

104TH CONGRESS
2D SESSION

H. R. 3657

To provide pay equity and labor protection for contingent workers and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1996

Ms. VELÁZQUEZ introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities, and in addition to the Committees on Ways and Means, Government Reform and Oversight, and House Oversight, 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 provide pay equity and labor protection for contingent workers and for other purposes.

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 “Contingent Work
5 Force Equity Act of 1996”.

1 **SEC. 2. EQUAL PAY.**

2 Section 6 of the Fair Labor Standards Act of 1938
3 (29 U.S.C. 206) is amended by adding at the end the fol-
4 lowing:

5 “(g)(1) No employer having employees subject to any
6 provision of this section shall discriminate, within any es-
7 tablishment in which such employees are employed, be-
8 tween employees on the basis of employment status by
9 paying wages to part-time or temporary employees in such
10 establishment at a rate less than the rate at which the
11 employer pays wages to full-time employees in such estab-
12 lishment for equal work on jobs the performance of which
13 requires equal skill, effort, and responsibility and which
14 are performed under similar working conditions unless
15 such payment is made pursuant to—

16 “(A) a seniority system;

17 “(B) a merit system;

18 “(C) a system that measures earnings by quan-
19 tity or quality of production; or

20 “(D) a differential based on any other factor
21 other than employment status.

22 An employer who is paying a wage rate differential in vio-
23 lation of this paragraph shall not, in order to comply with
24 the requirements of this paragraph, reduce the wage rate
25 of any employee.

1 “(2) No labor organization, or its agents, represent-
2 ing employees of an employer having employees subject to
3 any provision of this section shall cause or attempt to
4 cause such an employer to discriminate against an em-
5 ployee in violation of paragraph (1).

6 “(3) For purposes of administration and enforcement
7 of paragraph (1), any amount owing to any employee that
8 has been withheld in violation of paragraph (1) shall be
9 deemed to be unpaid minimum wages under subsection (a)
10 or unpaid overtime compensation under section 7.

11 “(4) As used in paragraph (2), the term ‘labor orga-
12 nization’ means any organization of any kind, or any agen-
13 cy or employee representation committee or plan, in which
14 employees participate and which exists for the purpose,
15 in whole or in part, of dealing with employers concerning
16 grievances, labor disputes, wages, rates of pay, hours of
17 employment, or conditions of work.”.

18 **SEC. 3. OCCUPATIONAL SAFETY AND HEALTH.**

19 (a) AMENDMENT.—Section 5(a)(1) of the Occupa-
20 tional Safety and Health Act of 1970 (29 U.S.C.
21 654(a)(1)) is amended to read as follows:

22 “(1) shall furnish employment and a place of
23 employment that are free from recognized hazards
24 that are causing or are likely to cause death or seri-
25 ous physical harm to the employees of the employer

1 or to individuals who are employed by another em-
2 ployer and are performing services at such place of
3 employment;”.

4 (b) **STUDY.**—The Secretary of Labor shall conduct
5 a study to determine if the health and safety of part-time
6 or temporary employees are being adequately monitored
7 and, if the monitoring is not adequate, to determine how
8 such monitoring can be made adequate.

9 **SEC. 4. FAMILY AND MEDICAL LEAVE.**

10 (a) **FAMILY AND MEDICAL LEAVE ACT.**—Section
11 101(2)(A) of the Family and Medical Leave Act (29
12 U.S.C. 2611(2)(A)) is amended—

13 (1) by striking “at least 12 months” and insert-
14 ing “at least 3 months”; and

15 (2) by striking “at least 1,250 hours of service
16 with such employer during the previous 12-month
17 period” and inserting “at least 125 hours of service
18 with such employer during the previous 3-month pe-
19 riod”.

20 (b) **FEDERAL EMPLOYEES.**—Section 6381(1)(B) of
21 title 5, United States Code, is amended by striking “12
22 months” and inserting “3 months”.

23 (c) **CONGRESSIONAL EMPLOYEES.**—Section
24 202(a)(2)(B) of the Congressional Accountability Act of
25 1995 is amended—

1 (1) by striking “for 12 months” and inserting
2 “for 3 months”; and

3 (2) by striking “at least 1,250 hours of
4 employment during the previous 12 months” and
5 inserting “at least 125 hours of employment during
6 the previous 3-month period”.

7 **SEC. 5. CONTINGENT WORKFORCE SURVEY.**

8 The Secretary of Labor, acting through the Commis-
9 sioner of the Bureau of Labor Statistics, shall establish
10 and carry out an annual survey identifying—

11 (1) the characteristics of temporary workers in
12 the United States;

13 (2) the relationship between such workers and
14 the establishments at which such workers are tempo-
15 rarily employed; and

16 (3) where appropriate, the relationship between
17 such workers and their permanent employers.

