To decrease the cost of hiring, and increase the take-home pay of, Puerto Rican workers.

IN THE SENATE OF THE UNITED STATES
JANUARY 5, 2017
Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL
To decrease the cost of hiring, and increase the take-home pay of, Puerto Rican workers.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Economic Mobility for
Productive Livelihoods and Expanding Opportunity Act of
2017” or the “EMPLEO Act”.

SEC. 2. FEDERAL MINIMUM WAGE REQUIREMENT FOR ELI-
GIBLE PUERTO RICO EMPLOYEES.
Section 6(a) of the Fair Labor Standards Act of
1938 (29 U.S.C. 206(a)) is amended—
(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by inserting after paragraph (1) the following:

“(2) if such employee is an eligible Puerto Rico employee, as defined in section 6433(c) of the Internal Revenue Code of 1986, who receives a qualified wage subsidy payment under section 6433 of such Code from a participating employer, $5.00 an hour (as determined without regard to the qualified wage subsidy payment);”.

SEC. 3. WAGE SUBSIDY FOR PUERTO RICO WORKERS.

(a) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 6433. WAGE SUBSIDY FOR PUERTO RICO WORKERS.

“(a) IN GENERAL.—In the case of a participating employer which makes qualified wage subsidy payments to eligible Puerto Rico employees, such participating employer shall be treated for purposes of this title as having paid to the Secretary, on the date any such qualified wage subsidy payment is paid, payroll taxes in an amount equal to such wage subsidy payment.

“(b) PARTICIPATING EMPLOYER.—
“(1) IN GENERAL.—For purposes of this section, the term ‘participating employer’ means an employer which—

“(A) elects the application of this section,

“(B) makes qualified wage subsidy payments to all eligible Puerto Rico employees of such employer,

“(C) provides to each eligible Puerto Rico employee (in such form and manner as the Secretary shall by regulations prescribe) information about the amount of qualified wage subsidy payments paid to such employee at the time such payments are made, and

“(D) in the case of an employer which elects to receive an advance payment under subsection (g), provides to the Secretary the information described in paragraph (2) not later than 30 days before the beginning of the applicable period.

“(2) INFORMATION REQUIRED.—The information required under this paragraph is the following:

“(A) An estimate of the number of workers who will be employed by the participating employer for the applicable period.
“(B) An estimate of the payroll taxes (determined without regard to any increase in tax under section 3111 by reason of subsection (g)(2)) that will be paid by the participating employer with respect to all employees for such applicable period.

“(C) An estimate of the number of eligible Puerto Rico employees who will be employed by the participating employer for such applicable period and the hourly rate of pay for each such employee (determined without regard to any qualified wage subsidy payment).

“(D) An estimate of the aggregate amount of qualified wage subsidy payments that will be paid by such employer to eligible Puerto Rico employees for such applicable period.

“(3) FAILURE TO MAKE SUBSIDY PAYMENTS.—

For purposes of this title (including penalties), the failure by any employer which makes an election under paragraph (1)(A) to make any qualified wage subsidy payment at the time provided therefor shall be treated as the failure at such time to deduct and withhold under section 3102 an amount equal to the amount of such qualified wage subsidy payment.
“(c) Eligible Puerto Rico Employee.—For purposes of this section, the term ‘eligible Puerto Rico employee’ means, with respect to any calendar year, any individual who—

“(1) is a citizen of the United States,

“(2) has a social security number issued to the individual by the Social Security Administration, and

“(3) certifies, in such form and manner as provided by the Secretary, to the employer that such individual is a resident of Puerto Rico and intends to remain a resident of Puerto Rico for not less than the next 6 months.

