

114TH CONGRESS
2D SESSION

H. R. 4376

To amend the Fair Labor Standards Act of 1938 to require certain disclosures be included on employee pay stubs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2016

Mr. SCOTT of Virginia introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Fair Labor Standards Act of 1938 to require certain disclosures be included on employee pay stubs, 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 “Pay Stub Disclosure
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The lack of a Federal requirement to pro-
9 vide employees with pay stubs indicating how their
10 pay is calculated or to allow employee inspections of

1 employers' payroll records significantly impedes ef-
2 forts to identify and challenge wage and hour viola-
3 tions.

4 (2) In a survey of 4,387 low-wage workers in
5 New York, Los Angeles, and Chicago, more than a
6 quarter of workers were paid less than the minimum
7 wage and among those who worked more than 40
8 hours per week, more than three-quarters were not
9 paid overtime. Fifty-seven percent of these workers
10 reported that they did not receive a pay stub in the
11 previous week.

12 (3) Some employers are increasingly engaging
13 in practices that make it extremely difficult for
14 workers to calculate their pay, including paying
15 workers in cash or by personal checks.

16 (4) While the Fair Labor Standards Act of
17 1938 and the regulations of the Department of
18 Labor require employers to keep records of employ-
19 ees' pay, the lack of remedies diminishes the effec-
20 tiveness of this requirement.

21 (5) The Supreme Court held in *Anderson v. Mt.*
22 *Clemens Pottery Co.* (328 U.S. 680 (1946)) that
23 where an employer fails to keep records that are re-
24 quired under the Fair Labor Standards Act of 1938,
25 when an employee presents sufficient evidence of the

1 “amount and extent of that work”, for which the
2 employee was “improperly compensated” the burden
3 shifts to the employer to disprove the employee’s tes-
4 timony and evidence of the hours the employee
5 worked and how much he or she was paid.

6 (6) Far too many courts have failed to shift the
7 burden to the employer, where the employer has
8 failed to keep records or has kept inadequate
9 records, instead giving the employer’s testimony
10 equal weight to credible evidence produced by the
11 employee.

12 **SEC. 3. PAY STUB REQUIREMENTS.**

13 (a) DISCLOSURE REQUIREMENTS.—Section 11 of the
14 Fair Labor Standards Act of 1938 (29 U.S.C. 211) is
15 amended by adding at the end the following:

16 “(e) INFORMATION TO BE DISCLOSED TO CERTAIN
17 EMPLOYEES.—

18 “(1) INITIAL DISCLOSURE.—Each employer
19 shall provide an initial disclosure to each employee
20 who is not subject to the exemptions set forth in sec-
21 tion 13 within 15 days of the date such employee is
22 hired or any of the information in subparagraphs
23 (A) through (C) changes with respect to that em-
24 ployee. Such disclosure shall include—

1 “(A) the rate or rates of pay and whether
2 the employee is paid by the hour, shift, day,
3 week, or job, or by salary, piece rate, commis-
4 sion, or other form of compensation;

5 “(B) the name of the employer and any
6 other name used by the employer to conduct
7 business; and

8 “(C) the physical address and telephone
9 number of the employer’s main office or prin-
10 cipal place of business, and a mailing address
11 if such mailing address is different from the ad-
12 dress of the main office or principal place of
13 business.

14 “(2) DISCLOSURES REQUIRED IN EACH PAY
15 STUB.—Each employer shall disclose to each em-
16 ployee who is not subject to the exemptions set forth
17 in section 13 in a pay stub provided each pay pe-
18 riod—

19 “(A) the pay period covered;

20 “(B) the name of the employee and the
21 last four digits of the employee’s Social Security
22 number;

23 “(C) the total hours worked by the em-
24 ployee, including the number of hours worked
25 per workweek in the pay period;

1 “(D)(i) in the case of an employee who is
2 paid an hourly wage, the total gross and net
3 wages paid, and the rate of pay for each hour
4 worked;

5 “(ii) in the case of an employee who is
6 paid a salary in lieu of an hourly wage, the
7 amount of salary paid during the pay period;

