

111TH CONGRESS
1ST SESSION

S. 502

To promote labor force participation of older Americans, with the goals of increasing retirement security, reducing the projected shortage of experienced workers, maintaining future economic growth, and improving the Nation's fiscal outlook.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2009

Mr. KOHL (for himself, Mr. DURBIN, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To promote labor force participation of older Americans, with the goals of increasing retirement security, reducing the projected shortage of experienced workers, maintaining future economic growth, and improving the Nation's fiscal outlook.

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 “Older Worker Oppor-
5 tunity Act of 2009”.

1 **SEC. 2. TAX CREDIT FOR EMPLOYING OLDER WORKERS IN**
 2 **FLEXIBLE WORK PROGRAMS.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
 4 chapter A of chapter 1 of the Internal Revenue Code of
 5 1986 (relating to business related credits) is amended by
 6 adding at the end the following new section:

7 **“SEC. 45R. FLEXIBLE WORK CREDIT.**

8 “(a) IN GENERAL.—For purposes of section 38, in
 9 the case of an eligible employer, the flexible work credit
 10 determined under this section for the taxable year shall
 11 be equal to 25 percent of the qualified wages for such tax-
 12 able year.

13 “(b) ELIGIBLE EMPLOYER.—For purposes of this
 14 section, the term ‘eligible employer’ means an employer
 15 which—

16 “(1) maintains a qualified trust (within the
 17 meaning of section 401(a)), and

18 “(2) provides health insurance coverage (as de-
 19 fined in section 9832(b)(1)(A)) to employees and
 20 pays no less than 60 percent of the cost of such
 21 health insurance coverage with respect to each full-
 22 time employee receiving such coverage.

23 “(c) QUALIFIED WAGES DEFINED.—For purposes of
 24 this section—

25 “(1) QUALIFIED WAGES.—The term ‘qualified
 26 wages’ means the wages paid or incurred by an eligi-

1 ble employer during the taxable year to eligible indi-
2 viduals.

3 “(2) ELIGIBLE INDIVIDUALS.—

4 “(A) IN GENERAL.—The term ‘eligible in-
5 dividual’ means an individual who, at the time
6 such wages are paid or incurred—

7 “(i) has attained the age of 62, and

8 “(ii) is participating in a formal flexi-
9 ble work program.

10 “(B) LIMITATION.—Such term shall not
11 include any individual who begins participation
12 in a formal flexible work program during any
13 period in which more than 20 percent of the
14 employees of the eligible employer are already
15 participating in a formal flexible work program.

16 “(3) WAGES.—

17 “(A) IN GENERAL.—The term ‘wages’ has
18 the meaning given such term by subsection (b)
19 of section 3306 (determined without regard to
20 any dollar limitation contained in such section).

21 “(B) OTHER RULES.—Rules similar to the
22 rules of paragraph (2) and (3) of section 51(c)
23 shall apply for purposes of this section.

1 “(C) TERMINATION.—The term ‘wages’
 2 shall not include any amount paid or incurred
 3 to an individual after December 31, 2012.

4 “(4) ONLY FIRST \$6,000 OF WAGES PER YEAR
 5 TAKEN INTO ACCOUNT.—The amount of the quali-
 6 fied wages which may be taken into account with re-
 7 spect to any individual shall not exceed \$6,000 per
 8 year.

9 “(d) FORMAL FLEXIBLE WORK PROGRAM.—For
 10 purposes of this section—

11 “(1) IN GENERAL.—The term ‘formal flexible
 12 work program’ means a program of an eligible em-
 13 ployer—

14 “(A) which consists of core time and flex
 15 time,

16 “(B) under which core time does not ex-
 17 ceed—

18 “(i) 20 hours per week,

19 “(ii) 3 days per week, or

20 “(iii) 1,000 hours per year, and

21 “(C) which meets the requirements of sub-
 22 section (e).

23 “(2) CORE TIME.—The term ‘core time’ means
 24 the specific time—

1 “(A) during which an employee is required
2 to perform services related to employment, and

3 “(B) which is determined by the employer.

4 “(3) FLEX TIME.—The term ‘flex time’ means
5 the time other than core time—

6 “(A) during which an employee is required
7 to perform services related to employment, and

8 “(B) which is determined at the election of
9 the employee.

