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HOUSE OF REPRESENTATIVES
REPORT
106–358

REWARDING PERFORMANCE IN COMPENSATION ACT

OCTOBER 1, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLING, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1381]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 1381) to amend the Fair Labor Standards Act of 1938 to provide that an employee's "regular rate" for purposes of calculating overtime compensation will not be affected by certain additional payments, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rewarding Performance in Compensation Act".

SEC. 2. REGULAR RATE FOR OVERTIME PURPOSES.

Section 7(e) of the Fair Labor Standards Act of 1938 is amended—

(1) by inserting before the semicolon at the end of paragraph (3) the following: "; or (d) the payments are made to reward an employee or group of employees for meeting or exceeding the productivity, quality, efficiency, or sales goals as specified in a gainsharing, incentive bonus, commission, or performance contingent bonus plan"; and

(2) by inserting after and below paragraph (7) the following:

"A plan described in paragraph (3)(d) shall be in writing and made available to employees, provide that the amount of the payments to be made under the plan be based upon a formula that is stated in the plan, and be established and maintained in good faith for the purpose of distributing to employees additional remuneration

over and above the wages and salaries that are not dependent upon the existence of such plan or payments made pursuant to such plan.".

PURPOSE

The purpose of H.R. 1381 is to amend the Fair Labor Standards Act of 1938 to provide that an employee's "regular rate" for the purpose of calculating overtime compensation will not be affected by certain additional payments.

COMMITTEE ACTION

104TH CONGRESS

The Subcommittee on Workforce Protections held a hearing on June 8, 1995, which focused on several issues under the Fair Labor Standards Act, including the problems associated with the use of bonus and gainsharing programs. The witnesses who testified were: Kathleen M. Fairall, Senior Human Resource Representative, The Timken Company, located in Randolph County, North Carolina; Ms. Sandie Moneypenny, Process Technician, The Timken Company, located in Randolph County, North Carolina; Dr. Richard W. Beatty, Professor of Industrial Relations and Human Resources, School of Management and Labor Relations, Rutgers University, New Brunswick, New Jersey; and Mr. Robert J. Niedzielski, Director of Human Resources, Tighe Industries, Inc., York, Pennsylvania, testifying on behalf of the Society for Human Resource Management.

On March 14, 1996, Representative Cass Ballenger introduced H.R. 3087, legislation amending the Fair Labor Standards Act to provide that an employee's "regular rate" for the purpose of calculating overtime compensation will not be affected by certain additional payments.

105TH CONGRESS

Representative Cass Ballenger introduced H.R. 2710, the Rewarding Performance in Compensation Act, on October 23, 1997. The Subcommittee on Workforce Protections held a hearing on the legislation on July 16, 1998. The following individuals testified at the hearing: Ms. Anita U. Hattiangadi, Economist, Employment Policy Foundation, Washington, D.C.; Ms. Jodi P. Holt, Manager of Compensation, Cordant Technologies, Inc, Ogden, Utah; Ms. Sally K. Fanning, SPHR, CCP, Director of Compensation and Benefits for Praxair, Inc., Connecticut, testifying on behalf of the Society for Human Resource Management; and Mr. Michael T. Leibig, Attorney-at-Law, Zwerdling, Paul, Leibig, Kahn, Thompson, & Wolly, Fairfax, Virginia.

106TH CONGRESS

Representative Cass Ballenger introduced H.R. 1381, the Rewarding Performance in Compensation Act, on April 13, 1999. The Subcommittee on Workforce Protections held a hearing on the legislation on April 13, 1999. The following individuals testified: Ms. Margaret A. Coil, Partner, Center for Workforce Effectiveness, Northbrook, Illinois; Ms. Pam Farr, President and Chief Operating Officer, Cabot Advisory Group, LLC, Washington, D.C.; Ms. Lynne

Bourgeois, SPHR, Director of Human Resources, BlueCross BlueShield of Louisiana, Baton Rouge, Louisiana, testifying on behalf of the Society for Human Resource Management; and Mr. Nicholas Clark, Assistant General Counsel, United Food and Commercial Workers International Union, Washington, D.C.

On May 19, 1999, the Subcommittee on Workforce Protections ordered H.R. 1381 favorably reported without amendment by voice vote. The Committee on Education and the Workforce ordered the bill favorably reported, as amended, to the House of Representatives by a rollcall vote of 26–22 on June 23, 1999.

COMMITTEE STATEMENT AND VIEWS

Background

The Fair Labor Standards Act of 1938[1] (FLSA) is the primary federal statute which regulates the wages and hours of work for most workers. Among other things, the FLSA mandates that employees who are "nonexempt" from its provisions receive an overtime rate of one-and-one-half times the employee's "regular rate" of pay for all hours worked over 40 within a seven-day period. An employee's regular rate of pay generally must include all "remuneration for employment" with the exception of certain narrowly prescribed statutory exemptions.[2]

For example, the regular rate does not include, "* * * sums paid as gifts; * * * the amounts of which are not measured by or dependent on hours worked, production, or efficiency."[3] Likewise, "payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause"[4] are not required to be calculated as part of the employee's regular rate of pay. Neither are "* * * reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment."[5]

The FLSA also excludes from calculation of the regular rate "sums paid in recognition of services performed during a given period if either (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly, or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency."[6]

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[1] 29 U.S.C. § 201–219.
[2] 29 U.S.C. § 207(e)(1)–(7).
[3] 29 U.S.C. § 207(e)(1).
[4] 29 U.S.C. § 207(e)(2).
[5] Ibid.
[6] 29 U.S.C. § 207(e)(3).