8 “(iii) in the case of an employee employed
9 at piece rate, the number of piece-rate units
10 earned, the applicable piece rate, and total
11 amount paid in accordance with such piece rate;
12 and

13 “(iv) in the case of an employee who re-
14 ceives commission or is paid on the basis of any
15 other type of rate, the total amount paid in
16 commission or in accordance with such rate and
17 any additional information relating to such pay
18 as determined by the Secretary;

19 “(E) the number of overtime hours worked
20 during each workweek of the pay period and the
21 hourly rate of pay for each such overtime hour,
22 or, in the case of an employee employed at piece
23 rate, the piece rate paid for each such overtime
24 hour;

1 “(F) any additional compensation paid or
2 benefits provided, including an explanation of
3 each type of compensation or benefit; and

4 “(G) any deductions, with an explanation
5 of each deduction, and any allowances or reim-
6 bursements, with an explanation of each allow-
7 ance or reimbursement.

8 “(3) REQUIREMENTS RELATED TO DISCLOSURE OF
9 COMPENSATION, BENEFITS, ALLOWANCES, AND REIM-
10 BURSEMENTS.—In disclosing the information required to
11 be disclosed pursuant to subparagraphs (F) and (G) of
12 paragraph (2)—

13 “(A) the compensation and benefits required to
14 be disclosed include—

15 “(i) any bonus, paid leave (including paid
16 vacation or personal time, paid sick leave, or
17 any other paid leave), or other compensation;

18 “(ii) any employer contributions to health
19 care coverage or to a retirement account for the
20 employee and any transit or other benefits pro-
21 vided by the employer; and

22 “(iii) any additional form of pay that is re-
23 quired under State or local law, or for which
24 records are required to be kept pursuant to
25 State or local law, such as reporting time pay,

1 split shift pay, paid sick leave, or paid family
2 or medical leave.

3 “(B) the allowances and reimbursements re-
4 quired to be disclosed include any amounts paid to
5 or reimbursed to an employee for meals, clothing,
6 lodging, or any other item for which the employer
7 makes an allowance or provides a reimbursement;
8 and

9 “(C) the explanation for any additional com-
10 pensation, benefits, allowances, or reimbursements
11 shall be itemized and may not be described as ‘mis-
12 cellaneous’.

13 “(4) FORM OF DISCLOSURE REQUIRED.—The pay
14 stub required by paragraph (2) shall be provided to an
15 employee each pay period and may be provided—

16 “(A) as a separate document, accompanying an
17 employee’s pay;

18 “(B) as a detachable part of a paycheck for em-
19 ployees receiving a paycheck; or

20 “(C) electronically, at the election of the em-
21 ployee, if the employee receives his or her pay
22 through electronic deposit.”.

23 (b) RECORDKEEPING REQUIREMENTS.—Section 11
24 of such Act is further amended by adding at the end of
25 subsection (c) the following: “An employer shall keep

1 records of the information disclosed in an employee’s pay
2 stub, as required by subsection (e), for a period of three
3 years from the date of issuance of each pay stub.”.

4 (c) INVESTIGATIONS AND INSPECTIONS.—Section 11
5 of such Act is further amended by adding at the end of
6 subsection (a) the following: “In the event that an em-
7 ployee requests an inspection of such employee’s records
8 described in subsection (e), the employer shall provide cop-
9 ies of such records for a period of up to three years prior
10 to such request. An employer shall comply with an employ-
11 ee’s requests to inspect records within 21 days of such
12 request.”.

13 (d) NOTICE AND POSTING REQUIREMENT.—Section
14 11 of such Act is further amended by inserting after sub-
15 section (e) (as added by subsection (a)) the following:

16 “(f)(1) Every employer subject to any provision of
17 this Act or of any order issued under this Act shall provide
18 a notice to each employee within 15 days of the date of
19 hire that includes—

20 “(A) a description of the employee’s right
21 to receive a pay stub and the information which
22 the pay stub must contain;

23 “(B) the address and telephone number for
24 the applicable local office of the Department of
25 Labor; and

1 “(C) such additional information as the
2 Secretary shall require by regulation.

