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H. R. 7341

To provide support and flexibility for the Federal workforce during the COVID–19 pandemic, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2020

Mr. CONNOLLY (for himself, Mrs. CAROLYN B. MALONEY of New York, Ms. NORTON, Mr. SARBANES, Mrs. LAWRENCE, Mr. LYNCH, Mr. RASKIN, Mr. GOMEZ, and Ms. SPEIER) introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committees on House Administration, the Judiciary, Ways and Means, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide support and flexibility for the Federal workforce during the COVID–19 pandemic, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Workforce Health and Safety During the Pandemic Act''.

SEC. 2. REIMBURSEMENT FOR CHILD AND FAMILY CARE FOR FEDERAL EMPLOYEES DURING COVID–19 PANDEMIC.

(a) IN GENERAL.—During the period beginning on the date of enactment of this Act and ending on December 31, 2020, any employee who is unable to care for a dependent child of the employee or a relative of the employee who has COVID–19 as a result of the employee being required to report to their duty station (either permanent or temporary) or to telework shall be entitled to reimbursement for the costs of such care.

(b) APPLICATION.—

(1) IN GENERAL.—Any payment provided by operation of subsection (a) shall be paid on a monthly basis, with payments being made to the employee on the last day of each month.

(2) SUBMISSION OF RECEIPTS.—For purposes of determining reimbursement amounts, each employee shall submit to their employing office receipts or other documents as the office may require.

(3) LIMIT.—Reimbursement may not be paid to any employee under this section for any month in an amount greater than $2,000 per child or relative.

(c) DEFINITIONS.—In this section—

(1) the term ''employee'' means—

(A) an employee of the Library of Congress;

(B) an employee of the Government Accountability Office;

(C) a covered employee as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), other than an applicant for employment;

(D) a covered employee as defined in section 411(c) of title 3, United States Code;

(E) a Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code; or

(F) any other individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code); and

(2) the terms ''dependent child'' and ''relative'' have the meaning given those terms in paragraphs (2) and (16), respectively, of section 109 of the Ethics in Government Act of 1978 (5 U.S.C. App.).

SEC. 3. REQUIREMENT TO TELEWORK.

(a) IN GENERAL.—Effective immediately upon the date of enactment of this Act, the head of any Federal agency shall require any employee of such agency who is

authorized to telework under chapter 65 of title 5, United States Code, or any other provision of law, to telework during the period beginning on the date of enactment of this Act and ending on December 31, 2020.

(b) DEFINITIONS.—In this section—

(1) the term ''employee'' has the meaning given that term in section 2(c)(1); and

(2) the term ''telework'' has the meaning given that term in section 6501(3) of title 5, United States Code.

SEC. 4. WEATHER AND SAFETY LEAVE FOR COVID–19.

(a) WEATHER AND SAFETY LEAVE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, including subsection (b) of section 6329c of title 5, United States Code, during the period beginning on the date of enactment of this Act and ending on December 31, 2020, any employee who is prevented from safely traveling to or performing work at an approved location as a result of the COVID–19 pandemic, or who is prevented from performing work in order to care for a child, relative of the employee, or other individual as a result of the COVID–19 pandemic, shall be provided weather and safety leave under such section.

(2) RULE OF CONSTRUCTION.—Notwithstanding subparagraph (B) of subsection (a)(2)(B) of such section 6329c, intermittent employees described in such subparagraph shall be eligible for the leave provided by paragraph (1) of this subsection.

(3) DEFINITION OF EMPLOYEE.—In this subsection, the term ''employee'' has the meaning given that term in section 2(c)(1).

(b) APPROVED LOCATION.—Section 6329c(a) of title 5, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(3) by adding at the end the following:

''(3) the term 'approved location' means any location at which an employee has been approved to perform work, including any Federal office, a teleworking site, or other location as determined by the head of the agency at which the employee is employed.''.

SEC. 5. EFFECT OF DEPENDENT CARE ON TELEWORK ELIGIBILITY.

(a) TITLE 5 EMPLOYEES.—Section 6502(a) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(3) DEPENDENT CARE.—

"(A) IN GENERAL.—The presence of a dependent individual at the location from which an employee teleworks shall have no effect on the eligibility of such employee to telework if such dependent individual is cared for by a caregiver other than such employee while such employee is teleworking.

