

110TH CONGRESS
1ST SESSION

S. 1753

To amend the Internal Revenue Code of 1986 to provide a tax credit to employers for the costs of implementing wellness programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 9, 2007

Mr. HARKIN (for himself and Mr. SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a tax credit to employers for the costs of implementing wellness programs, 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 “Healthy Workforce Act
5 of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The United States has more than 12 million
2 employers and approximately 135 million working
3 adults.

4 (2) The use of effective worksite policies and
5 programs can reduce health risks and improve the
6 quality of life for the 135 million full-time and part-
7 time workers in the United States.

8 (3) Workers spend more than one-third of their
9 day on the job and, as a result, employers are in a
10 unique position to promote the health and safety of
11 their employees.

12 (4) Chronic diseases such as heart disease,
13 stroke, cancer, obesity, and diabetes are among the
14 most prevalent and costly worker health problems
15 for most employers.

16 (5) The use by employers of effective worksite
17 policies and programs can reduce health risks and
18 improve the quality of life for their employees.

19 (6) The good health of workers is good for busi-
20 ness because healthier workers miss less work, are
21 more productive, and have lower health care costs.

22 **SEC. 3. TAX CREDIT TO EMPLOYERS FOR COSTS OF IMPLE-**
23 **MENTING WELLNESS PROGRAMS.**

24 (a) IN GENERAL.—Subpart D of part IV of sub-
25 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business related credits) is amended by
2 adding at the end the following:

3 **“SEC. 450. WELLNESS PROGRAM CREDIT.**

4 “(a) ALLOWANCE OF CREDIT.—

5 “(1) IN GENERAL.—For purposes of section 38,
6 the wellness program credit determined under this
7 section for any taxable year during the credit period
8 with respect to an employer is an amount equal to
9 50 percent of the costs paid or incurred by the em-
10 ployer in connection with a qualified wellness pro-
11 gram during the taxable year.

12 “(2) LIMITATION.—The amount of credit al-
13 lowed under paragraph (1) for any taxable year shall
14 not exceed the sum of—

15 “(A) the product of \$200 and the number
16 of employees of the employer not in excess of
17 200 employees, plus

18 “(B) the product of \$100 and the number
19 of employees of the employer in excess of 200
20 employees.

21 “(b) QUALIFIED WELLNESS PROGRAM.—For pur-
22 poses of this section—

23 “(1) QUALIFIED WELLNESS PROGRAM.—The
24 term ‘qualified wellness program’ means a program
25 which—

1 “(A) consists of any 3 of the wellness pro-
2 gram components described in subsection (c),
3 and

4 “(B) which is certified by the Secretary of
5 Health and Human Services, in coordination
6 with the Director of the Center for Disease
7 Control and Prevention, as a qualified wellness
8 program under this section.

9 “(2) PROGRAMS MUST BE CONSISTENT WITH
10 RESEARCH AND BEST PRACTICES.—

11 “(A) IN GENERAL.—The Secretary of
12 Health and Human Services shall not certify a
13 program as a qualified wellness program unless
14 the program—

15 “(i) is consistent with evidence-based
16 research and best practices, as identified
17 by persons with expertise in employer
18 health promotion and wellness programs,

19 “(ii) includes multiple, evidence-based
20 strategies which are based on the existing
21 and emerging research and careful sci-
22 entific reviews, including the Guide to
23 Community Preventive Services, the Guide
24 to Clinical Preventive Services, and the

1 National Registry for Effective Programs,
2 and

3 “(iii) includes strategies which focus
4 on employee populations with a dispropor-
5 tionate burden of health problems.

6 “(B) PERIODIC UPDATING AND REVIEW.—

7 The Secretary of Health and Human Services
8 shall establish procedures for periodic review of
9 programs under this subsection. Such proce-
10 dures shall require revisions of programs if nec-
11 essary to ensure compliance with the require-
12 ments of this section and require updating of
13 the programs to the extent the Secretary, in co-
14 ordination with the Director of the Centers for
15 Disease Control and Prevention, determines
16 necessary to reflect new scientific findings.

17 “(3) HEALTH LITERACY.—The Secretary of
18 Health and Human Services shall, as part of the
19 certification process, encourage employees to make
20 the programs culturally competent and to meet the
21 health literacy needs of the employees covered by the
22 programs.

23 “(c) WELLNESS PROGRAM COMPONENTS.—For pur-
24 poses of this section, the wellness program components de-
25 scribed in this subsection are the following:

1 “(1) HEALTH AWARENESS COMPONENT.—A
2 health awareness component which provides for the
3 following:

4 “(A) HEALTH EDUCATION.—The dissemi-
5 nation of health information which addresses
6 the specific needs and health risks of employees.

7 “(B) HEALTH SCREENINGS.—The oppor-
8 tunity for periodic screenings for health prob-
9 lems and referrals for appropriate follow up
10 measures.

11 “(2) EMPLOYEE ENGAGEMENT COMPONENT.—
12 An employee engagement component which provides
13 for—

14 “(A) the establishment of a committee to
15 actively engage employees in worksite wellness
16 programs through worksite assessments and
17 program planning, delivery, evaluation, and im-
18 provement efforts, and

19 “(B) the tracking of employee participa-
20 tion.

