
21 section 3306(v));”.

22 (B) Subsection (f) of section 3306 of the
23 Internal Revenue Code of 1986 is amended—

1 (i) by striking paragraph (5) (relating
2 to short-term compensation) and inserting
3 the following new paragraph:

4 “(5) amounts may be withdrawn for the pay-
5 ment of short-time compensation under a short-time
6 compensation program (as defined in subsection
7 (v));”, and

8 (ii) by redesignating paragraph (5)
9 (relating to self-employment assistance
10 program) as paragraph (6).

11 (2) SOCIAL SECURITY ACT.—Section 303(a)(5)
12 of the Social Security Act is amended by striking
13 “the payment of short-time compensation under a
14 plan approved by the Secretary of Labor” and in-
15 serting “the payment of short-time compensation
16 under a short-time compensation program (as de-
17 fined in section 3306(v) of the Internal Revenue
18 Code of 1986)”.

19 (3) REPEAL.—Subsections (b) through (d) of
20 section 401 of the Unemployment Compensation
21 Amendments of 1992 (26 U.S.C. 3304 note) are re-
22 pealed.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of enactment of
25 this Act.

1 **SEC. 4. TEMPORARY FINANCING OF CERTAIN SHORT-TIME**
2 **COMPENSATION PROGRAMS.**

3 (a) **PAYMENTS TO STATES WITH CERTIFIED PRO-**
4 **GRAMS.—**

5 (1) **IN GENERAL.—**Not later than 30 days after
6 the date of enactment of this Act, the Secretary
7 shall establish a program under which the Secretary
8 shall make payments to any State unemployment
9 trust fund to be used for the payment of unemploy-
10 ment compensation if the Secretary approves an ap-
11 plication for certification submitted under paragraph
12 (3) for such State to operate a short-time compensa-
13 tion program (as defined in section 3306(v) of the
14 Internal Revenue Code of 1986 (as added by section
15 3(a))) which requires the maintenance of health and
16 retirement employee benefits as described in para-
17 graph (7) of such section 3306(v), notwithstanding
18 the otherwise effective date of such requirement.

19 (2) **FULL REIMBURSEMENT.—**Subject to sub-
20 section (d), the payment to a State under paragraph
21 (1) shall be an amount equal to 100 percent of the
22 total amount of benefits paid to individuals by the
23 State pursuant to the short-time compensation pro-
24 gram during the period—

1 (A) beginning on the date a certification is
2 issued by the Secretary with respect to such
3 program; and

4 (B) ending on September 30, 2011.

5 (3) CERTIFICATION REQUIREMENTS.—

6 (A) IN GENERAL.—Any State seeking full
7 reimbursement under this subsection shall sub-
8 mit an application for certification at such time,
9 in such manner, and complete with such infor-
10 mation as the Secretary may require (whether
11 by regulation or otherwise), including informa-
12 tion relating to compliance with the require-
13 ments of paragraph (7) of such section 3306(v).
14 The Secretary shall, within 30 days after receiv-
15 ing a complete application, notify the State
16 agency of the State of the Secretary's findings
17 with respect to the requirements of such para-
18 graph (7).

19 (B) FINDINGS.—If the Secretary finds
20 that the short-time compensation program oper-
21 ated by the State meets the requirements of
22 such paragraph (7), the Secretary shall certify
23 such State's short-time compensation program
24 thereby making such State eligible for full reim-
25 bursement under this subsection.

1 (b) TIMING OF APPLICATION SUBMITTALS.—No ap-
2 plication under subsection (a)(3) may be considered if sub-
3 mitted before the date of enactment of this Act or after
4 the latest date necessary (as specified by the Secretary)
5 to ensure that all payments under this section are made
6 before September 30, 2011.

7 (c) TERMS OF PAYMENTS.—Payments made to a
8 State under subsection (a)(1) shall be payable by way of
9 reimbursement in such amounts as the Secretary esti-
10 mates the State will be entitled to receive under this sec-
11 tion for each calendar month, reduced or increased, as the
12 case may be, by any amount by which the Secretary finds
13 that the Secretary’s estimates for any prior calendar
14 month were greater or less than the amounts which should
15 have been paid to the State. Such estimates may be made
16 on the basis of such statistical, sampling, or other method
17 as may be agreed upon by the Secretary and the State
18 agency of the State involved.

19 (d) LIMITATIONS.—

20 (1) GENERAL PAYMENT LIMITATIONS.—No
21 payments shall be made to a State under this sec-
22 tion for benefits paid to an individual by the State
23 pursuant to a short-time compensation program that
24 is in excess of 26 weeks of benefits.

1 (2) EMPLOYER LIMITATIONS.—No payments
2 shall be made to a State under this section for bene-
3 fits paid to an individual by the State pursuant to
4 a short-time compensation program if such indi-
5 vidual is employed by an employer—

6 (A) whose workforce during the 3 months
7 preceding the date of the submission of the em-
8 ployer’s short-time compensation plan has been
9 reduced by temporary layoffs of more than 20
10 percent;

11 (B) on a seasonal, temporary, or intermit-
12 tent basis; or

13 (C) engaged in a labor dispute.

14 (3) PROGRAM PAYMENT LIMITATION.—In mak-
15 ing any payments to a State under this section pur-
16 suant to a short-time compensation program, the
17 Secretary may limit the frequency of employer par-
18 ticipation in such program.

19 (e) CHARGING RULE.—Under a short-time com-
20 pensation program reimbursed under this section, a State
21 may require short-time compensation benefits paid to an
22 individual to be charged to a participating employer re-
23 gardless of the base period charging rule.

24 (f) RETENTION REQUIREMENT.—

1 (1) IN GENERAL.—A participating employer
2 under this section is required to comply with the
3 terms of the written plan approved by the State
4 agency and act in good faith to retain participating
5 employees, and the State shall, in the event of any
6 violation, require such employer to repay to the
7 State a sum based on the amount expended by the
8 State under the program as a result of that viola-
9 tion.

10 (2) OVERSIGHT AND MONITORING.—The Sec-
11 retary shall establish an oversight and monitoring
12 process by regulation by which State agencies will
13 ensure that participating employers comply with the
14 requirements of paragraph (1).

15 (3) PENALTY REMITTANCE.—In the case of any
16 State which receives reimbursement under this sec-
17 tion, if such State determines that a violation of
18 paragraph (1) has occurred, the State shall transfer
19 an appropriate amount to the United States of the
20 repayment the State required of the employer pursu-
21 ant to such paragraph.

22 (g) FUNDING.—There are appropriated, from time to
23 time, out of any moneys in the Treasury not otherwise
24 appropriated, to the Secretary, such sums as the Secretary
25 certifies are necessary to carry out this section (including

1 to reimburse any additional administrative expenses in-
2 curred by the States in operating such short-time com-
3 pensation programs).

4 (h) DEFINITION OF STATE.—In this section, the term
5 “State” includes the District of Columbia, the Common-
6 wealth of Puerto Rico, and the Virgin Islands.

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