18 **SEC. 6. COLLECTIVE BARGAINING RIGHTS.**

19 Section 9(b) of the National Labor Relations Act (29
20 U.S.C. 195(b)) is amended—

21 (1) by striking “; or (2)” and inserting “2”;

22 (2) by striking “or (3)” and inserting “; (3)”;

23 and

24 (3) by inserting before the period the following:

25 “; or (4) decide that an employee shall be excluded

1 from a unit otherwise appropriate for the purposes
2 of collective bargaining based on the employee’s
3 part-time or temporary status, if such employee (A)
4 has a reasonable expectation of continued employ-
5 ment; and (B) is employed by the employer on the
6 date on which eligibility for participation in a rep-
7 resentation election is determined and on the date of
8 the election.”.

9 **SEC. 7. PROTECTION OF PART-TIME AND TEMPORARY**
10 **WORKERS.**

11 (a) TREATMENT OF EMPLOYEES WORKING AT LESS
12 THAN FULL-TIME UNDER PARTICIPATION, VESTING, AND
13 ACCRUAL RULES GOVERNING PENSION PLANS.—

14 (1) PARTICIPATION RULES.—

15 (A) IN GENERAL.—Section 202(a)(3) of
16 the Employee Retirement Income Security Act
17 of 1974 (29 U.S.C. 1052(a)(3)) is amended by
18 adding at the end the following new subpara-
19 graph:

20 “(E)(i) For purposes of this paragraph, in the case
21 of any employee who, as of the beginning of the 12-month
22 period referred to in subparagraph (A)—

23 “(I) has customarily completed 500 or more
24 hours of service per year but less than 1,000 hours
25 of service per year, or

1 “(II) is employed in a type of position in which
2 employment customarily constitutes 500 or more
3 hours of service per year but less than 1,000 hours
4 of service per year,
5 completion of 500 hours of service within such 12-month
6 period shall be treated as completion of 1,000 hours of
7 service.

8 “(ii) For purposes of this subparagraph, the extent
9 to which employment in any type of position customarily
10 constitutes less than 1,000 hours of service per year shall
11 be determined with respect to each pension plan in accord-
12 ance with such regulations as the Secretary shall prescribe
13 providing for consideration of facts and circumstances pe-
14 culiar to the work-force constituting the participants in
15 such plan.”.

16 (B) CONFORMING AMENDMENT.—Section
17 204(b)(1)(E) of such Act (29 U.S.C.
18 1054(b)(1)(E)) is amended by striking “section
19 202(a)(3)(A)” and inserting “subparagraphs
20 (A) and (E) of section 202(a)(3)”.

21 (2) VESTING RULES.—

22 (A) IN GENERAL.—Section 203(b)(2) of
23 such Act (29 U.S.C. 1053(b)(2)) is amended by
24 adding at the end the following new subpara-
25 graph:

1 “(E)(i) For purposes of this paragraph, in the case
2 of any employee who, as of the beginning of the period
3 designated by the plan pursuant to subparagraph (A)—

4 “(I) has customarily completed 500 or more
5 hours of service per year but less than 1,000 hours
6 of service per year, or

7 “(II) is employed in a type of position in which
8 employment customarily constitutes 500 or more
9 hours of service per year but less than 1,000 hours
10 of service per year,

11 completion of 500 hours of service within such period shall
12 be treated as completion of 1,000 hours of service.

13 “(ii) For purposes of this subparagraph, the extent
14 to which employment in any type of position customarily
15 constitutes less than 1,000 hours of service per year shall
16 be determined with respect to each pension plan in accord-
17 ance with such regulations as the Secretary shall prescribe
18 providing for consideration of facts and circumstances pe-
19 culiar to the work-force constituting the participants in
20 such plan.”.

21 (B) 1-YEAR BREAKS IN SERVICE.—Section
22 203(b)(3) of such Act (29 U.S.C. 1053(b)(3))
23 is amended by adding at the end the following
24 new subparagraph:

1 “(F)(i) For purposes of this paragraph, in the case
2 of any employee who, as of the beginning of the period
3 designated by the plan pursuant to subparagraph (A)—

4 “(I) has customarily completed 500 or more
5 hours of service per year but less than 1,000 hours
6 of service per year, or

7 “(II) is employed in a type of position in which
8 employment customarily constitutes 500 or more
9 hours of service per year but less than 1,000 hours
10 of service per year,

11 completion of 250 hours of service within such period shall
12 be treated as completion of 500 hours of service.

