

104TH CONGRESS
2D SESSION

H. R. 4252

To establish labor provisions and tax provisions for small-business concerns.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 1996

Mr. HEFLEY introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities, and in addition to the Committee on Ways and Means, 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 establish labor provisions and tax provisions for small-business concerns.

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 referred to as the “Small Business
5 Emancipation Act of 1996”.

6 **SEC. 2. DEFINITION.**

7 For purposes of this Act the term small-business con-
8 cern has the meaning given such term in section 3(a)(1)
9 of the Small Business Act (15 U.S.C. 632(a)(1)).

1 **TITLE I—LABOR PROVISIONS**

2 **SEC. 101. SIMPLIFICATION OF EMPLOYEE’S “REGULAR** 3 **RATE” FOR PURPOSES OF CALCULATING** 4 **OVERTIME COMPENSATION.**

5 Notwithstanding 7(e) of the Fair Labor Standards
6 Act of 1938 (29 U.S.C. 207(e)), the “regular rate” at
7 which an employee of a small-business concern is employed
8 shall not be deemed to include sums paid in recognition
9 of services performed during a given period if the pay-
10 ments are made to reward an employee or group of em-
11 ployees for meeting or exceeding the productivity, quality,
12 efficiency, or sales goals as specified in a gainsharing, in-
13 centive bonus, commission, or performance contingent
14 bonus plan.

15 **SEC. 102. COMPENSATORY TIME.**

16 Notwithstanding section 7(o) of the Fair Labor
17 Standards Act of 1938 (29 U.S.C. 207(o))—

18 (1) An employee of a small-business concern
19 may receive, in accordance with this subsection and
20 in lieu of monetary overtime compensation, compen-
21 satory time off at a rate not less than 1½ hours for
22 each hour of employment for which overtime com-
23 pensation is required by this subsection.

24 (2) An employer may provide compensatory
25 time under paragraph (1) only pursuant to—

1 (A) applicable provisions of a collective
2 bargaining agreement, memorandum of under-
3 standing, or any other agreement between the
4 employer and representative of such employees;
5 or

6 (B) in the case of employees not covered
7 by subparagraph (A), an agreement or under-
8 standing arrived at between the employer and
9 employee before the performance of the work.

10 (3) An employee may accrue not more than 240
11 hours of compensatory time. Not later than January
12 31 of each calendar year, the employee's employer
13 shall provide monetary compensation for any com-
14 pensatory time off accrued during the preceding cal-
15 endar year which was not used prior to December 31
16 of the preceding year at a rate not less than 1½
17 times the regular rate earned by the employee at the
18 time the employee receives such payment. An em-
19 ployer may designate and communicate to the em-
20 ployer's employees a 12-month period other than the
21 calendar year, in which case such compensation shall
22 be provided not later than 31 days after the end of
23 such 12-month period.

24 (4) An employee who has accrued compensatory
25 time off authorized to be provided under paragraph

1 (1) shall, upon termination of employment, be paid
2 for the unused compensatory time at a rate of com-
3 pensation not less than—

4 (A) the average regular rate received by
5 such employee during the last 3 years of the
6 employee's employment, or

7 (B) the final regular rate received by such
8 employee, whichever is higher.

9 (5) An employee—

10 (A) who has accrued compensatory time
11 off authorized to be provided under paragraph
12 (1), and

13 (B) who has requested the use of such
14 compensatory time,

15 shall be permitted by the employee's employer to use such
16 time within a reasonable period after making the request
17 if the use of the compensatory time does not unduly dis-
18 rupt the operations of the employer.

19 (6) For purposes of this subsection the terms
20 “compensatory time” and “compensatory time off”
21 mean hours during which an employee is not work-
22 ing, which are not counted as hours worked during
23 the applicable workweek or other work period for
24 purposes of overtime compensation, and for which

1 the employee is compensated at the employee's regu-
2 lar rate.

3 **SEC. 103. FLEXIBLE AND COMPRESSED SCHEDULES.**

4 (a) COMPRESSED SCHEDULES.—Notwithstanding
5 any other provision of law, a small-business concern em-
6 ployer may establish programs that allow the use of a com-
7 pressed schedule that consists of—

8 (1) in the case of a schedule of a full-time em-
9 ployee, a 160-hour basic work requirement, over a 4-
10 week period, that is scheduled for less than 20 work-
11 days; and

12 (2) in the case of a schedule of a part-time em-
13 ployee, a basic work requirement of less than 160
14 hours, over a 4-week period, that is scheduled for
15 less than 20 workdays.