3 “(2) In the case of employees employed by an em-
4 ployer on the date of enactment of this Act, the employer
5 shall provide the notice described in paragraph (1) within
6 15 days of the effective date of the Pay Stub Disclosure
7 Act.”.

8 (e) CONFORMING AMENDMENT.—The section head-
9 ing of section 11 of such Act is amended by inserting
10 “**PAY STUB DISCLOSURES,**” after “**RECORDS,**”.

11 **SEC. 4. ENFORCEMENT.**

12 (a) IN GENERAL.—Section 16 of the Fair Labor
13 Standards Act of 1938 is further amended—

14 (1) in subsection (b)—

15 (A) by inserting after the second sentence
16 the following: “An employer who violates sub-
17 sections (e) or (f) of section 11 shall be liable
18 to the affected employee for \$50 for the initial
19 pay period in which such a violation occurs and
20 \$100 per employee for each violation in a sub-
21 sequent pay period, not to exceed an aggregate
22 of \$4,000 per employee.”; and

23 (B) by striking “either of the preceding
24 sentences” and inserting “any of the preceding
25 sentences”;

1 (2) in subsection (e)—

2 (A) by redesignating paragraphs (3)
3 through (5) as paragraphs (4) through (6), re-
4 spectively; and

5 (B) by inserting after paragraph (2) the
6 following:

7 “(3) An employer who fails to make, keep, and pre-
8 serve records as required by section 11(c), or fails to per-
9 mit a current or former employee to inspect or copy
10 records as required by section 11(a), shall be subject to
11 a civil penalty of \$750 per violation.”; and

12 (3) by adding at the end the following:

13 “(f) The Secretary shall have the authority, in ac-
14 cordance with inflation, to periodically increase the
15 amounts provided for in this section as penalties or recov-
16 erable in an action described in subsection (b).”.

17 (b) EVIDENTIARY STANDARDS.—Section 15 of such
18 Act (29 U.S.C. 215) is amended by adding at the end the
19 following:

20 “(c) In the event that an employer fails to keep suffi-
21 cient records as required by section 11(c) and any related
22 regulations, the employee’s production of credible evidence
23 and testimony regarding the amount and extent of the
24 work for which the employee was improperly compensated
25 shall be sufficient to create a rebuttable presumption that

1 the employee's records are accurate, consistent with the
2 Supreme Court's decision in *Anderson v. Mt. Clemens*
3 *Pottery Co.* (328 U.S. 680 (1946)).”.

4 **SEC. 5. DEFINITIONS.**

5 Section 3 of the Fair Labor Standards Act of 1938
6 29 U.S.C. 203) is amended by adding at the end the fol-
7 lowing:

8 “(z) ‘Pay stub’ means a paper that itemizes in writ-
9 ing all wages and deductions paid to an employee each
10 pay period.”.

11 **SEC. 6. REGULATIONS AND TECHNICAL ASSISTANCE.**

12 (a) REGULATIONS.—Not later than 1 year after the
13 date of enactment of this Act, the Secretary of Labor shall
14 prescribe such regulations as are necessary to carry out
15 this Act, including a list of State and local laws—

16 (1) with requirements that are substantially
17 similar to the requirements of this Act; and

18 (2) compliance with which the Secretary may
19 determine satisfies the requirements of this Act.

20 (b) GUIDANCE AND TECHNICAL ASSISTANCE.—In
21 order to achieve the objectives of this Act, the Secretary
22 of Labor—

23 (1) acting through the Administrator of the
24 Wage and Hour Division of the Department of
25 Labor, shall issue guidance on compliance with this

1 Act regarding providing the disclosures required
2 pursuant to this Act; and

3 (2) shall provide technical assistance to employ-
4 ers, labor organizations, professional associations,
5 and other interested persons on means of achieving
6 and maintaining compliance with the provisions of
7 this Act.

8 **SEC. 7. EFFECTIVE DATE.**

9 The amendments made by this Act shall take effect
10 on the date that is 6 months after final regulations are
11 issued by the Secretary of Labor and not later than 18
12 months after the date of enactment of this Act.

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