13 “(ii) For purposes of this subparagraph, the extent
14 to which employment in any type of position customarily
15 constitutes less than 1,000 hours of service per year shall
16 be determined with respect to each pension plan in accord-
17 ance with such regulations as the Secretary shall prescribe
18 providing for consideration of facts and circumstances pe-
19 culiar to the work-force constituting the participants in
20 such plan.”.

21 (3) ACCRUAL RULES.—Section 204(b)(4)(C) of
22 such Act (29 U.S.C. 1054(b)(4)(C)) is amended—

23 (A) by inserting “(i)” after “(C)”; and

24 (B) by adding at the end the following new
25 clauses:

1 “(ii) For purposes of this subparagraph, in the case
2 of any employee who, as of the beginning of the period
3 designated by the plan pursuant to clause (i)—

4 “(I) has customarily completed 500 or more
5 hours of service per year but less than 1,000 hours
6 of service per year, or

7 “(II) is employed in a type of position in which
8 employment customarily constitutes 500 or more
9 hours of service per year but less than 1,000 hours
10 of service per year,

11 completion of 500 hours of service within such period shall
12 be treated as completion of 1,000 hours of service.

13 “(iii) For purposes of clause (ii), the extent to which
14 employment in any type of position customarily constitutes
15 less than 1,000 hours of service per year shall be deter-
16 mined with respect to each pension plan in accordance
17 with such regulations as the Secretary shall prescribe pro-
18 viding for consideration of facts and circumstances pecu-
19 liar to the work-force constituting the participants in such
20 plan.”.

21 (b) TREATMENT OF EMPLOYEES WORKING AT LESS
22 THAN FULL-TIME UNDER GROUP HEALTH PLANS.

23 (1) IN GENERAL.—Part 2 of subtitle B of title
24 I of such Act is amended—

1 (A) by redesignating section 211 (29
2 U.S.C. 1061) as section 212; and

3 (B) by inserting after section 210 (29
4 U.S.C. 1060) the following new section:

5 “TREATMENT OF PART-TIME WORKERS UNDER GROUP
6 HEALTH PLANS

7 “SEC. 211. (a) IN GENERAL.—A reduction in the em-
8 ployer-provided premium under a group health plan with
9 respect to any employee for any period of coverage solely
10 because the employee’s customary employment is less than
11 full-time may be provided under such plan only if the em-
12 ployee is described in subsection (b) and only to the extent
13 permitted under subsection (c).

14 “(b) REDUCTIONS APPLICABLE TO EMPLOYEES
15 WORKING LESS THAN FULL-TIME.—

16 “(1) IN GENERAL.—An employee is described in
17 this subsection if such employee, as of the beginning
18 of the period of coverage referred to in subsection
19 (a)—

20 “(A) has customarily completed less than
21 30 hours of service per week, or

22 “(B) is employed in a type of position in
23 which employment customarily constitutes less
24 than 30 hours of service per week.

25 “(2) REGULATIONS.—For purposes of para-
26 graph (1), whether employment in any type of posi-

1 tion customarily constitutes less than 30 hours of
2 service per week shall be determined with respect to
3 each group health plan in accordance with such reg-
4 ulations as the Secretary shall prescribe providing
5 for consideration of facts and circumstances peculiar
6 to the work-force constituting the participants in
7 such plan.

8 “(c) AMOUNT OF PERMISSIBLE REDUCTION.—The
9 employer-provided premium under a group health plan
10 with respect to any employee for any period of coverage,
11 after the reduction permitted under subsection (a), shall
12 not be less than a ratable portion of the employer-provided
13 premium which would be provided under such plan for
14 such period of coverage with respect to an employee who
15 completes 30 hours of service per week.

16 “(d) DEFINITIONS.—For purposes of this section—

17 “(1) GROUP HEALTH PLAN.—The term ‘group
18 health plan’ has the meaning provided such term in
19 section 607(1).

20 “(2) EMPLOYER-PROVIDED PREMIUM.—

21 “(A) IN GENERAL.—The term ‘employer-
22 provided premium’ under a plan for any period
23 of coverage means the portion of the applicable
24 premium under the plan for such period of cov-

1 erage which is attributable under the plan to
2 employer contributions.

3 “(B) APPLICABLE PREMIUM.—For pur-
4 poses of subparagraph (A), in determining the
5 applicable premium of a group health plan,
6 principles similar to the principles applicable
7 under section 604 shall apply.”.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 201(1) of such Act (29 U.S.C.
10 1051(1)) is amended by inserting “, except with
11 respect to section 211” before the semicolon.