10 “(e) REQUIREMENTS.—A program shall not be con-
11 sidered a formal flexible work program under this section
12 unless such program meets the following requirements:

13 “(1) DURATION OF PROGRAM.—The program
14 shall allow for participation for a period of at least
15 1 year.

16 “(2) NO CHANGE IN HEALTH CARE BENE-
17 FITS.—With respect to a participant whose work
18 schedule is no less than 20 percent of the work
19 schedule of a similarly situated full-time employee—

20 “(A) such participant shall be entitled to
21 the same health insurance coverage to which a
22 similarly situated full-time employee would be
23 entitled,

24 “(B) the employer shall contribute the
25 same percentage of the cost of health insurance

1 coverage for such participant as the employer
2 would contribute for a similarly situated full-
3 time employee, and

4 “(C) such participant shall be entitled to
5 participate in a retiree health benefits plan of
6 the employer in the same manner as a similarly
7 situated full-time employee, except that service
8 credited under the plan for any plan year shall
9 be equal to the ratio of the participant’s work
10 schedule during such year to the work schedule
11 of a similarly situated full-time employee during
12 such year.

13 “(3) NO REDUCTION IN PENSION BENEFITS.—

14 “(A) DEFINED BENEFIT PLANS.—

15 “(i) A participant shall be entitled to
16 participate in a defined benefit plan (with-
17 in the meaning of section 414(j)) of the
18 employer in the same manner as a simi-
19 larly situated full-time employee.

20 “(ii) Service credited to a participant
21 under the plan for any plan year shall be
22 equal to the ratio of the participant’s work
23 schedule during such year to the work
24 schedule of a similarly situated full-time
25 employee during such year.

1 “(iii) If the plan uses final average
 2 earnings to determine benefits, final aver-
 3 age earnings of the participant shall be no
 4 less than such earnings were before the
 5 participant entered the program.

6 “(B) DEFINED CONTRIBUTION PLANS.—A
 7 participant shall be entitled to participate in a
 8 defined contribution plan (within the meaning
 9 of section 414(i)) of the employer in the same
 10 manner as a similarly situated full-time em-
 11 ployee, and the employer shall match the par-
 12 ticipant’s contributions at the same rate that
 13 the employer would match the contributions of
 14 a similarly situated full-time employee.

15 “(C) NO FORFEITURE OF PENSION BENE-
 16 FITS.—The pension benefits of a participant
 17 shall not be forfeited under the rules of section
 18 411(a)(3)(B) or section 203(a)(3)(B) of the
 19 Employee Retirement Income Security Act of
 20 1974 with respect to a participant who has at-
 21 tained normal retirement age as of the end of
 22 the plan year.

23 “(4) NONDISCRIMINATION RULE.—Eligibility to
 24 participate in the program shall not discriminate in

1 favor of highly compensated employees (within the
2 meaning of section 414(q)).

3 “(f) CERTAIN INDIVIDUALS INELIGIBLE.—For pur-
4 poses of this section, rules similar to the rules of section
5 51(i)(1) and section 52 shall apply.

6 “(g) REGULATIONS.—The Secretary may prescribe
7 such regulations as are necessary to carry out the pur-
8 poses of this section, including simplified rules to satisfy
9 the requirements of subsection (e)(3)(C) taking into ac-
10 count the requirements of section 411 and section 203 of
11 the Employee Retirement Income Security Act of 1974.”.

12 (b) CREDIT MADE PART OF GENERAL BUSINESS
13 CREDIT.—Subsection (b) of section 38 of the Internal
14 Revenue Code of 1986 is amended by striking “plus” at
15 the end of paragraph (34), by striking the period at the
16 end of paragraph (35) and inserting “, plus”, and by add-
17 ing at the end the following new paragraph:

18 “(36) the flexible work credit determined under
19 section 45R(a).”.

20 (c) NO DOUBLE BENEFIT.—Subsection (a) of section
21 280C of the Internal Revenue Code of 1986 is amended
22 by inserting “45R(a),” after “45P(a),”.

23 (d) CLERICAL AMENDMENT.—The table of sections
24 for subpart D of part IV of subchapter A of chapter 1

1 of the Internal Revenue Code of 1986 is amended by add-
2 ing at the end the following new item:

“Sec. 45R. Flexible work credit.”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to wages paid after December 31,
5 2008.

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