16 (b) FLEXIBLE SCHEDULES.—Notwithstanding any
17 other provision of law, a small-business concern employer
18 may establish programs that allow the use of flexible
19 schedules that include—

20 (1) designated hours and days during
21 which an employee on such a schedule must be
22 present for work; and

23 (2) designated hours during which an em-
24 ployee on such a schedule may elect the time of
25 the arrival of such employee at and departure

1 of such employee from work, solely for such
2 purpose or, if and to the extent permitted, for
3 the purpose of accumulating credit hours to re-
4 duce the length of the workweek or another
5 workday.

6 **SEC. 104. SMALL-BUSINESS CONCERN AUDIT EXEMPTION.**

7 Notwithstanding any other provision of law, a small-
8 business concern shall not be required to disclose any in-
9 formation obtained through a voluntary internal audit to
10 any regulatory agency.

11 **SEC. 105. EXEMPTION FROM THE DAVIS-BACON ACT.**

12 The provisions of the Act of March 3, 1931 (40
13 U.S.C. 276a et seq.) (commonly referred to as the Davis-
14 Bacon Act) shall not apply to any laborers or mechanics
15 employed by small-business concerns.

16 **SEC. 106. OCCUPATIONAL SAFETY AND HEALTH STAND-**
17 **ARDS.**

18 (a) STANDARD BASIS.—Section 6(b) of the Occupa-
19 tional Safety and Health Act (29 U.S.C. 655(b)) is
20 amended by inserting after paragraph (8) the following:

21 “(9) In establishing standards under this sec-
22 tion, the Secretary shall consider and make findings
23 concerning whether there is a reasonable relationship
24 between the costs and benefits of the standard, and

1 the particular effects of the standard on small-busi-
2 ness concerns.”.

3 (b) VIOLATIONS.—Section 17 of the Occupational
4 Safety and Health Act (29 U.S.C. 666) is amended by
5 redesignating subsection (l) as subsection (m) inserting
6 after subsection (k) the following:

7 “(l) In the case of any small-business concern em-
8 ployer who received a citation for a violation of the re-
9 quirements of section 5, any standard, rule, or order pro-
10 mulgated pursuant to section 6 or of any regulations pre-
11 scribed under this Act, the Secretary shall waive up to
12 100 percent of such penalty to the extent that the em-
13 ployer uses the amount which would have been paid as
14 penalty for correction of the violation. This subsection
15 shall apply where

16 “(1) the employer has made a good faith effort
17 to comply with applicable regulation, and

18 “(2) the violation does not constitute a signifi-
19 cant threat to an employee’s health or safety or is
20 not a criminal violation.”.

21 (c) EMPLOYEE PARTICIPATION.—The Occupational
22 Safety and Health Act (29 U.S.C. 651 et seq.) is amended
23 by adding at the end the following:

24 “EMPLOYEE PARTICIPATION

25 “SEC. 33. In order to carry out the purposes of this
26 Act to encourage employers and employees in their efforts

1 to reduce the number of occupational safety and health
2 hazards, an employee participation committee or other
3 mechanism—

4 “(1) in which employees participate,

5 “(2) which exists for the purpose, in whole or
6 in part, of dealing with employees concerning the
7 safety or health of working conditions or related
8 matters, and

9 “(3) which does not have, claim, or seek author-
10 ity to negotiate or enter into collective bargaining
11 agreements with an employer or to amend existing
12 collective bargaining agreements between and em-
13 ployer and any labor organization,

14 shall not constitute a ‘labor organization’ for purposes of
15 section 8(a)(2) of the National Labor Relations Act or a
16 representative for purposes of sections 1 and 2 of the Rail-
17 way Labor Act.”.

18 (d) SMALL BUSINESS ASSISTANCE AND TRAINING.—
19 The Occupational Safety and Health Act, as amended by
20 paragraph (3), is amended by adding after section 33 the
21 following:

22 “SMALL BUSINESS ASSISTANCE AND TRAINING

23 “SEC. 34. (a) The Secretary shall establish and im-
24 plement a program to provide technical assistance and
25 consultative services for employers and employees, either
26 directly or by grant or contract, concerning worksite safety

1 and health and compliance with this Act. Such assistance
2 shall be targeted at small employers and the most hazard-
3 ous industries.

