

114TH CONGRESS
2D SESSION

S. 2630

To amend the Fair Labor Standards Act of 1938 to require certain disclosures be included on employee pay stubs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2016

Mr. FRANKEN (for himself and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to require certain disclosures be included on employee pay stubs, 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 “Pay Stub Disclosure
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The lack of a Federal requirement to pro-
9 vide employees with pay stubs indicating how their

1 pay is calculated or to allow employee inspections of
2 employers' payroll records significantly impedes ef-
3 forts to identify and challenge wage and hour viola-
4 tions.

5 (2) In a survey of 4,387 low-wage workers in
6 New York, Los Angeles, and Chicago, more than
7 one-fourth of such workers were paid less than the
8 minimum wage and among those who worked more
9 than 40 hours per week, more than three-fourths
10 were not paid overtime. Fifty-seven percent of these
11 workers reported that they did not receive a pay
12 stub in the previous week.

13 (3) Some employers are increasingly engaging
14 in practices that make it extremely difficult for
15 workers to calculate their pay, including paying
16 workers in cash or by personal checks.

17 (4) While the Fair Labor Standards Act of
18 1938 (29 U.S.C. 201 et seq.) and the regulations of
19 the Department of Labor require employers to keep
20 records of employees' pay, the lack of remedies di-
21 minishes the effectiveness of this requirement.

22 (5) The Supreme Court held in *Anderson v. Mt.*
23 *Clemens Pottery Co.* (328 U.S. 680 (1946)) that
24 where an employer fails to keep records that are re-
25 quired under the Fair Labor Standards Act of 1938,

1 when an employee presents sufficient evidence of the
2 “amount and extent of that work” for which the em-
3 ployee was “improperly compensated”, the burden
4 shifts to the employer to disprove the employee’s tes-
5 timony and evidence of the hours the employee
6 worked and how much he or she was paid.

7 (6) Far too many courts have failed to shift the
8 burden to the employer, where the employer has
9 failed to keep records or has kept inadequate
10 records, instead giving the employer’s testimony
11 equal weight to credible evidence produced by the
12 employee.

13 **SEC. 3. PAY STUB REQUIREMENTS.**

14 (a) DISCLOSURE REQUIREMENTS.—Section 11 of the
15 Fair Labor Standards Act of 1938 (29 U.S.C. 211) is
16 amended by adding at the end the following:

17 “(e) INFORMATION TO BE DISCLOSED TO CERTAIN
18 EMPLOYEES.—

19 “(1) INITIAL DISCLOSURE.—Each employer
20 shall provide an initial disclosure to each employee
21 who is not subject to any exemption set forth in sec-
22 tion 13 within 15 days of the date such employee is
23 hired or any of the information described in sub-
24 paragraphs (A) through (C) changes with respect to
25 that employee. Such disclosure shall include—

1 “(A) the rate or rates of pay and whether
2 the employee is paid by the hour, shift, day,
3 week, or job, or by salary, piece rate, commis-
4 sion, or other form of compensation;

5 “(B) the name of the employer and any
6 other name used by the employer to conduct
7 business; and

8 “(C) the physical address and telephone
9 number of the employer’s main office or prin-
10 cipal place of business, and a mailing address
11 if such mailing address is different from the ad-
12 dress of the main office or principal place of
13 business.

14 “(2) DISCLOSURES REQUIRED IN EACH PAY
15 STUB.—Each employer shall disclose to each em-
16 ployee who is not subject to any exemption set forth
17 in section 13 in a pay stub provided each pay pe-
18 riod—

19 “(A) the pay period covered;

20 “(B) the name of the employee;

21 “(C) the total hours worked by the em-
22 ployee, including the number of hours worked
23 per workweek in the pay period;

24 “(D)(i) in the case of an employee who is
25 paid an hourly wage, the total gross and net

1 wages paid, and the rate of pay for each hour
2 worked;

3 “(ii) in the case of an employee who is
4 paid a salary in lieu of an hourly wage, the
5 amount of salary paid during the pay period;

6 “(iii) in the case of an employee employed
7 at piece rate, the number of piece-rate units
8 earned, the applicable piece rate, and the total
9 amount paid in accordance with such piece rate;
10 and

