

118TH CONGRESS
1ST SESSION

S. 516

To require coverage of incarcerated workers under the Fair Labor Standards Act of 1938, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2023

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require coverage of incarcerated workers under the Fair Labor Standards Act of 1938, 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 “Fair Wages for Incar-
5 cerated Workers Act of 2023”.

6 **SEC. 2. COVERAGE OF INCARCERATED WORKERS UNDER**
7 **THE FAIR LABOR STANDARDS ACT OF 1938.**

8 Section 3 of the Fair Labor Standards Act of 1938
9 (29 U.S.C. 203) is amended—

10 (1) in subsection (e)—

1 (A) in paragraph (2)—

2 (i) in subparagraph (B), by striking “;
3 and” and inserting a semicolon;

4 (ii) in subparagraph (C)(ii)(V), by
5 striking the period at the end and inserting
6 “; and”; and

7 (iii) by adding at the end the fol-
8 lowing:

9 “(D) any individual employed as an incar-
10 cerated worker by a public agency that operates
11 the correctional facility in which such individual
12 is incarcerated or detained.”; and

13 (B) by adding at the end the following:

14 “(6) The term ‘employee’ includes (in addition
15 to an individual described in paragraph (2)(D)) any
16 individual employed as an incarcerated worker by a
17 private entity that operates, through a contract with
18 a public agency, the correctional facility in which
19 such individual is incarcerated or detained.”;

20 (2) in subsection (m)(1), by striking “any em-
21 ployee.” and inserting “any employee: *Provided fur-*
22 *ther*, That, in the case of an employee who is an in-
23 carcerated worker, the cost of board, lodging, or
24 other facilities and any amount taken from amounts
25 paid such incarcerated worker for payment of a

1 court-imposed fee shall not be included in the wage
 2 paid to such employee.”; and

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

4 “(z)(1) ‘Incarcerated worker’ means an individual, in-
 5 carcerated or detained in a correctional facility operated
 6 by a public agency or by a private entity through a con-
 7 tract with a public agency, who performs work offered or
 8 required by or through the correctional facility, including
 9 work associated with prison work programs, work release
 10 programs, the UNICOR program, State prison industries,
 11 public works programs, restitution centers, correctional fa-
 12 cility operations and maintenance, and private entities.

13 “(2) An incarcerated worker shall be considered em-
 14 ployed by—

15 “(A) the public agency operating the correc-
 16 tional facility in which the individual is incarcerated
 17 or detained; or

18 “(B) in the case of a correctional facility oper-
 19 ated by a private entity through a contract with a
 20 public agency, such private entity.

21 “(aa) ‘Correctional facility’ has the meaning given
 22 such term in section 901 of the Omnibus Crime Control
 23 and Safe Streets Act of 1968 (34 U.S.C. 10251).

24 “(bb)(1) ‘Court-imposed fee’ means any fee imposed
 25 by a court as a result of a criminal conviction, including

1 any surcharge imposed for a felony or misdemeanor con-
2 viction, a criminal justice administrative fee, a court-ap-
3 pointed attorney fee, a court clerk fee, a filing clerk fee,
4 a DNA database fee, a jury fee, a crime lab analysis fee,
5 a late fee, an installment fee, or any other court cost.

6 “(2) The term ‘court-imposed fee’ does not include
7 any amount required by a court to be paid for child sup-
8 port, to a crime victim compensation fund, for a civil judg-
9 ment, or for a criminal fine.”.

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