The FLSA thus makes three distinctions which are relevant here. First, the FLSA distinguishes between bonuses paid to different employees. Bonuses paid to so-called "exempt" employees, the largest category of whom are professional, managerial, and administrative, require no particular recordkeeping or compensation treatment. Bonuses paid to "nonexempt" employees may have to be treated as part of the employee's regular rate of pay and the employee's hourly and overtime rates recalculated to take any bonus into account.

Second, the FLSA distinguishes between discretionary and nondiscretionary bonuses. Bonuses for which the employer has the sole discretion as to their payment and amount are not required to be included as part of the employee's regular rate of pay. On the other hand, non-discretionary bonuses, which reward employees according to an agreed upon schedule or formula for meeting (either individually, as a team, as a workplace or as a company) performance measures such as quality, productivity, efficiency, or health and safety goals, are regarded as part of the regular rate. If a bonus is paid under such a schedule or formula, the employer must compute the bonus as part of the employee's regular rate of pay for the entire period of work on which the level of performance has been achieved. The employer must then divide the bonus by all of the hours worked by the employee and retroactively include that amount in the hourly rate used to determine overtime pay.

Third, the FLSA distinguishes between performance bonuses tied to company profits (profit-sharing plans) and performance bonuses tied to other factors and measures, such as quality, productivity, sales, and safety. While payments to an employee under profit-sharing plans are not included in the employee's regular rate, payments to an employee based on other performance measures are required to be included in the employee's regular rate. This is so, despite the fact that current human resource policies and compensation programs often favor the use of gainsharing plans over profit-sharing because gainsharing plans can be linked to the performance of an individual or a group of individuals, while profit-sharing plans depend on the organization as a whole and are often dependent on a great many other factors.

The Subcommittee on Workforce Protections has heard much testimony over the past few years that these distinctions and the current treatment of performance bonuses under the FLSA are outdated and, most importantly, do not benefit the very employees which the FLSA is intended to protect.

Testimony before the Subcommittee, as well as other studies, shows that performance bonuses result in increased pay for employees, as well as improved performance by the company. Dr. Richard W. Beatty, professor of industrial relations and human resources, School of Management and Labor Relations, Rutgers University, put the issue in the context of other changes in the workplace, changes that have occurred and are occurring in order for companies to compete in the ever-changing and very competitive world marketplace: [7]

[7] Hearings on the Fair Labor Standards Act before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 104th Congress, First Session, June 8, 1995, Serial No. 104–46, pp. 191–192.

> * * * I think what we are seeing in the revision of pay plans is that pay plans are going to be based more and more upon the contributions of workers, the competencies of workers, the collaboration of working in teams, their creativity * * *
>
> These plans, and what's happening in incentive pay, I believe have very real benefits for individuals, give them the opportunity to earn more, also you give the firm an opportunity to become more competitive * * *

Gainsharing is one type of pay plan that links pay to measurable improvements in productivity. Employees are given individual or group productivity goals, and the savings achieved from such improvements, or the gains, are then shared between the company and the employees. The payouts are based directly on factors under an employee's control, such as productivity or costs, rather than on the company's profits. Thus, employees directly benefit from improvements that they help to produce by increasing their overall compensation. Gainsharing and other similar type plans allow employees not only to increase their wages, but also to share in the success of the company, to improve productivity, to have more control over their jobs, and to have more involvement in decision-making.

In 1998 testimony before the Subcommittee, economist Anita U. Hattiangadi reviewed the results of a number of studies which have shown that gainsharing plans result in improved productivity and increased pay for workers: [8]

> An early study by Eldridge Puckett of gainsharing found that productivity improvements in the first two years of plan implementation range between ten and 49 percent, with average productivity growth of 23 percent.
>
> A study by the General Accounting Office found that most firms achieved average labor cost savings of 17 percent, which they attributed to performance improvements in employees, improved employee attitudes, and improved productivity.
>
> A study by Roger Kaufmann of all firms known to have info-share or gainsharing plans, found that the median firm experienced a five to 15 percent increase in productivity. That's compared to a two percent increase for all manufacturing firms.
>
> Finally, a study by the American Compensation Association found that most gainsharing plans translated into 129 percent net return to firms, on average. Gains per employee were about $2,000 per year.
>
> * * * In addition to these productivity increases, there are also substantial increases in workers' wages that are realized through gainsharing. When gains are distributed to workers through bonus payouts, their compensation rises and their standards of living rise accordingly.

[8] Hearing on H.R. 2710, the Rewarding Performance in Compensation Act, before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 105th Congress, Second Session, July 16, 1998, Serial No. 105–132, pp. 5–6.

> Aggregate studies show that gainsharing bonuses range from three to 29 percent of base pay. Workers in the Puckett study earned average bonuses equal to 17 percent of gross pay during a two-year period, and individual firms' bonuses range between eight and 29 percent. In the Kaufmann study, mean and median bonus payouts during the first quarter of plan operation were four and six percent of wages and salaries, respectively, and remained significant over time. Gainsharing payouts in the ACA study were approximately three percent of base pay and had a median value of $700.
>
> These studies show that workers can achieve significant productivity and wage gains through a gainsharing plan. In fact, EPF research shows that a median-wage worker could earn a total of $17,000 to $26,000 more over a 20-year period if gainsharing and teams were implemented and more widespread.