12 (B) The table of contents in section 1 of
13 such Act is amended by striking the item relat-
14 ing to section 211 and inserting the following
15 new items:

“Sec. 211. Treatment of part-time workers under group health plans.

“Sec. 212. Effective date.”.

16 (c) EXPANSION OF DEFINITION OF EMPLOYEE TO
17 INCLUDE CERTAIN INDIVIDUALS WHOSE SERVICES ARE
18 LEASED OR CONTRACTED FOR.—Paragraph (6) of section
19 3 of such Act (29 U.S.C. 1002(6)) is amended—

20 (1) by inserting “(A)” after “(6)”; and

21 (2) by adding at the end the following new sub-
22 paragraph:

23 “(B) Such term includes, with respect to any em-
24 ployer, any person who is not an employee (within the

1 meaning of subparagraph (A)) of such employer and who
2 provides services to such employer, if—

3 “(i) such person has (pursuant to an agreement
4 with such employer or any other person) performed
5 such services for such employer (or for such em-
6 ployer and related persons (within the meaning of
7 section 144(a)(3) of the Internal Revenue Code of
8 1986)) for a period of at least 1 year (6 months in
9 the case of core health benefits) at the rate of at
10 least 500 hours of service per year, and

11 “(ii) such services are of a type historically per-
12 formed, in the business field of the employer, by em-
13 ployees (within the meaning of subparagraph (A)).”.

14 (d) EFFECTIVE DATES.

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply with respect to plan years beginning on
18 or after January 1, 1997.

19 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
20 GAINED PLANS.—In the case of a plan maintained
21 pursuant to 1 or more collective bargaining agree-
22 ments between employee representatives and 1 or
23 more employers ratified on or before the date of the
24 enactment of this Act, paragraph (1) shall be ap-
25 plied to benefits pursuant to, and individuals covered

1 by, any such agreement by substituting for “Janu-
2 ary 1, 1997” the date of the commencement of the
3 first plan year beginning on or after the earlier of—

4 (A) the later of—

5 (i) January 1, 1997, or

6 (ii) the date on which the last of such
7 collective bargaining agreements termi-
8 nates (determined without regard to any
9 extension thereof after the date of the en-
10 actment of this Act), or

11 (B) January 1, 1999.

12 (3) PLAN AMENDMENTS.—If any amendment
13 made by this section requires an amendment to any
14 plan, such plan amendment shall not be required to
15 be made before the first plan year beginning on or
16 after January 1, 1998, if—

17 (A) during the period after such amend-
18 ment made by this section takes effect and be-
19 fore such first plan year, the plan is operated
20 in accordance with the requirements of such
21 amendment made by this section, and

22 (B) such plan amendment applies retro-
23 actively to the period after such amendment
24 made by this section takes effect and such first
25 plan year.

1 A plan shall not be treated as failing to provide defi-
2 nitely determinable benefits or contributions, or to
3 be operated in accordance with the provisions of the
4 plan, merely because it operates in accordance with
5 this paragraph.

6 **SEC. 8. UNEMPLOYMENT COMPENSATION.**

7 (a) PART-TIME EMPLOYEES; INDEPENDENT CON-
8 TRACTORS.—Subsection (a) of section 3304 of the Inter-
9 nal Revenue Code of 1986 (relating to requirements for
10 approval of State unemployment compensation laws) is
11 amended by striking “and” at the end of paragraph (17),
12 by redesignating paragraph (18) as paragraph (20), and
13 by inserting after paragraph (17) the following new para-
14 graphs:

15 “(18) in applying the State law provisions relat-
16 ing to availability for work, active search for work,
17 or refusal to accept work, to an individual seeking
18 part-time employment, the term ‘suitable work’ shall
19 not include any work where the individual would
20 normally perform services for more hours per week
21 than the number of hours per week for which the in-
22 dividual is available if the individual demonstrates
23 good cause for the individual’s limited availability
24 and such limitation does not substantially impair the
25 individual’s current attachment to the labor force;

1 “(19) the determination of whether an individ-
2 ual is an employee of another person shall be made
3 in accordance with section 3306(i); and”.

4 (b) EFFECTIVE DATE.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall take effect on January 1, 1997.

8 (2) SPECIAL RULE.—In the case of any State
9 the legislature of which has not been in session for
10 at least 30 calendar days (whether or not successive)
11 between the date of the enactment of this Act and
12 January 1, 1997, the amendments made by this sec-
13 tion shall take effect 30 calendar days after the 1st
14 day on which such legislature is in session on or
15 after January 1, 1998.

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