"(B) TEMPORARY UNAVAILABILITY OF CAREGIVER.—The temporary unavailability of a caregiver described in subparagraph (A) does not affect the eligibility of the relevant employee to telework if—

"(i) such unavailability is due to unusual or extraordinary circumstances; and

"(ii) an alternative caregiver is not reasonably available.

"(C) DEPENDENT INDIVIDUAL DEFINED.—In this paragraph, the term 'dependent individual' means a dependent child or relative (as such terms are defined in paragraphs

(2) and (16), respectively, of section 109 of the Ethics in Government Act of 1978 (5 U.S.C. App.)) who is dependent on the employee for care.''.

(b) OTHER APPLICABLE EMPLOYEES.—With respect to any employee not covered under chapter 65 of title 5, United States Code, the terms and conditions with respect to dependent care and teleworking under section 6502(a)(3) of such title (as added by subsection (a)) shall apply. In this subsection, the term ''employee'' has the meaning given that term under section 2(c)(1), but does not include an employee as defined in section 6501(1) of such title.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall alter or otherwise affect the rights, remedies, and procedures related to dependent care under the terms of any collective bargaining agreement.

SEC. 6. PRESUMPTION OF ELIGIBILITY FOR WORKERS' COMPENSATION BENEFITS FOR FEDERAL EMPLOYEES DIAGNOSED WITH CORONAVIRUS.

(a) IN GENERAL.—An employee who is diagnosed with COVID–19 during the period described in subsection (b)(2)(A) shall, with respect to any claim made by or on behalf of the employee for benefits under subchapter I of

chapter 81 of title 5, United States Code, be deemed to have an injury proximately caused by exposure to coronavirus arising out of the nature of the employee's employment and be presumptively entitled to such benefits, including disability compensation, medical services, and survivor benefits.

(b) DEFINITIONS.—In this section—

(1) the term ''coronavirus'' means SARS–CoV–2 or another coronavirus with pandemic potential; and

(2) the term ''employee''—

(A) means an employee as that term is defined in section 8101(1) of title 5, United States Code, (including an employee of the United States Postal Service, the Transportation Security Administration, or the Department of Veterans Affairs, including any individual appointed under chapter 73 or 74 of title 38, United States Code) employed in the Federal service at anytime during the period beginning on January 27, 2020, and ending on January 30, 2022—

(i) who carried out duties requiring contact with patients, members of the public, or co-workers; or

(ii) whose duties include a risk of exposure to the coronavirus; and

(B) does not include any employee otherwise covered by subparagraph (A) who is teleworking on a full-time basis during all of such period.

SEC. 7. PANDEMIC DUTY DIFFERENTIAL.

(a) DEFINITIONS.—In this section—

(1) the term ''agency''—

(A) means—

(i) each agency, office, or other establishment in the executive, legislative, or judicial branch of the Federal Government, including—

(I) an Executive agency, as that term is defined in section 105 of title 5, United States Code;

(II) a military department, as that term is defined in section 102 of title 5, United States Code;

(III) the Federal Aviation Administration;

(IV) the Transportation Security Administration;

(V) the Department of Veterans Affairs;

(VI) the United States Postal Service and the Postal Regulatory Commission; and

(VII) the Government Accountability Office;

(ii) the District of Columbia courts and the District of Columbia Public Defender Service; and

(iii)(I) an Indian tribe or tribal organization carrying out a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.);

(II) an Indian tribe or tribal organization that receives a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.); and

(III) an urban Indian organization that receives a grant or carries out a contract under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.); and

(B) does not include a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces;

(2) the term ''covered duty''—

(A) means duty that requires—

(i) an employee to have regular or routine contact with the public; or

(ii) the reporting of an employee to a worksite at which—

(I) social distancing is not possible, consistent with the regularly assigned duties of the position of the employee; and

(II) other preventative measures with respect to COVID–19 are not available; and

(B) does not include duty that an employee performs while teleworking from a residence;

(3) the term ''covered period'' means the period beginning on the date on which the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d) with respect to COVID–19 and ending on the date that is 60 days

after the date on which that public health emergency terminates;

(4) the term ''employee''—

(A) means an employee of an agency;

(B) includes—

(i) any employee of an agency who occupies a position within the General Schedule under subchapter III of chapter 53 of title 5, United States Code;

(ii) any employee of an agency whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose;

(iii) an official or employee of an Indian tribe, tribal organization, or urban Indian organization described in paragraph (1)(A)(iii);