Not only do performance bonus plans, such as gainsharing, help achieve more productive businesses and higher pay for employees, but they also are an important part of meaningful employee involvement and allow employees to have a greater share in their company's success. In fact, President Clinton has urged business groups to share "the benefits when times are good"[9] by working in partnership with employees.[10]

Despite the benefits of performance bonus and gainsharing plans for employees, the FLSA currently discourages employers from offering such plans to their nonexempt employees. This point has been made repeatedly in testimony before the Subcommittee. As. Ms. Margaret A. Coil, a partner with the Center for Workforce Effectiveness in Northbrook, Illinois, testified:[11]

> * * * We and many of our clients, are looking for ways to make employees "business partners" and provide opportunities to share in the success of the business.
>
> Goalsharing, gainsharing and incentive compensation are labels used to speak to these monetary linkages between business performance and rewards. Under the current statutory framework, these programs are problematic when applied to the nonexempt workforce of a firm.
>
> Companies are also trying to minimize the trappings of hierarchy to ensure that all employees feel free to participate in the organization. The collaboration required to be successful and to make the workplace an engaging environment is also impeded by the strict interpretations we have seen from the DOL. The DOL is valiantly trying to apply sixty year old labor law to a workplace that was not envisioned when the regulations were enacted. At the

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[9] Strobel, Warren P., "Clinton Prods U.S. Firms to Treat Their Workers Better." The Washington Times, March 24, 1996.

[10] Given President Clinton's admonition in this regard, it is unfortunate that his administration is opposed to legislation that would encourage businesses to share their success with workers.

[11] Hearing on the Rewarding Performance in Compensation Act before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 106th Congress, First Session, April 13, 1999, Serial No. 106–17, pp. 40, 47.

> same time, employers are trying to understand and comply with these regulations that make little sense in the current reality of work, the workplace and today's workers.
>
> * * * Does it make sense to continue to enforce provisions written for and about a workplace that has all but become extinct? Is it not time that the regulations be amended to fit the realities of work today in the United States?
>
> I am not suggesting that the Fair Labor Standards Act be removed and abandoned. I do believe that there needs to be a reasonable framework within which all employers can legally operate in this country. At the same time, it is important that employers and employees be afforded the flexibility to ensure a workplace that is responsive to the diversity, complexity, and the intellectual contribution necessary to succeed.

Sally K. Fanning, director of compensation and benefits for Praxair, Inc., explained the effect of the outdated provisions of the law on her company: [12]

> We compete very globally, and we need to be able to use every tool available to reward and motivate employees. It's important that you understand that SHRM does not take exception with the intent or the spirit of the FLSA. The contention is with the outdated provisions. The regulation that we are talking about today was essentially written in 1953, 45 years ago. And it was really intended to address individual productivity incentive systems such as piecerate systems for cut-and-sew type of operations. Very easy to measure on an individual basis.
>
> Today's incentive rewards focus on group productivity, teams, company-wide profit-sharing. The regulations do encourage profit-sharing, but they do not encourage productivity-improvement programs, nor employee-ownership programs.

The Committee believes that the FLSA creates a disincentive for employers to include hourly workers in employee bonus and gainsharing programs. For other types of employees, such as executive, administrative, or professional employees who are exempt from minimum wage and overtime, an employer can easily give financial rewards without having to recalculate rates of pay. Yet, hourly workers should have the same opportunity as salaried workers to participate in gainsharing programs. Ms. Lynne Bourgeois, director of human resources for BlueCross BlueShield of Louisiana, told the Subcommittee that employees want to be rewarded for a job well done: [13]

> * * * They want to feel like a key player on a winning team. Different standards such as "how incentives must be

[12] Hearing on H.R. 2710, the Rewarding Performance in Compensation Act, before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 105th Congress, Second Session, July 16, 1998, Serial No. 105–132, p. 8.

[13] Hearing on the Rewarding Performance in Compensation Act before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 106th Congress, First Session, April 13, 1999, Serial No. 106–17, p. 67.

> paid" continue to separate non-exempt and exempt employee groups. Today's employees are not well served by the outdated provision of the FLSA. It discourages companies from fully motivating and rewarding their employees for their hard work.

Ms. Coil also described how, in her experience, the regular rate requirements of the FLSA deter many employers from implementing bonus or gainsharing programs for their nonexempt workforce: [14]

> The restrictions of [the] FLSA make adopting incentive compensation for nonexempt employees problematic at best. They force employers to choose between complying with the regulations or opting to restrict incentive compensation to their exempt workforce where it can be simply applied.

Many employers who choose to operate performance-based pay plans for their nonexempt workforce can be burdened with unpredictable and complex administrative costs. The administrative costs of recalculating each employee's regular rate and overtime rate can be substantial, taking up much of the money that the employer has set aside for the employee bonuses. Ms. Pam Farr, president and chief operating officer, Cabot Advisory Group, LLC, testified that: [15]

> * * * the amount of human resources staff time required to recalculate overtime pay after the bonus amounts have been determined has partially caused companies to slow down the pace with which they roll out such bonus plans. Although calculating overtime on an employee's bonus is not impossible, it consumes a significant amount of staff time * * * For example, a single bonus payment for a single employee may involve three or four steps that must be performed by a person, and for companies that have multiple facilities in several states, the calculations take on geometric proportions. While much can be computerized, it still takes time and effort to build the programs, test for compliance, calculate weekly wage reports, and cut the bonus checks. Many executives when faced with the decision of either implementing additional bonus programs or allocating the staff's time to improve administration of existing programs would opt for the latter. Employees would be better served if the employer spent additional time communicating the plans to employees, training them on how to satisfy customers to become more efficient, and celebrating and honoring their efforts above and beyond the average.

