

106TH CONGRESS
1ST SESSION

H. R. 2299

To amend title I of the Employee Retirement Income Security Act of 1974 to ensure proper treatment of temporary employees under employee benefit plans.

IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 1999

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

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to ensure proper treatment of temporary employees under employee benefit plans.

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 “ERISA Clarification
5 Act of 1999”.

1 **SEC. 2. EXCLUSIONS FROM PLAN AFFECTING MINIMUM**
2 **PARTICIPATION REQUIREMENTS.**

3 Section 202 of the Employee Retirement Income Se-
4 curity Act of 1974 (29 U.S.C. 1052) is amended by adding
5 at the end the following new subsections:

6 “(c) ‘Year of service’ for purposes of this section in-
7 cludes all service for the employer as an employee under
8 the common law, regardless of whether a worker is paid
9 through an employment agency, payroll agency, temporary
10 help agency, or staffing firm or any other entity which
11 is not the employer of the worker under the common law.

12 “(d) Any exclusion from a pension plan must be made
13 on a uniform basis, must be stated in the plan, must be
14 based on reasonable job classifications, and must be based
15 on objective criteria. An exclusion violates this section if
16 it has the effect of giving an employer or plan fiduciary
17 authority to exclude workers from a pension plan for an
18 indefinite period of time, beyond a year of service as de-
19 fined in subsection (c) of this section, or to otherwise ex-
20 clude workers from a pension plan for an indefinite period
21 by designating the worker as part-time employee, tem-
22 porary employee, leased employee, agency employee, or
23 staffing firm employee, where the worker is an employee
24 of the employer under the common law and has served
25 the plan’s minimum service period.”.

1 **SEC. 3. OBJECTIVE ELIGIBILITY CRITERIA IN PLAN IN-**
2 **STRUMENTS.**

3 Section 402(a)(1) of the Employee Retirement In-
4 come Security Act of 1974 (29 U.S.C. 1102(a)(1)) is
5 amended by adding at the end the following new sen-
6 tences: “Every such instrument shall contain eligibility cri-
7 teria which (A) include or exclude employees on a uniform
8 basis, (B) are based on reasonable job classifications, and
9 (C) are based on objective criteria stated in the instrument
10 itself. No plan instrument may permit an employer or plan
11 sponsor to exclude an employee from pension or welfare
12 benefits by simply designating the employee as in an ineli-
13 gible category, even though the worker, under objective
14 criteria, meets the plan’s eligibility criteria.”.

15 **SEC. 4. EFFECTIVE DATE.**

16 (a) IN GENERAL.—Subject to subsection (b), the
17 amendments made by this Act shall apply with respect to
18 plans for plan years beginning on or after January 1,
19 2001.

20 (b) COLLECTIVE BARGAINING.—In the case of a plan
21 maintained pursuant to 1 or more collective bargaining
22 agreements between employee representatives and 1 or
23 more employers ratified before the date of the enactment
24 of this Act, the amendments made by this Act shall not
25 apply to plan years beginning before the later of—

1 (1) the date on which the last of such collective
2 bargaining agreements relating to the plan termi-
3 nates (determined without regard to any extension
4 thereof agreed to after the date of the enactment of
5 this Act), or

6 (2) January 1, 2001.

7 For purposes of paragraph (1), any plan amendment made
8 pursuant to a collective bargaining agreement relating to
9 the plan which amends the plan solely to conform to any
10 requirement added by this Act shall not be treated as a
11 termination of such collective bargaining agreement.

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