11 “(iv) in the case of an employee who re-
12 ceives commission or is paid on the basis of any
13 other type of rate, the total amount paid in
14 commission or in accordance with such rate and
15 any additional information relating to such pay
16 as determined by the Secretary;

17 “(E) the number of overtime hours worked
18 during each workweek of the pay period and the
19 hourly rate of pay for each such overtime hour,
20 or, in the case of an employee employed at piece
21 rate, the piece rate paid for each such overtime
22 hour;

23 “(F) any additional compensation paid or
24 benefits provided, including an explanation of
25 each type of compensation or benefit; and

1 “(G) any deductions, with an explanation
2 of each deduction, and any allowances or reim-
3 bursements, with an explanation of each allow-
4 ance or reimbursement.

5 “(3) REQUIREMENTS RELATED TO DISCLOSURE
6 OF COMPENSATION, BENEFITS, ALLOWANCES, AND
7 REIMBURSEMENTS.—In disclosing the information
8 required to be disclosed pursuant to subparagraphs
9 (F) and (G) of paragraph (2)—

10 “(A) the compensation and benefits re-
11 quired to be disclosed include—

12 “(i) any bonus, paid leave (including
13 paid vacation or personal time, paid sick
14 leave, or any other paid leave), or other
15 compensation;

16 “(ii) any employer contributions to
17 health care coverage or to a retirement ac-
18 count for the employee and any transit or
19 other benefits provided by the employer;
20 and

21 “(iii) any additional form of pay that
22 is required under State or local law, or for
23 which records are required to be kept pur-
24 suant to State or local law, such as report-

1 ing time pay, split shift pay, paid sick
2 leave, or paid family or medical leave;

3 “(B) the allowances and reimbursements
4 required to be disclosed include any amounts
5 paid to or reimbursed to an employee for meals,
6 clothing, lodging, or any other item for which
7 the employer makes an allowance or provides a
8 reimbursement; and

9 “(C) the explanation for any additional
10 compensation, benefits, allowances, or reim-
11 bursements shall be itemized and may not be
12 described as ‘miscellaneous’.

13 “(4) FORM OF DISCLOSURE REQUIRED.—The
14 pay stub required by paragraph (2) shall be provided
15 to an employee each pay period and may be pro-
16 vided—

17 “(A) as a separate document, accom-
18 panying an employee’s pay;

19 “(B) as a detachable part of a paycheck
20 for employees receiving a paycheck; or

21 “(C) electronically, at the election of the
22 employee, if the employee receives his or her
23 pay through electronic deposit.”.

24 (b) RECORDKEEPING REQUIREMENTS.—Section 11
25 of such Act (29 U.S.C. 211) is further amended by adding

1 at the end of subsection (c) the following: “An employer
2 shall keep records of the information disclosed in an em-
3 ployee’s pay stub, as required by subsection (e), for a pe-
4 riod of 3 years from the date of issuance of each pay
5 stub.”.

6 (c) INVESTIGATIONS AND INSPECTIONS.—Section 11
7 of such Act (29 U.S.C. 211) is further amended by adding
8 at the end of subsection (a) the following: “In the event
9 that an employee who is not subject to any exemption set
10 forth in section 13 requests an inspection of such employ-
11 ee’s records described in subsection (c), the employer shall
12 provide copies of such records to the employee for a period
13 of not more than 3 years prior to such request. An em-
14 ployer shall comply with such employee’s request to in-
15 spect records within 21 days of such request.”.

16 (d) NOTICE AND POSTING REQUIREMENT.—Section
17 11 of such Act (29 U.S.C. 211) is further amended by
18 inserting after subsection (e) (as added by subsection (a))
19 the following:

20 “(f)(1) Every employer subject to any provision of
21 this Act or of any order issued under this Act shall pro-
22 vide, to each employee who is not subject to any exemption
23 set forth in section 13, a notice that includes—

1 “(A) a description of the employee’s right to re-
2 ceive a pay stub and the information which the pay
3 stub must contain;

4 “(B) the address and telephone number for the
5 applicable local office of the Department of Labor;
6 and

7 “(C) such additional information as the Sec-
8 retary shall require by regulation.