Current law also reinforces the concept that employees should be paid only on the basis of how many hours they work, rather than on their contribution to gains in productivity, quality of service, or other similar type goals. In complying with the regular rate requirements prescribed in the FLSA, companies are compelled to reward employees based on the time that they are on the clock

[14] Ibid., p. 45.
[15] Ibid., p. 58.

versus their contribution to the organization. Ms. Farr described how the FLSA is a barrier to team-based bonus plans: [16]

> * * * [T]he FLSA effectively precludes companies from offering bonus plans because it requires bonuses to be included in the employee's regular rate of pay. Companies must pay overtime compensation based upon this higher hourly rate, distorting overtime pay.
>
> By requiring companies to pay employees overtime on a bonus payment, the FLSA contradicts the messages that companies attempt to send through such payments. The bonuses are not given merely to increase employee's base pay. Rather, they are provided for achieving goals that go well beyond performing the minimum job requirements. Employees who delight the customers and think of ways to increase sales, improve manufacturing processes, or otherwise save money by being more efficient should receive a bonus. Because the bonus is paid separately, and for distinct reasons, it should be differentiated from base pay or the overtime premiums that employees receive.

Similarly, Ms. Kathleen M. Fairall, senior human resource representative with the Timken Company in Randolph County, North Carolina, told of how current law undermines rewards based on teamwork: [17]

> Currently, the Act requires that if an employer wants to provide employees a non-discretionary bonus, they must determine the period of time covered by the bonus, for that period recalculate the previously established regular rate of pay or base pay by adding in the proposed bonus payment, and then recalculate any overtime pay that had been paid during the time covered by the bonus. If that sounds complicated, there's a simple reason. It is. And as a result, a non-exempt employee who works overtime in that period receives the bonus and then an additional "extra" payment for his or her recalculated overtime. The employee who does not work overtime or who is exempt does not receive this "extra" payment.
>
> This type of preferential treatment strikes a blow to the heart of work teams—essentially the law is saying "you are equal, except with bonus payments." Each member of a team contributes equally to the business and this must be reflected in equal bonus payments. This is the foundation on which self directed teams must be built.

Ms. Sandie Moneypenny, a process technician for the Timken Company, described the effect of current law on self-directed work teams: [18]

> * * * In our plant, we have some pieces of equipment that are not as dependable as others and some processes

[16] Ibid., p. 57.
[17] Hearings on the Fair Labor Standards Act before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 104h Congress, First Session, June 8, 1995, Serial No. 104–46, p. 184.
[18] Ibid., p. 187.

> that are slower than the rest. The people in these areas work more hours. They would receive a larger bonus than the other associates in the plant. Just because these people work more hours does not mean they are more valuable than the rest of us. They could actually be not as efficient at operating their process or may not be as experienced at maintaining their equipment.

It is true that many employers do maintain performance bonus and gainsharing plans for their nonexempt employees.[19] Some employers do so unaware that the FLSA treats such bonuses as part of the employees' regular rate—until they happen to be audited by the Department of Labor.[20] Other employers have maintained such programs despite the administrative difficulty and expense of doing so, and despite the fact that the FLSA's current treatment of performance bonuses can undermine the purpose of the gainsharing or performance bonus plan. For many employees, however, the current burdens and costs imposed on performance bonuses and gainsharing programs simply prevents such bonuses from being available to them.[21]

The Committee does not believe that the current treatment of performance bonuses and gainsharing plans is necessary or beneficial for employees. Federal law should not discourage companies from implementing such plans, yet that is what the FLSA currently does.

Legislation

The Rewarding Performance in Compensation Act is intended to make performance bonuses and gainsharing more available to employees by removing the current obstacles to such plans in the FLSA. Under the bill, payments "made to reward an employee or group of employees for meeting or exceeding the productivity, quality, efficiency, or sales goals" would not be considered part of the employee's regular rate of pay.

As introduced, H.R. 1381 specified that such payments must be made pursuant to a compensation plan; in other words, an employer could not utilize such performance bonuses on an ad hoc basis. During the Committee's consideration of the bill, opponents of the bill argued that employers would abuse the change made by H.R. 1381, particularly, they alleged, by redesignating a portion of an employee's regular, base pay as a performance bonus and thereby avoid paying overtime on that portion of the employee's hourly pay. The specific example given was an employee who is paid $10

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[19] A recent survey by William M. Mercer indicated that 24 percent of large and midsize companies use team-based incentive pay.

[20] As Mr. Robert J. Niedzielski from Tighe Industries, Inc., in York, Pennsylvania, testified before the Subcommittee in April 1999: "We thought we were being a good employer by sharing profits with our associates. We thought we had been a responsible employer by paying wages far above the minimum and complying with the overtime provisions of the FLSA. Finally, we thought we had been a fair employer, by consistently applying the criteria for bonus determination."

[21] In April 1999 testimony before the Subcommittee, Ms. Lynne Bourgeois testified about her experience with her former employer: "We implemented a management incentive program—the sales group had commission and sales incentives but the support staff, all non-exempt, received base pay and overtime. Consequently, the support staff often felt left out and not appreciated since they were not able to participate in the branch's financial success. After considering the issue, we decided not to implement a gainsharing program for the support staff because of the time and effort that would have been necessary to perform the bureaucratic calculations."

per hour. Opponents alleged that his employer would continue to pay $10 per hour, but the employer would designate some portion of the $10—for example, $4 as a "performance bonus." As a result, under this hypothetical, if the employee worked overtime, he or she would receive the time-and-one-half overtime rate only on $6, rather than on the employee's real hourly rate of $10.

