

117TH CONGRESS  
1ST SESSION

# H. R. 738

To require employers to pay essential pay to health care employees during public health emergencies, and to provide a tax credit for the cost of such pay.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2021

Mrs. WATSON COLEMAN (for herself, Ms. NORTON, Mrs. HAYES, Ms. BARRAGÁN, Mr. CARSON, Mr. COHEN, Mr. LAWSON of Florida, and Mr. SAN NICOLAS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, 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

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## A BILL

To require employers to pay essential pay to health care employees during public health emergencies, and to provide a tax credit for the cost of such pay.

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 “Essential Pay for Es-  
5 sential Workers Act”.

1 **SEC. 2. MANDATORY ESSENTIAL PAY FOR HEALTH CARE**  
2 **EMPLOYEES DURING PUBLIC HEALTH EMER-**  
3 **GENCIES.**

4 (a) **EMPLOYER REQUIREMENT.**—During an emer-  
5 gency period, an employer of an essential employee shall  
6 pay the employee at a rate equal to the sum of the regular  
7 rate of pay of the employee and \$15.

8 (b) **ENFORCEMENT.**—A violation of subsection (a)  
9 shall be deemed a violation of section 7 of the Fair Labor  
10 Standards Act of 1938 (29 U.S.C. 206) and unpaid  
11 amounts shall be treated as unpaid overtime compensation  
12 for the purposes of sections 15 and 16 of such Act (29  
13 U.S.C. 215 and 216).

14 (c) **DEFINITIONS.**—In this Act:

15 (1) **FLSA TERMS.**—The terms “employer” and  
16 “employ” have the meanings given the terms in sec-  
17 tion 3 of the Fair Labor Standards Act of 1938 (29  
18 U.S.C. 203).

19 (2) **ESSENTIAL.**—The term “essential em-  
20 ployee” means an employee identified as an essential  
21 critical infrastructure worker in the memorandum  
22 entitled, “Advisory Memorandum on Identification  
23 of Essential Critical Infrastructure Workers During  
24 COVID–19 Response” issued by the Director of the  
25 Cybersecurity and Infrastructure Agency on March  
26 28, 2020, or a successor memorandum.

1           (3) EMERGENCY PERIOD.—The term “emer-  
2           gency period” has the meaning given such term in  
3           section 1135(g) of the Social Security Act.

4           (4) REGULAR RATE.—The term “regular rate”  
5           has the meaning given the term in section 7 of the  
6           Fair Labor Standards Act of 1938 (29 U.S.C. 207).

7   **SEC. 3. PAYROLL CREDIT FOR CERTAIN MANDATORY ES-**  
8                                   **SENTIAL PAY.**

9           (a) IN GENERAL.—In the case of an employer, there  
10          shall be allowed as a credit against the tax imposed by  
11          section 3111(a) of the Internal Revenue Code of 1986 for  
12          each calendar quarter an amount equal to 100 percent of  
13          the qualified essential pay wages paid by such employer  
14          with respect to such calendar quarter.

15          (b) LIMITATIONS AND REFUNDABILITY.—

16                 (1) CREDIT LIMITED TO CERTAIN EMPLOYMENT  
17                 TAXES.—The credit allowed by subsection (a) with  
18                 respect to any calendar quarter shall not exceed the  
19                 tax imposed by section 3111(a) of such Code for  
20                 such calendar quarter (reduced by any other credits  
21                 allowed against such tax for such quarter) on the  
22                 wages paid with respect to the employment of all  
23                 employees of the employer.

24                 (2) REFUNDABILITY OF EXCESS CREDIT.—

1           (A) IN GENERAL.—If the amount of the  
2           credit under subsection (a) exceeds the limita-  
3           tion of paragraph (1) for any calendar quarter,  
4           such excess shall be treated as an overpayment  
5           that shall be refunded under sections 6402(a)  
6           and 6413(b) of such Code.

7           (B) TREATMENT OF PAYMENTS.—For pur-  
8           poses of section 1324 of title 31, United States  
9           Code, any amounts due to an employer under  
10          this paragraph shall be treated in the same  
11          manner as a refund due from a credit provision  
12          referred to in subsection (b)(2) of such section.

13          (c) QUALIFIED ESSENTIAL PAY WAGES.—For pur-  
14          poses of this section, the term “qualified essential pay  
15          wages” means wages (as defined in section 3121(a) of the  
16          Internal Revenue Code of 1986) paid by an employer  
17          which are required to be paid by reason of section 2.

18          (d) SPECIAL RULES.—

19               (1) DENIAL OF DOUBLE BENEFIT.—For pur-  
20               poses of chapter 1 of such Code, the gross income  
21               of the employer, for the taxable year which includes  
22               the last day of any calendar quarter with respect to  
23               which a credit is allowed under this section, shall be  
24               increased by the amount of such credit.

1           (2) ELECTION NOT TO HAVE SECTION APPLY.—

2           This section shall not apply with respect to any em-  
3           ployer for any calendar quarter if such employer  
4           elects (at such time and in such manner as the Sec-  
5           retary of the Treasury (or the Secretary's delegate)  
6           may prescribe) not to have this section apply.

7           (3) CERTAIN TERMS.—Any term used in this  
8           section which is also used in chapter 21 of such  
9           Code shall have the same meaning as when used in  
10          such chapter.

11          (e) REGULATIONS.—The Secretary of the Treasury  
12          (or the Secretary's delegate) shall prescribe such regula-  
13          tions or other guidance as may be necessary to carry out  
14          the purposes of this section, including—

15                (1) regulations or other guidance to prevent the  
16                avoidance of the purposes of the limitations under  
17                this section;

18                (2) regulations or other guidance to minimize  
19                compliance and record-keeping burdens under this  
20                section;

21                (3) regulations or other guidance providing for  
22                waiver of penalties for failure to deposit amounts in  
23                anticipation of the allowance of the credit allowed  
24                under this section;

1           (4) regulations or other guidance for recap-  
2           turing the benefit of credits determined under this  
3           section in cases where there is a subsequent adjust-  
4           ment to the credit determined under subsection (a);  
5           and

6           (5) regulations or other guidance to ensure that  
7           the wages taken into account under this section con-  
8           form with the wages required under section 2.

9           (f) TRANSFERS TO FEDERAL OLD-AGE AND SUR-  
10          VIVORS INSURANCE TRUST FUND.—There are hereby ap-  
11          propriated to the Federal Old-Age and Survivors Insur-  
12          ance Trust Fund and the Federal Disability Insurance  
13          Trust Fund established under section 201 of the Social  
14          Security Act (42 U.S.C. 401) amounts equal to the reduc-  
15          tion in revenues to the Treasury by reason of this section  
16          (without regard to this subsection). Amounts appropriated  
17          by the preceding sentence shall be transferred from the  
18          general fund at such times and in such manner as to rep-  
19          licate to the extent possible the transfers which would have  
20          occurred to such Trust Fund had this section not been  
21          enacted.

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