21 “(3) BEHAVIORAL CHANGE COMPONENT.—A
22 behavioral change component which provides for al-
23 tering employee lifestyles to encourage healthy living
24 through counseling, seminars, on-line programs, or
25 self-help materials which provide technical assistance

1 and problem solving skills. Such component may in-
2 clude programs relating to—

3 “(A) tobacco use,

4 “(B) obesity,

5 “(C) stress management,

6 “(D) physical fitness,

7 “(E) nutrition,

8 “(F) substance abuse,

9 “(G) depression, and

10 “(H) mental health promotion (including

11 anxiety).

12 “(4) SUPPORTIVE ENVIRONMENT COMPO-
13 NENT.—A supportive environment component which
14 includes the following:

15 “(A) ON-SITE POLICIES.—Policies and
16 services at the worksite which promote a
17 healthy lifestyle, including policies relating to—

18 “(i) tobacco use at the worksite,

19 “(ii) the nutrition of food available at
20 the worksite through cafeterias and vend-
21 ing options,

22 “(iii) minimizing stress and promoting
23 positive mental health in the workplace,

24 “(iv) where applicable, accessible and
25 attractive stairs, and

1 “(v) the encouragement of physical
2 activity before, during, and after work
3 hours.

4 “(B) PARTICIPATION INCENTIVES.—

5 “(i) IN GENERAL.—Qualified incentive
6 benefits for each employee who participates
7 in the health screenings described in para-
8 graph (1)(B) or the behavioral change pro-
9 grams described in paragraph (3).

10 “(ii) QUALIFIED INCENTIVE BEN-
11 EFIT.—For purposes of clause (i), the
12 term ‘qualified incentive benefit’ means
13 any benefit which is approved by the Sec-
14 retary of Health and Human Services, in
15 coordination with the Director of the Cen-
16 ters for Disease Control and Prevention.
17 Such benefit may include an adjustment in
18 health insurance premiums or co-pays.

19 “(C) EMPLOYEE INPUT.—The opportunity
20 for employees to participate in the management
21 of any qualified wellness program to which this
22 section applies.

23 “(d) PARTICIPATION REQUIREMENT.—

24 “(1) IN GENERAL.—No credit shall be allowed
25 under subsection (a) unless the Secretary of Health

1 and Human Services, in coordination with the Direc-
2 tor of the Centers for Disease Control and Preven-
3 tion, certifies, as a part of any certification described
4 in subsection (b), that each wellness program compo-
5 nent of the qualified wellness program applies to all
6 qualified employees of the employer. The Secretary
7 of Health and Human Services shall prescribe rules
8 under which an employer shall not be treated as fail-
9 ing to meet the requirements of this subsection
10 merely because the employer provides specialized
11 programs for employees with specific health needs or
12 unusual employment requirements or provides a
13 pilot program to test new wellness strategies.

14 “(2) QUALIFIED EMPLOYEE.—For purposes of
15 paragraph (1), the term ‘qualified employee’ means
16 an employee who works an average of not less than
17 25 hours per week during the taxable year.

18 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
19 For purposes of this section—

20 “(1) EMPLOYEE AND EMPLOYER.—

21 “(A) PARTNERS AND PARTNERSHIPS.—
22 The term ‘employee’ includes a partner and the
23 term ‘employer’ includes a partnership.

24 “(B) CERTAIN RULES TO APPLY.—Rules
25 similar to the rules of section 52 shall apply.

1 “(2) CERTAIN COSTS NOT INCLUDED.—Costs
2 paid or incurred by an employer for food or health
3 insurance shall not be taken into account under sub-
4 section (a).

5 “(3) NO CREDIT WHERE GRANT AWARDED.—
6 No credit shall be allowable under subsection (a)
7 with respect to any qualified wellness program of
8 any taxpayer (other than an eligible employer de-
9 scribed in subsection (f)(2)(A)) who receives a grant
10 provided by the United States, a State, or a political
11 subdivision of a State for use in connection with
12 such program. The Secretary shall prescribe rules
13 providing for the waiver of this paragraph with re-
14 spect to any grant which does not constitute a sig-
15 nificant portion of the funding for the qualified
16 wellness program.

17 “(4) CREDIT PERIOD.—

18 “(A) IN GENERAL.—The term ‘credit pe-
19 riod’ means the period of 10 consecutive taxable
20 years beginning with the taxable year in which
21 the qualified wellness program is first certified
22 under this section.

23 “(B) SPECIAL RULE FOR EXISTING PRO-
24 GRAMS.—In the case of an employer (or prede-
25 cessor) which operates a wellness program for

1 its employees on the date of the enactment of
2 this section, subparagraph (A) shall be applied
3 by substituting ‘3 consecutive taxable years’ for
4 ‘10 consecutive taxable years’. The Secretary
5 shall prescribe rules under which this sub-
6 section shall not apply if an employer is re-
7 quired to make substantial modifications in the
8 existing wellness program in order to qualify
9 such program for certification as a qualified
10 wellness program.