As was pointed out during the Subcommittee and full Committee markups on H.R. 1381, this hypothetical ignores a number of practical considerations. It also ignores current Department of Labor regulations prohibiting false or "pseudo" bonuses, regulations that are unchanged by H.R. 1381 and would remain in place. Those regulations read as follows: [22]

> (a) The term "bonus" is properly applied to a sum which is paid as an addition to total wages usually because of extra effort of one kind or another, or as a reward for loyal service or as a gift. The term is improperly applied if it is used to designate a portion of regular wages which the employee is entitled to receive under his regular wage contract * * *
>
> (e) The general rule may be stated that wherever the employee is guaranteed a fixed or determinable sum as his wages each week, no part of this sum is a true bonus and the rules of determining overtime due on bonuses do not apply.

In short, the law currently prohibits, and would continue to prohibit, the hypothetical situation that opponents claim would result from the passage of H.R. 1381.

In order to further ensure that H.R. 1381 accomplishes the goal of increasing employee pay by promoting legitimate performance bonuses and gainsharing plans and not be misconstrued or misused, the Committee adopted an amendment in the nature of a substitute which was offered by Rep. Cass Ballenger, the chief sponsor of H.R. 1381 and the Chairman of the Subcommittee on Workforce Protections.

The amendment is similar to long-standing Department of Labor regulations defining when payments made to employees under profit-sharing plans are not included in the employee's regular rate of pay.[23]

First, the amendment requires that the plan under which the performance bonus is provided and calculated be in writing and made available to employees. The requirement ensures that employees are informed about the performance bonus and the basis and manner on which it is calculated. It also provides further assurance to employees that, contrary to claims made by the opponents of H.R. 1381, an employer may not arbitrarily claim that some portion of an employee's regular, hourly pay is deemed a performance bonus on which overtime need not be paid.

Second, the amendment requires that the plan specify the formula by which the performance bonus to be paid to the employees is to be calculated. As is the case under the Department of Labor's regulations for profit-sharing plans, the formula stated may be "per

[22] 29 C.F.R. § 778.502.
[23] 29 C.F.R. § 549.0–549.4.

capita" (that is, each employee covered by the plan will receive the same amount if a certain goal is reached or exceeded.) Alternatively, the bonus may vary by individual or group performance. In either case, the plan must state how the performance bonus or gainsharing payment is calculated and when it is to be paid.

Third, the amendment states that the plan for paying performance bonuses or gainsharing payments must be "established and maintained in good faith for the purpose of distributing to employees additional remuneration over and above the wages and salaries that are not dependent upon the existence of such plan or payments made pursuant to such plan." This requirement further ensures that any attempt by an employer simply to "rename" a portion of an employee's regular hourly rate as a "performance bonus" is not permitted under H.R. 1381. The performance bonus must be separately determined and identified as such to the employee and must be "over and above" the employee's regular base pay.

H.R. 1381 does not prohibit an employer from changing pay plans, for example, changing from all base pay to a base pay plus performance bonus, even if such a change may result in changes in the amount of base pay. But, in order for the performance bonus to be exempt from the regular rate, it must be "established and maintained in good faith," that is, to carry out the purposes of the performance plan itself and not to evade or avoid paying employees time-and-a-half overtime compensation.

Performance plans and gainsharing payment plans are obviously of great variety. One of the witnesses who testified before the Subcommittee on Workforce Protections described a performance bonus plan that was instituted for housekeepers and other employees of Fairfield Inns:[24]

> * * * [I]n our small hotels, we recognized that it had to be a team approach. We were all interdependent. Housekeepers, front-desk, laundry, maintenance, and sometimes restaurant workers, all had to be part of a moving-part, organic organization. The housekeepers couldn't check people in if the rooms weren't ready or if the plumbing didn't work. Our housekeepers needed fresh linens. Our front-desk people couldn't check people out unless all of the bill was in order.
>
> So, we worked with employees. This was very important when we began the gainsharing plans. We talked to the employees about "what they would think if we had a gainsharing type plan?" We worked with the managers and compensation experts, "how would they be able to administer it?"
>
> We had a very strong belief that we needed to reward the associates on top of their base pay. We actually calculated these bonuses based on actual guest comments. People like yourselves that were checking out of our hotels, who rated us on room cleanliness, on friendliness, on services, and all of the amenities. The bonuses were paid out

[24] Hearing on the Rewarding Performance in Compensation Act before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 106th Congress, First Session, April 13, 1999, Serial No. 106–17, pp. 6–7.

> quarterly, and it averaged in our beginning years from $200–300 per quarter.
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> * * * We would ask the housekeepers, "how do you think we can improve the check-in speed?" We would ask them about the room amenities, and they gave us great information. They listened to the customers, who oftentimes were in the room when they began cleaning. We learned from our employees. They also helped us adjust the bonus plans over time.

Such a plan involves different considerations and factors than a performance bonus, for example, for employees at a manufacturing plant. The goal of H.R. 1381 is to provide protections against abuse while allowing flexibility for employers and employees to structure such plans in ways that meet their needs. Current law also balances these two factors, but does so in a way that, as the testimony verifies, discourages employers from maintaining such plans for their nonexempt, hourly employees. The Committee believes that a better balance is struck by H.R. 1381, which encourages greater use of performance bonuses but maintains protections against abuse.

Conclusion

H.R. 1381 will not reduce the pay of workers; it will encourage employers to include more of their hourly workers in performance bonus plans and thereby increase their compensation. Nor does H.R. 1381 in any way affect the 40-hour workweek or the right to overtime pay on employees' regular, hourly wage. It simply brings the 1938 Fair Labor Standards Act a step closer to meeting the workplace realities as we enter the 21st century.

