

106TH CONGRESS
2^D SESSION

S. 2323

AN ACT

To amend the Fair Labor Standards Act of 1938 to clarify
the treatment of stock options under the Act.

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 “Worker Economic Op-
5 portunity Act”.

1 **SEC. 2. AMENDMENTS TO THE FAIR LABOR STANDARDS**

2 **ACT OF 1938.**

3 (a) **EXCLUSION FROM REGULAR RATE.**—Section
4 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C.
5 207(e)) is amended—

6 (1) in paragraph (6), by striking “or” at the
7 end;

8 (2) in paragraph (7), by striking the period and
9 inserting “; or”; and

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

11 “(8) any value or income derived from em-
12 ployer-provided grants or rights provided pursuant
13 to a stock option, stock appreciation right, or bona
14 fide employee stock purchase program which is not
15 otherwise excludable under any of paragraphs (1)
16 through (7) if—

17 “(A) grants are made pursuant to a pro-
18 gram, the terms and conditions of which are
19 communicated to participating employees either
20 at the beginning of the employee’s participation
21 in the program or at the time of the grant;

22 “(B) in the case of stock options and stock
23 appreciation rights, the grant or right cannot
24 be exercisable for a period of at least 6 months
25 after the time of grant (except that grants or
26 rights may become exercisable because of an

1 employee's death, disability, retirement, or a
2 change in corporate ownership, or other cir-
3 cumstances permitted by regulation), and the
4 exercise price is at least 85 percent of the fair
5 market value of the stock at the time of grant;

6 “(C) exercise of any grant or right is vol-
7 untary; and

8 “(D) any determinations regarding the
9 award of, and the amount of, employer-provided
10 grants or rights that are based on performance
11 are—

12 “(i) made based upon meeting pre-
13 viously established performance criteria
14 (which may include hours of work, effi-
15 ciency, or productivity) of any business
16 unit consisting of at least 10 employees or
17 of a facility, except that, any determina-
18 tions may be based on length of service or
19 minimum schedule of hours or days of
20 work; or

21 “(ii) made based upon the past per-
22 formance (which may include any criteria)
23 of one or more employees in a given period
24 so long as the determination is in the sole

1 discretion of the employer and not pursu-
2 ant to any prior contract.”.

3 (b) EXTRA COMPENSATION.—Section 7(h) of the
4 Fair Labor Standards Act of 1938 (29 U.S.C. 207(h)) is
5 amended—

6 (1) by striking “Extra” and inserting the fol-
7 lowing:

8 “(2) Extra”; and

9 (2) by inserting after the subsection designation
10 the following:

11 “(1) Except as provided in paragraph (2), sums ex-
12 cluded from the regular rate pursuant to subsection (e)
13 shall not be creditable toward wages required under sec-
14 tion 6 or overtime compensation required under this sec-
15 tion.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the date that is 90 days
18 after the date of enactment of this Act.

19 (d) LIABILITY OF EMPLOYERS.—No employer shall
20 be liable under the Fair Labor Standards Act of 1938 for
21 any failure to include in an employee’s regular rate (as
22 defined for purposes of such Act) any income or value de-
23 rived from employer-provided grants or rights obtained
24 pursuant to any stock option, stock appreciation right, or
25 employee stock purchase program if—

1 (1) the grants or rights were obtained before
2 the effective date described in subsection (c);

3 (2) the grants or rights were obtained within
4 the 12-month period beginning on the effective date
5 described in subsection (c), so long as such program
6 was in existence on the date of enactment of this
7 Act and will require shareholder approval to modify
8 such program to comply with section 7(e)(8) of the
9 Fair Labor Standards Act of 1938 (as added by the
10 amendments made by subsection (a)); or

11 (3) such program is provided under a collective
12 bargaining agreement that is in effect on the effec-
13 tive date described in subsection (c).

14 (e) REGULATIONS.—The Secretary of Labor may
15 promulgate such regulations as may be necessary to carry
16 out the amendments made by this Act.

Passed the Senate April 12, 2000.

Attest:

Secretary.

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