“(d) Qualified Wage Subsidy Payment.—For purposes of this section—

“(1) In general.—The term ‘qualified wage subsidy payment’ means, with respect to any eligible Puerto Rico employee for any period, a payment equal to 50 percent of the excess (if any) of—

“(A) the median hourly wage for Puerto Rico, over

“(B) the hourly wage paid to the eligible Puerto Rico employee.
“(2) Median hourly wage for Puerto Rico.—For purposes of paragraph (1)(A), the median hourly wage for Puerto Rico is—

“(A) $10 for calendar years 2018 and 2019, and

“(B) for any calendar year beginning after 2019, the amount determined by the Bureau of Labor Statistics based on the most recent data available as of 30 days before the start of such calendar year.

“(3) Determination of hourly wage.—For purposes of paragraph (1)(B)—

“(A) In general.—The hourly wage of any employee shall be determined without regard to any qualified wage subsidy payment under this section.

“(B) Period.—Each hour at which an eligible Puerto Rico employee performs services for a different rate of pay shall be treated as a separate period.

“(C) Salaried employees.—In the case of a salaried employee, the hourly wage for such employee for any period shall be determined by dividing the annual rate of pay for such period by 2,080.
“(e) PAYROLL TAXES.—For purposes of this section, the term ‘payroll taxes’ means—

“(1) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

“(2) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes).

“(f) OTHER DEFINITIONS AND SPECIAL RULES.—

For purposes of this section—

“(1) APPLICABLE PERIOD.—For purposes of this section, the term ‘applicable period’ means—

“(A) except as provided in subparagraph (B), a calendar quarter, and

“(B) in the case of any employer which files returns for payroll taxes less frequently than quarterly, such period as determined by the Secretary under regulations.

“(2) WAGE SUBSIDY PAYMENTS IN EXCESS OF PAYROLL TAX LIABILITY.—To the extent that the amount treated as paid under subsection (a) exceeds the amount of such person’s liability for payroll taxes, the Secretary shall credit and refund such excess in the same manner as if it were an overpayment of such taxes.
“(g) Advanced Payments for Certain Participating Employers.—

“(1) In General.—In the case of a participating employer which elects the application of this subsection, the Secretary shall pay to such participating employer, not later than the first day of the applicable period, an amount equal to the excess of—

“(A) the aggregate amount of qualified wage subsidy payments for such applicable period (as determined based on estimates submitted under subsection (b)(2)), exceeds

“(B) the aggregate amount of payroll taxes (determined without regard to any increase in tax under section 3111 by reason of paragraph (2) and based on estimates submitted under subsection (b)(2)) for such applicable period.

“(2) Treatment of Payments.—For purposes of this title, the amount of taxes imposed under section 3111 on any participating employer for any calendar quarter shall be increased by an amount equal to any payment made under paragraph (1) with respect to such calendar quarter.”.

(b) Social Security Trust Funds Held Harmless.—In determining the amount of any amount trans-
ferred or appropriated to any fund under the Social Security Act, section 6433 of the Internal Revenue Code of 1986 shall not be taken into account.

(c) CONFORMING AMENDMENTS.—

(1) Section 1324(b)(2) of title 31, United States Code, is amended by striking “or 6431” and inserting “6431, or 6433”.

(2) The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“Sec. 6433. Wage subsidy for Puerto Rico workers.”.

(d) OTHER PROVISIONS.—

(1) REPORTING OF WAGE SUBSIDY INFORMATION.—Section 6051(a) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting “, and”, and by inserting after paragraph (14) the following new paragraph:

“(15) in the case of an eligible Puerto Rico employee (as defined in section 6433), the amount of any qualified wage subsidy payment paid to such employee.”.

(2) PENALTY FOR FAILURE TO PROVIDE INFORMATION TO EMPLOYEES.—Section 6652 of such
Code is amended by adding at the end the following new subsection:

“(o) **Failure To Report Wage Subsidy Information to Employees.**—In the case of a failure to provide the information required under section 6433(b)(1)(C) at the time required for providing such information, there shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to provide such information, an amount equal to $50 for each such failure. In the case of any failure due to negligence or intentional disregard, the preceding sentence shall be applied by substituting ‘$100’ for ‘$50’.”.

(e) **Effective Date.**—The amendments made by this section shall apply to wages paid after December 31, 2017.