In conjunction with the Committee's markup of H.R. 1381, the Secretary of Labor sent a letter[25] expressing the Administration's opposition to the legislation. The letter unfortunately ignored the realities of current workplace needs and policies and, in response, Rep. Cass Ballenger sent the following letter to Secretary Herman:

SUBCOMMITTEE ON WORKFORCE PROTECTIONS,
COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC, May 25, 1999.

Hon. ALEXIS M. HERMAN,
Secretary of Labor, U.S. Department of Labor,
Washington, DC.

DEAR MADAM SECRETARY: I must respond to the excessive rhetoric in your letter to me dated May 19, 1999, expressing the Department of Labor's views on H.R. 1381, the "Rewarding Performance in Compensation Act." Your letter arrived just as the Subcommittee on Workforce Protections was beginning the markup of several bills, including H.R. 1381. The timing of its arrival couldn't have been more indicative of its rhetorical rather than substantive intent.

As I'm sure you know, the purpose of H.R. 1381 is to encourage companies to implement bonus, "gainsharing," and similar com-

[25] Letter dated June 22, 1999, from Alexis M. Herman, Secretary of Labor, U.S. Department of Labor, to the Honorable William F. Goodling, Chairman, Committee on Education and the Workforce, U.S. House of Representatives.

pensation plans that provide a means for employees to share directly in the benefits the company receives when the employees' efforts produce improvements in any number of areas—productively, product or service quality, safety, etc.

Your predecessor as Secretary of Labor, Mr. Reich, frequently criticized American companies for, in his view, failing to share their success with their employees. In that context, he frequently urged employers to implement employee gainsharing programs. President Clinton has echoed the same theme and has encouraged employers to implement employee gainsharing programs. Additionally, as I am sure you are aware, studies have shown that employee gainsharing programs have helped American workers become more productive and led to increased compensation for employees. I regret that you and your Department apparently do not share your predecessor's encouragement for compensation programs by which employees can directly share in the success that their efforts have helped to achieve.

The Subcommittee on Workforce Protections has received considerable testimony, over several Congresses, from companies large and small, that a principal deterrent to providing or expanding gainsharing programs for non-exempt workers is the current treatment of bonus and gainsharing programs under the Fair Labor Standards Act (FLSA). H.R. 1381 attempts to address that very issue, thereby encouraging wider use of gainsharing programs.

During our hearings on this issue, only one witness has taken the same approach as you expressed in your letter, that is, to say that any change in the law is unwarranted. That witness testified that the number of hours worked should be the only way in which an employee's contribution is measured. Not only is this position inconsistent with current law (profit sharing and employed benefits, for example, are not now included in the employee's regular rate), but it also reflects a view of work that is increasingly at odds with what employees want and what the workplace of the 1990s demands.

Beyond that, your letter repeats the old, worn out rhetoric that any legislation that amends the FLSA to make it fit the workplace of the 1990s rather than the 1930s is "an assault on the 40-hour workweek." If in fact, as you say in your letter, employers would simply decrease employees' hourly wage as a result of H.R. 1381, then any profit-making company would already be doing so under the exclusion from regular rate for "profit sharing" payments that was added to the FLSA in 1949. The rhetoric in your letter simply makes no sense.

I have made very clear and I am willing to work with anyone to improve the legislation to address any legitimate concerns. Your letter of May 19, however, contributes nothing towards constructive discussion or the needs of employees as we enter the 21st century.

Sincerely,

CASS BALLENGER,
Chairman.

SUMMARY

The bill would amend the Fair Labor Standards Act to specify that an employee's regular rate of pay for the purposes of calcu-

lating overtime would be unchanged by additional payments that reward or provide incentives for meeting productivity, quality, efficiency or sales goals. Any incentive plan offered pursuant to the bill must be in writing and made available to employees, the amount of the payments must be based on a formula that is stated in the plan, and the plan must be established and maintained in good faith for the purpose of distributing additional compensation over and above the employee's wages and salaries.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

"Rewarding Performance in Compensation Act".

Section 2. Regular rate for overtime purposes

Adds a new provision to section 7(e)(3) of the Fair Labor Standards Act of 1938 which specifies that certain payments can be excluded from the calculation of the employee's regular rate of pay if the payments are made to reward an employee or group of employees for meeting or exceeding the productivity, quality, efficiency, or sales goals as specified in a gainsharing, incentive bonus, commission, or performance contingent bonus plan.

Adds a new provision after section 7(e)(7) which specifies that such plan shall be in writing and made available to employees, provide that the amount of the payments to be made under the plan be based upon a formula that is stated in the plan, and be established and maintained in good faith for the purpose of distributing to employees additional remuneration over and above the wages and salaries that are not dependent upon the existence of such plan or payments made pursuant to such plan.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This bill amends the Fair Labor Standards Act of 1938 to provide that an employee's "regular rate" for the purpose of calculating overtime compensation will not be affected by certain additional payments. The bill does not prevent legislative branch employees from receiving the benefits of this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This bill amends the Fair Labor Standards Act of 1938 to provide that an employee's "regular rate" for the purpose of calculating overtime compensation will not be affected by certain additional payments. As such, the bill does not contain any unfunded mandates.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 **BILL** H.R. 1381 **DATE** June 23, 1999

Motion Sustained 24 - 21

SPONSOR/AMENDMENT Mr. Petri / motion to table the appeal of the ruling of the chair