(iv) each employee of the Department of Veterans Affairs, including an employee appointed under chapter 74 of title 38, United States Code, without regard to whether section 7421(a) of that title, sec-

tion 7425(b) of that title, or any other provision of chapter 74 of that title is inconsistent with that inclusion; and

(v) any other individual occupying a position in the civil service, as that term is defined in section 2101 of title 5, United States Code; and

(C) does not include—

(i) a member of the uniformed services, as that term is defined in section 2101 of title 5, United States Code;

(ii) an employee of an agency who occupies a position within the Executive Schedule under any of sections 5312 through 5316 of title 5, United States Code;

(iii) an individual in a Senior Executive Service position, unless the individual is a career appointee, as those terms are defined in section 3132(a) of title 5, United States Code;

(iv) an individual serving in a position of a confidential or policy-determining character under Schedule C of subpart C

of part 213 of title 5, Code of Federal Regulations, or any successor regulations;

(v) a member of the Senate or House of Representatives, a Delegate to the House of Representatives, or the Resident Commissioner from Puerto Rico; or

(vi) an employee of the personal office of an individual described in clause (v), of a leadership office of the Senate or the House of Representatives, of a committee of the Senate or the House of Representatives, or of a joint committee of Congress; and

(5) the term ''employer payroll taxes'' means—

(A) taxes imposed under sections 3111(b), 3221(a) (but only to the extent attributable to the portion of such tax attributable to the tax imposed by section 3111(b)), 3221(b), and 3301 of the Internal Revenue Code of 1986; and

(B) taxes imposed by a State or local government on an employer with respect to amounts paid by such employer for work by employees.

(b) PANDEMIC DUTY DIFFERENTIAL.—

(1) IN GENERAL.—There is established a schedule of pay differentials for covered duty as follows:

(A) An employee is entitled to pay for that covered duty at the rate of basic pay, which includes any differential or other premium pay paid for regularly scheduled work of the employee other than the differential established under this section, of the employee plus premium pay of $13 per hour.

(B) The total amount of premium pay paid to an employee under subparagraph (A) shall be—

(i) with respect to an employee whose annual rate of basic pay is less than $200,000, not more than $10,000 reduced by employer payroll taxes with respect to such premium pay; and

(ii) with respect to an employee whose annual rate of basic pay is not less than $200,000, not more than $5,000 reduced by employer payroll taxes with respect to such premium pay.

(2) PAY.—

(A) IN GENERAL.—With respect to the covered period, an employee is entitled to be

paid the applicable differential established under paragraph (1) for any period, including any period during the covered period that precedes the date of enactment of this Act, in which the employee is carrying out covered duty, subject to the applicable limitations under that paragraph.

(B) RETROACTIVE PAYMENT.—With respect to a payment earned by an employee under this subsection for a period during the covered period that precedes the date of enactment of this Act, the employee shall be paid that payment in a lump sum payment as soon as is practicable after that date of enactment.

(3) GUIDANCE AND REGULATIONS.—

(A) EXECUTIVE BRANCH.—

(i) IN GENERAL.—The Office of Personnel Management shall develop criteria for agencies in the executive branch of the Federal Government regarding the means by which to determine the eligibility of an employee in such an agency for the pay differential established under this subsection, which shall—

(I) be based on—

(aa) the duties performed by the employee;

(bb) the setting in which the employee performs the duties described in item (aa); and

(cc) the interactions with the public required in order for the employee to perform the duties described in item (aa); and

(II) apply equally to all such agencies.

(ii) REGULATIONS.—The Office of Personnel Management may prescribe regulations implementing the pay differential under this subsection with respect to employees in the executive branch of the Federal Government.

(B) OTHER BRANCHES, CERTAIN DC EMPLOYEES, AND CERTAIN TRIBAL OFFICIALS.—

(i) IN GENERAL.—The employing authority for each agency that is not in the executive branch of the Federal Government—

(I) shall develop criteria regarding the means by which to determine

the eligibility of an employee in such an agency for the pay differential established under this subsection; and

(II) may prescribe regulations implementing the pay differential under this subsection with respect to employees in the applicable agency.

(ii) CONSISTENCY WITH OPM GUIDANCE AND REGULATIONS.—Any criteria developed, and regulations prescribed, by an agency under clause (i) shall, to the extent practicable, be comparable to any criteria developed and regulations prescribed by the Office of Personnel Management under subparagraph (A).