11 “(C) CONTROLLED GROUPS.—For pur-
12 poses of this paragraph, all persons treated as
13 a single employer under subsection (b), (c),
14 (m), or (o) of section 414 shall be treated as a
15 single employer.

16 “(f) PORTION OF CREDIT MADE REFUNDABLE.—

17 “(1) IN GENERAL.—In the case of an eligible
18 employer of an employee, the aggregate credits al-
19 lowed to a taxpayer under subpart C shall be in-
20 creased by the lesser of—

21 “(A) the credit which would be allowed
22 under this section without regard to this sub-
23 section and the limitation under section 38(c),
24 or

1 “(B) the amount by which the aggregate
2 amount of credits allowed by this subpart (de-
3 termined without regard to this subsection)
4 would increase if the limitation imposed by sec-
5 tion 38(e) for any taxable year were increased
6 by the amount of employer payroll taxes im-
7 posed on the taxpayer during the calendar year
8 in which the taxable year begins.

9 The amount of the credit allowed under this sub-
10 section shall not be treated as a credit allowed under
11 this subpart and shall reduce the amount of the
12 credit otherwise allowable under subsection (a) with-
13 out regard to section 38(c).

14 “(2) ELIGIBLE EMPLOYER.—For purposes of
15 this subsection, the term ‘eligible employer’ means
16 an employer which is—

17 “(A) a State or political subdivision there-
18 of, the District of Columbia, a possession of the
19 United States, or an agency or instrumentality
20 of any of the foregoing, or

21 “(B) any organization described in section
22 501(c) of the Internal Revenue Code of 1986
23 which is exempt from taxation under section
24 501(a) of such Code.

1 “(3) EMPLOYER PAYROLL TAXES.—For pur-
2 poses of this subsection—

3 “(A) IN GENERAL.—The term ‘employer
4 payroll taxes’ means the taxes imposed by—

5 “(i) section 3111(b), and

6 “(ii) sections 3211(a) and 3221(a)
7 (determined at a rate equal to the rate
8 under section 3111(b)).

9 “(B) SPECIAL RULE.—A rule similar to
10 the rule of section 24(d)(2)(C) shall apply for
11 purposes of subparagraph (A).

12 “(g) TERMINATION.—This section shall not apply to
13 any amount paid or incurred after December 31, 2017.”.

14 (b) TREATMENT AS GENERAL BUSINESS CREDIT.—
15 Subsection (b) of section 38 of the Internal Revenue Code
16 of 1986 (relating to general business credit) is amended
17 by striking “plus” at the end of paragraph (30), by strik-
18 ing the period at the end of paragraph (31) and inserting
19 “, plus”, and by adding at the end the following:

20 “(32) the wellness program credit determined
21 under section 45O.”.

22 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of
23 the Internal Revenue Code of 1986 (relating to certain
24 expenses for which credits are allowable) is amended by
25 adding at the end the following new subsection:

1 “(f) WELLNESS PROGRAM CREDIT.—

2 “(1) IN GENERAL.—No deduction shall be al-
3 lowed for that portion of the costs paid or incurred
4 for a qualified wellness program (within the meaning
5 of section 45O) allowable as a deduction for the tax-
6 able year which is equal to the amount of the credit
7 allowable for the taxable year under section 45O.

8 “(2) SIMILAR RULE WHERE TAXPAYER CAP-
9 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

10 “(A) the amount of the credit determined
11 for the taxable year under section 45O, exceeds

12 “(B) the amount allowable as a deduction
13 for such taxable year for a qualified wellness
14 program,

15 the amount chargeable to capital account for the
16 taxable year for such expenses shall be reduced by
17 the amount of such excess.

18 “(3) CONTROLLED GROUPS.—In the case of a
19 corporation which is a member of a controlled group
20 of corporations (within the meaning of section
21 41(f)(5)) or a trade or business which is treated as
22 being under common control with other trades or
23 business (within the meaning of section
24 41(f)(1)(B)), this subsection shall be applied under
25 rules prescribed by the Secretary similar to the rules

1 applicable under subparagraphs (A) and (B) of sec-
2 tion 41(f)(1).”.

3 (d) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1
5 of the Internal Revenue Code of 1986 is amended by add-
6 ing at the end the following:

“Sec. 45O. Wellness program credit.”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2007.

10 (f) OUTREACH.—

11 (1) IN GENERAL.—The Secretary of the Treas-
12 ury, in conjunction with the Director of the Centers
13 for Disease Control and members of the business
14 community, shall institute an outreach program to
15 inform businesses about the availability of the
16 wellness program credit under section 45O of the In-
17 ternal Revenue Code of 1986 as well as to educate
18 businesses on how to develop programs according to
19 recognized and promising practices and on how to
20 measure the success of implemented programs.

21 (2) AUTHORIZATION OF APPROPRIATIONS.—
22 There are authorized to be appropriated such sums
23 as are necessary to carry out the outreach program
24 described in paragraph (1).

○