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mrs. ROUKEMA	X			
Mr. BALLENGER	X			
Mr. BARRETT	X			
Mr. BOEHNER	X			
Mr. HOEKSTRA	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. TALENT	X			
Mr. GREENWOOD				X
Mr. GRAHAM	X			
Mr. SOUDER	X			
Mr. McINTOSH				X
Mr. NORWOOD	X			
Mr. PAUL	X			
Mr. SCHAFFER	X			
Mr. UPTON	X			
Mr. DEAL	X			
Mr. HILLEARY	X			
Mr. EHLERS	X			
Mr. SALMON				X
Mr. TANCREDO	X			
Mr. FLETCHER	X			
Mr. DEMINT	X			
Mr. ISAKSON	X			
Mr. CLAY		X		
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. MARTINEZ		X		
Mr. OWENS		X		
Mr. PAYNE		X		
Mrs. MINK		X		
Mr. ANDREWS		X		
Mr. ROEMER		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. ROMERO-BARCELO		X		
Mr. FATTAH		X		
Mr. HINOJOSA				X
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KIND		X		
Ms. SANCHEZ		X		
Mr. FORD		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
TOTALS	24	21		4

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 2 **BILL** H.R. 1381 **DATE** June 23, 1999

Passed 26 - 22

SPONSOR/AMENDMENT Mr. Petri / motion to report the bill with an amendment to the House and with the recommendation that the amendment be agreed to and that the bill as amended do pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mrs. ROUKEMA	X			
Mr. BALLENGER	X			
Mr. BARRETT	X			
Mr. BOEHNER	X			
Mr. HOEKSTRA	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. TALENT	X			
Mr. GREENWOOD	X			
Mr. GRAHAM	X			
Mr. SOUDER	X			
Mr. McINTOSH	X			
Mr. NORWOOD	X			
Mr. PAUL	X			
Mr. SCHAFFER	X			
Mr. UPTON	X			
Mr. DEAL	X			
Mr. HILLEARY	X			
Mr. EHLERS	X			
Mr. SALMON				X
Mr. TANCREDO	X			
Mr. FLETCHER	X			
Mr. DEMINT	X			
Mr. ISAKSON	X			
Mr. CLAY		X		
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. MARTINEZ		X		
Mr. OWENS		X		
Mr. PAYNE		X		
Mrs. MINK		X		
Mr. ANDREWS		X		
Mr. ROEMER		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. ROMERO-BARCELO		X		
Mr. FATTAH		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KIND		X		
Ms. SANCHEZ		X		
Mr. FORD		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
TOTALS	26	22		1

CORRESPONDENCE

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 23, 1999.

Hon. WILLIAM F. GOODLING,
Chairman, House Education and the Workforce Committee, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN, Due to other legislative responsibilities, I was unable to be present for the House Education and Workforce Committee vote on H.R. 1381, the Rewarding Performance in Compensation Act. Had I been present I would have voted in the affirmative. Please include this in the full committee report. Thank you.

Sincerely,

MATT SALMON,
Member of Congress.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1381 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 2, 1999.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1381, the Rewarding Performance in Compensation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Sadoti.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1381—Rewarding Performance in Compensation Act

H.R. 1381 would amend the Fair Labor Standards Act of 1938 to provide that an employee's regular rate of compensation for purposes of calculating overtime compensation will not be affected by additional payments, such a performance bonuses. CBO estimates that enactment of H.R. 1381 would have no significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 1381 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no net costs on state, local, or tribal governments.

This estimate was prepared by Christina Hawley Sadoti (federal cost), Susan Sieg (impact on state, local, and tribal governments), and Karuna Patel (impact on the private sector).

This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

STATEMENT OF OVERSIGHT FINDINGS OF THE COMMITTEE ON GOVERNMENT REFORM

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on the subject of H.R. 1381.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

COMMITTEE ESTIMATE

Clauses 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1381. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 7 OF THE FAIR LABOR STANDARDS ACT OF 1938

MAXIMUM HOURS

SEC. 7. (a) * * *

* * * * * * *

(e) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) * * *

* * * * * * *

(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulations which he shall issue, having due regard among other relevant facts, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs*; or (d) the payments are made to reward an employee or group of employees for meeting or exceeding the productivity, quality, efficiency, or sales goals as specified in a gainsharing, incentive bonus, commission, or performance contingent bonus plan*;

* * * * * * *

A plan described in paragraph (3)(d) shall be in writing and made available to employees, provide that the amount of the payments to be made under the plan be based upon a formula that is stated in the plan, and be established and maintained in good faith for the purpose of distributing to employees additional remuneration over and above the wages and salaries that are not dependent upon the existence of such plan or payments made pursuant to such plan.

* * * * * * *

MINORITY VIEWS

We strongly oppose H.R. 1381. This legislation effectively repeals the requirement that workers be paid time-and-a-half for hours worked in excess of 40 hours a week. There are approximately 73 million workers who are entitled to overtime pay. The number of overtime hours worked are presently at or near an all-time high. Since 1990, overtime work has increased by one third in the manufacturing sector.

Under current law, a worker is entitled to time-and-a-half pay based on all incentive based pay a worker receives. H.R. 1381 permits employers to exclude performance-related bonuses from the calculation of a workers' overtime pay. A worker who is making $10 an hour today is entitled to $15 an hour for overtime work. H.R. 1381 would provide a financial incentive to employers to reduce base pay to the minimum wage, $5.15 an hour, and convert all additional compensation to some form of bonus.