4 “(b) This subsection authorizes the consultative serv-
5 ices to employers provided under cooperative agreements
6 between the States and the Occupational Safety and
7 Health Administration and described in part 1908 of title
8 39 of the Code of Federal Regulations.

9 “(c) Not less than one-fourth of the annual appro-
10 priation made to the Secretary to carry out this Act shall
11 be expended for the purposes described in this section.”.

12 (e) VOLUNTARY PROTECTION PROGRAM AWARD.—
13 The Occupational Safety and Health Act, as amended by
14 paragraph (4), is amended by adding after section 34 the
15 following:

16 “VOLUNTARY PROTECTION PROGRAM AWARD

17 “SEC. 35. (a) The Secretary shall establish an award
18 which shall periodically be made to small-business con-
19 cerns which have implemented particularly effective ap-
20 proaches to addressing occupational safety and health in
21 the workplace, including those which provide for effective
22 employee involvement in improving safety and health and
23 which are as a consequence deserving of special recogni-
24 tion.

25 “(b) A company or organization to which an award
26 is made under subsection (a) and which agrees to help

1 other American companies or organizations improve their
2 occupational safety and health may publicize its receipt
3 of such award and use the award in its advertising, but
4 it shall be ineligible to receive another such award in the
5 same category for a period of 5 years.

6 “(c)(1) Subject to paragraph (2), separate awards
7 shall be made to qualifying organizations and companies
8 in each of the following categories—

9 “(A) manufacturing;

10 “(B) agricultural;

11 “(C) concerns providing services;

12 “(D) retail; and

13 “(E) construction.

14 “(2) Not more than 1 award may be made within
15 any subcategory in any year (and no award shall be made
16 within any category if there are no qualifying enterprises
17 in that category.

18 “(d) An organization or company may qualify for an
19 award under subsection (a) only if it—

20 “(1) applies to the Secretary in writing, for the
21 award,

22 “(2) permits a rigorous evaluation of its occu-
23 pational safety and health operations, and

1 “(3) meets such requirements and specifications
2 as the Secretary determines to be appropriate to
3 achieve the objectives of this section.

4 In applying paragraph (3) with respect to any organiza-
5 tion or company, the Secretary shall rely upon an intensive
6 evaluation of the occupational safety and health operation.
7 The examination should encompass all aspects of the orga-
8 nization’s or company’s current occupational safety and
9 health practice. The award shall be given only to organiza-
10 tions and companies which have made outstanding im-
11 provements in their occupational safety and health prac-
12 tices and which demonstrate effective occupational safety
13 and health practices through the training and involvement
14 of all levels of personnel.

15 “(e) The Secretary shall ensure that all program par-
16 ticipants receive the complete results of their audits as
17 well as detailed explanations of all suggestions for im-
18 provements. The Secretary shall also provide information
19 about the awards and the successful quality improvement
20 strategies and programs of the award-winning participants
21 to all participants and other appropriate groups.

22 “(f) The Secretary is authorized to seek and accept
23 gifts from public and private sources to carry out the pro-
24 gram under this section. If additional sums are needed
25 to cover the full cost of the program, the Secretary shall

1 impose fees upon the organizations and companies apply-
2 ing for the award in amounts sufficient to provide such
3 additional sums.

4 “(g) The Secretary shall prepare and submit to the
5 President and the Congress, within 3 years after the date
6 of the enactment of this section, a report on the progress,
7 findings, and conclusions of activities conducted pursuant
8 to this section along with recommendations for possible
9 modifications thereof.”.

10 **SEC. 107. PROHIBITION OF PREFERENTIAL TREATMENT.**

11 (a) It shall be an unlawful employment practice for
12 any small business concern employer to grant preferential
13 treatment to any individual or group with respect to selec-
14 tion for, discharge from, compensation for, or the terms,
15 conditions, or privileges of, employment or union member-
16 ship, on the basis of the race, color, religion, sex, or na-
17 tional origin of such individual or group, for any purpose,
18 except as provided in subsection (b).

19 (b) It shall not be unlawful employment practice for
20 an entity described in subsection (a) to undertake affirma-
21 tive action designed to recruit individuals of an underrep-
22 resented race, color, religion, sex, or national origin, to
23 expand the applicant pool of the individuals seeking em-
24 ployment or union membership with the entity.

1 (c) Nothing in the amendments made by this sub-
 2 section shall be construed to affect the authority of courts
 3 to remedy intentional discrimination under section 706(g)
 4 of the Civil Rights Act of 1964 (Public Law 88–352).