9 “(2) An employer shall provide an employee described
10 in paragraph (1) with the notice required under such para-
11 graph—

12 “(A) within 15 days of the date of hire, except
13 as provided in subparagraph (B); and

14 “(B) in the case of employee employed by an
15 employer on the date of enactment of the Pay Stub
16 Disclosure Act, within 15 days of the effective date
17 of such Act.”.

18 (e) CONFORMING AMENDMENT.—The section head-
19 ing of section 11 of such Act is amended by inserting
20 “**PAY STUB DISCLOSURES,**” after “**RECORDS,**”.

21 **SEC. 4. ENFORCEMENT.**

22 (a) IN GENERAL.—Section 16 of the Fair Labor
23 Standards Act of 1938 (29 U.S.C. 216) is further amend-
24 ed—

25 (1) in subsection (b)—

1 (A) by inserting after the second sentence
2 the following: “An employer who violates sub-
3 section (e) or (f) of section 11 shall be liable to
4 the affected employee for \$50 for the initial pay
5 period in which such a violation occurs and
6 \$100 per employee for each violation in a sub-
7 sequent pay period, not to exceed an aggregate
8 of \$4,000 per employee.”; and

9 (B) by striking “either of the preceding
10 sentences” and inserting “any of the preceding
11 sentences”;

12 (2) in subsection (e)—

13 (A) by redesignating paragraphs (3)
14 through (5) as paragraphs (4) through (6), re-
15 spectively; and

16 (B) by inserting after paragraph (2) the
17 following:

18 “(3) An employer who fails to make, keep, and pre-
19 serve records as required by section 11(c), or fails to per-
20 mit a current or former employee to inspect or copy
21 records as required by section 11(a), shall be subject to
22 a civil penalty of \$750 per violation.”; and

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

24 “(f) The Secretary shall have the authority to periodi-
25 cally increase, in accordance with inflation, the amounts

1 provided for in this section as penalties or recoverable in
2 an action described in subsection (b).”.

3 (b) EVIDENTIARY STANDARDS.—Section 15 of such
4 Act (29 U.S.C. 215) is amended by adding at the end the
5 following:

6 “(c) In the event that an employer fails to keep suffi-
7 cient records as required by section 11(c) and any related
8 regulations, the employee’s production of credible evidence
9 and testimony regarding the amount and extent of the
10 work for which the employee was improperly compensated
11 shall be sufficient to create a rebuttable presumption that
12 the employee’s records are accurate, consistent with the
13 Supreme Court’s decision in *Anderson v. Mt. Clemens*
14 *Pottery Co.* (328 U.S. 680 (1946)).”.

15 **SEC. 5. DEFINITIONS.**

16 Section 3 of the Fair Labor Standards Act of 1938
17 (29 U.S.C. 203) is amended by adding at the end the fol-
18 lowing:

19 “(z) ‘Pay stub’ means a paper that itemizes in writ-
20 ing all wages and deductions paid to an employee each
21 pay period.”.

22 **SEC. 6. REGULATIONS AND TECHNICAL ASSISTANCE.**

23 (a) REGULATIONS.—Not later than 1 year after the
24 date of enactment of this Act, the Secretary of Labor shall

1 prescribe such regulations as are necessary to carry out
2 this Act, including a list of State and local laws—

3 (1) with requirements that are substantially
4 similar to the requirements of this Act and the
5 amendments made by this Act; and

6 (2) compliance with which the Secretary may
7 determine satisfies the requirements of this Act and
8 the amendments made by this Act.

9 (b) **GUIDANCE AND TECHNICAL ASSISTANCE.**—In
10 order to achieve the objectives of this Act, the Secretary
11 of Labor—

12 (1) acting through the Administrator of the
13 Wage and Hour Division of the Department of
14 Labor, shall issue guidance on compliance with this
15 Act regarding providing the disclosures required
16 pursuant to this Act and the amendments made by
17 this Act; and

18 (2) shall provide technical assistance to employ-
19 ers, labor organizations, professional associations,
20 and other interested persons on means of achieving
21 and maintaining compliance with the provisions of
22 this Act and the amendments made by this Act.

23 **SEC. 7. EFFECTIVE DATE.**

24 The amendments made by this Act shall take effect
25 on the earlier of—

1 (1) the date that is 6 months after the date on
2 which final regulations are issued by the Secretary
3 of Labor under section 6(a); and

4 (2) the date that is 18 months after the date
5 of enactment of this Act.

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