For example, this bill would allow an employer to pay a $10 an hour worker $5.15 and an additional bonus of $4.85 an hour for the first forty hours worked in a week. Under this arrangement the employee appears to be receiving the same rate of pay per hour. However, when the employee works overtime, H.R. 1381 provides that instead of receiving $15 an hour, the employee would only be entitled to $7.73 an hour. In effect, H.R. 1381 enables employers to require workers to work overtime for less than the normal amount of compensation they receive for regular hours worked. Simply put, this legislation encourages employers to make workers work longer hours for less pay and will result in the creation of fewer jobs as a consequence.

The Majority contends that an amendment in the nature of substitute adopted in Committee will ensure that the legislation is not abused. Notwithstanding that amendment, this bill remains fatally flawed. The amendment provides that a bonus plan must be written and that the bonus must be in accordance with a specific formula. Additionally, the amendment provides that the bonus plan must be "established and maintained in good faith for the purpose of distributing to employees additional remuneration over and above the wages and salaries that are not dependent upon the existence of such plan." By definition, every bonus is in addition an employee's regular wage. Nothing in this amendment says that an employer may not reconfigure the pay or lower the wages of current employees. However, even if the amendment prevented employers from reconfiguring the pay of current employees, this bill remains fatally flawed. Such a provision would simply have the effect of providing financial incentive for employers to displace current workers with new workers. There is nothing in this legislation that prevents an employer from restructuring the compensation

package of a new worker or a worker who is moved into a new job. The ultimate consequence of the legislation remains the same.

Proponents of H.R. 1381 also claim that existing Department of Labor regulations will ensure that the provisions of the legislation will not result in the restructuring of workers' pay. As quoted by the Majority, those regulations provide:

> (a) The term "bonus" is properly applied to a sum which is paid as an additional to total wages usually because of extra effort of one kind or another, or as a reward for loyal service, or as a gift. The term is improperly applied if it is used to designate a portion of regular wages which the employee is entitled to receive under his regular wage contract * * *
>
> (e) The general rule may be stated that wherever the employee is guaranteed a fixed or determinable sum as his wages each week, no part of this sum is a true bonus and rules of determining overtime due on bonuses do not apply.

The intent of these provisions is to prevent an employer from claiming ad hoc that a part of an employees regular wage is a bonus that would otherwise be exempt from the overtime calculation. However, these provisions do not restrict an employer from establishing the employee's wage at any level the employer desires and the provisions do not restrict an employer from providing additional compensation in the form of bonuses. Claims of the Majority notwithstanding, nothing in these regulations prevents an employer from establishing an employee's "wage" at the minimum wage rate and providing additional compensation in the form of performance bonuses. Far from prohibiting this, H.R. 1381 encourages it by ensuring that no part of the bonus will be used in calculating the employee's overtime pay.

Our Republican colleagues claim that employers would not be so cost conscious as to try to reduce overtime costs by converting wages to bonuses. Controlling overtime costs has been, is, and will remain an important management objective. However, this bill provides important additional financial incentives for employers. The potential savings to employers, not only in terms of reduced overtime pay, but in terms of reduced hiring, training, and fringe benefit costs are such that, ultimately, employers will have to take advantage of the loophole created by H.R. 1381 in order to remain competitive. The fact is that enactment of H.R. 1381 would make it much cheaper for employers to work fewer workers for longer hours than to hire new workers for a second shift.

Finally, it is hard to give credence to the justification proffered by the proponents of this legislation that it is too difficult for employers to offer bonuses if they must account for overtime. As the Majority notes, thousands of employers operate gainsharing plans and other performance based bonus plans for non-exempt workers. Calculating for overtime does not require an employer to generate any new information. The employer already knows how many hours the employee has worked, how many overtime hours the employee has worked, and what the employee has been paid for those hours so far. Calculating a bonus for employees that includes proper overtime is an easy process, as the Department of Labor's regu-

lations make clear (see 29 CFR Section 778.209). Where employees have already been paid their regular hourly rate for non-overtime work and have already been paid time-and-a-half for overtime hours, additional pay due to a bonus is easily computed simply by multiplying the number of overtime hours worked over the period for which the bonus is paid by one-half of the overall hourly increase in pay caused by the bonus payment.

Employees have been paying performance based bonuses to workers in compliance with the Fair Labor Standards Act for more than fifty years. To contend that it is now too difficult, in an era when there is widespread use of payroll services and virtually universal computer access, is not credible.

Eliminating or reducing overtime pay is nothing less than a pay cut for millions of working families who work extra hours to make ends meet. H.R. 1381 jeopardizes their living standards at the same time that it effectively requires them to work longer for less.

The Majority is seeking to impose this pay cut upon workers at a time when corporate profits are at unprecedented levels and executive incomes are not just 10 to 20 times greater than workers' salaries, but are 200 to 400 times greater. The Democrats on this Committee are committed to increasing the income of low wage workers by increasing the minimum wage. The Majority continues to block a minimum wage increase, while pushing legislation that undermines overtime pay and decreases workers' income. It is difficult to imagine a more wrong-headed piece of legislation than H.R. 1381.

WILLIAM L. CLAY.
DALE E. KILDEE.
MAJOR R. OWENS.
PATSY T. MINK.
TIM ROEMER.
LYNN WOOLSEY.
CHAKA FATTAH.
CAROLYN MCCARTHY.
RON KIND.
HAROLD E. FORD, Jr.
DAVID WU.
GEORGE MILLER.
MATTHEW G. MARTINEZ.
DONALD M. PAYNE.
ROBERT E. ANDREWS.
BOBBY SCOTT.
CARLOS ROMERO-BARCELO.
RUBEN HINOJOSA.
JOHN F. TIERNEY.
LORETTA SANCHEZ.
DENNIS J. KUCINICH.
RUSH HOLT.

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