5 **TITLE II—TAX PROVISIONS**

6 **SEC. 201. EXCLUSION FROM GROSS ESTATE OF INTERESTS** 7 **IN CERTAIN SMALL BUSINESSES.**

8 (a) IN GENERAL.—Part III of subchapter A of chap-
 9 ter 11 of the Internal Revenue Code of 1986 (relating to
 10 gross estate) is amended by adding at the end the follow-
 11 ing new section:

12 **“SEC. 2047. EXCLUSION OF QUALIFIED SMALL BUSINESS IN-** 13 **TERESTS.**

14 “(a) IN GENERAL.—If the executor elects the appli-
 15 cation of this section, the value of the gross estate shall
 16 not include the value of the qualified small business inter-
 17 ests of the decedent which are otherwise includible in the
 18 estate.

19 “(b) QUALIFIED SMALL BUSINESS INTEREST.—For
 20 purposes of this section—

21 “(1) IN GENERAL.—The term ‘qualified small
 22 business interest’ means—

23 “(A) an interest as a proprietor in a small-
 24 business concern which is a trade or business
 25 carried on as a proprietorship, or

1 “(B) an interest as a partner in a small-
2 business concern which is a partnership, or
3 stock in a small-business concern which is a
4 corporation, carrying on a trade or business, if
5 more than 50 percent of such partnership or
6 corporation (by vote or value) is owned by the
7 decedent.

8 “(2) SMALL-BUSINESS CONCERN.—For pur-
9 poses of this subsection, the term ‘small-business
10 concern’ has the meaning given such term in section
11 3(a)(1) of the Small Business Act.

12 “(3) INDIRECT OWNERSHIP.—For purposes of
13 determining ownership under paragraph (1), the
14 rules of section 318 shall apply.

15 “(4) LIMITATION TO SMALL-BUSINESS CON-
16 CERNS IN UNITED STATES.—The term ‘qualified
17 small business interest’ shall not include any interest
18 in a small-business concern the principal place of
19 business of which is not in the United States or its
20 possessions.”

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for part III of subchapter A of chapter 11 of such Code
23 is amended by adding at the end the following new item:

 “Sec. 2047. Exclusion of qualified small business interests.”

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to estates of decedents dying after
3 the date of the enactment of this Act.

4 **SEC. 202. EXCLUSION OF 401(k) PLANS FROM TOP-HEAVY**
5 **RULES.**

6 (a) IN GENERAL.—Paragraph (4) of section 416(g)
7 of the Internal Revenue Code of 1986 (relating to special
8 rules for top-heavy plans) is amended by adding at the
9 end the following new subparagraph:

10 “(H) 401(k) PLANS.—The term ‘top heavy
11 plan’ shall not include a qualified cash or de-
12 ferred arrangement, as defined in section
13 401(k).”

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall apply to plan years ending after the
16 date of the enactment of this Act.

17 **SEC. 203. NO DISQUALIFICATION BY REASON OF GOOD**
18 **FAITH ADMINISTRATIVE ERROR.**

19 (a) IN GENERAL.—Section 401 of the Internal Reve-
20 nue Code of 1986 (relating to qualified pension, profit-
21 sharing, and stock bonus plans) is amended by redesignat-
22 ing subsection (o) as subsection (p) and by inserting after
23 subsection (n) the following new subsection:

24 “(o) NO DISQUALIFICATION BY REASON OF GOOD
25 FAITH ADMINISTRATIVE ERROR.—

1 “(1) IN GENERAL.—A trust shall not be dis-
2 qualified for purposes of this part by reason of a
3 good faith administrative error which is—

4 “(A) de minimis, or

5 “(B) inadvertent,

6 if such error is corrected within a reasonable period
7 of time after the employer is notified (by the Sec-
8 retary or by any other person) of the error.

9 “(2) INADVERTENT.—For purposes of para-
10 graph (1), an error shall be treated as inadvertent
11 if made without knowledge or reason to know of the
12 error.”

13 (b) REPORT ON DEFINITIONS.—Not later than 90
14 days after the date of the enactment of this Act, the Sec-
15 retary of the Treasury shall submit to the Congress a re-
16 port setting forth the proposed interpretation by the Sec-
17 retary of the terms “good faith administrative error” and
18 “de minimis” for purposes of subsection (o) of section 401
19 of the Internal Revenue Code of 1986, as added by this
20 section.

21 (c) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to plan years ending after the
23 date of the enactment of this Act.

○