(c) LIMITATION ON PREMIUM PAY.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 5547 of title 5, United States Code, or a provision of any other Federal, State, or Tribal law that imposes a limitation on the amount of premium pay (including any premium pay paid under subsection (b) and any overtime pay paid for covered duty) that may be payable to an employee, an employee may be paid such premium pay to the extent that the payment does not cause the aggre-

gate of basic pay and such premium pay for service performed in that calendar year by that employee to exceed the annual rate of basic pay payable for level II of the Executive Schedule, as of the end of the calendar year.

(2) APPLICABILITY OF AGGREGATE LIMITATION ON PAY.—In determining whether a payment to an employee is subject to the limitation under section 5307(a) of title 5, United States Code, a payment described in paragraph (1) shall not apply.

(3) APPLICABILITY OF CARES ACT.—The authority provided under this subsection shall be considered to be in addition to, and not a replacement for, the authority provided under section 18110 of title VIII of the CARES Act (Public Law 116–136).

(4) RETROACTIVE EFFECT.—This subsection shall take effect as if enacted on the date on which the covered period began.

(d) APPROPRIATION.—

(1) APPROPRIATION.—There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, $10,000,000,000, to remain available until expended, for the offices and agencies described in paragraph (2) to carry out subsections

(b) and (c) and to make transfers authorized under paragraph (3) of this subsection.

(2) OFFICES AND AGENCIES.—The offices and agencies described in this paragraph are—

(A) the Office of the Sergeant at Arms and Doorkeeper of the Senate;

(B) the Office of the Clerk of the House of Representatives;

(C) the Office of the Sergeant at Arms of the House of Representatives;

(D) the Office of the Chief Administrative Officer of the House of Representatives;

(E) the Office of the Attending Physician;

(F) the Capitol Police;

(G) the Office of the Architect of the Capitol;

(H) the Library of Congress;

(I) the Government Publishing Office;

(J) the Government Accountability Office;

(K) the Office of Personnel Management;

(L) the Administrative Office of the United States Courts;

(M) the District of Columbia Courts; and

(N) the District of Columbia Public Defender Service.

(3) TRANSFER AUTHORITY.—

(A) OPM.—The Office of Personnel Management may transfer funds made available under this subsection to other Federal agencies within the executive branch to reimburse such agencies for costs incurred to implement this section.

(B) AOUSC.—The Administrative Office of the United States Courts may transfer funds made available under this subsection to other entities within the judicial branch to reimburse the entities for costs incurred to implement this section.

(e) COORDINATION WITH OTHER BENEFITS.—

(1) DISREGARD FOR PURPOSES OF FEDERAL AND STATE PROGRAMS.—Any payment provided under this section shall not be regarded as income and shall not be regarded as a resource for the month of receipt and the following 12 months, for purposes of determining the eligibility of the recipient (or the recipient's spouse or family) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(2) AMOUNTS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF PREMIUM TAX CREDIT.—

(A) IN GENERAL.—For purposes of determining modified adjusted gross income under section 36B(d)(2)(B) of the Internal Revenue Code of 1986, adjusted gross income shall be reduced by any amounts received by reason of subsection (b).

(B) EXCEPTION.—Subparagraph (A) shall not apply to the extent such reduction results in an amount of household income (as defined in section 36B(d)(2)(A) of such Code) of a taxpayer that is less than 100 percent of the poverty line (as defined in section 36B(d)(3) of such Code) for a family of the size involved (as determined under the rules of section 36B(d)(1) of such Code).

(C) REPORTING.—

(i) IN GENERAL.—Any employer that makes an applicable payment during a calendar year shall include as a separately stated item on any written statement required under section 6051 of the Internal Revenue Code of 1986 or any return or statement required by the Secretary of the

Treasury (or the Secretary's delegate) with respect to nonemployee compensation the aggregate amount of each type of applicable payments so made.

(ii) APPLICABLE PAYMENTS.—For purposes of this subparagraph, the term ''applicable payments'' means amounts paid by reason of subsection (b).

(3) EMPLOYMENT TAX TREATMENT FOR AMOUNTS PAID THROUGH GRANTS.—

(A) IN GENERAL.—For purposes of section 3111(a) of the Internal Revenue Code of 1986, any amounts required to be paid by reason of this section shall not be considered wages.

(B) RAILROAD RETIREMENT TAXES.—For purposes of section 3221(a) of the Internal Revenue Code of 1986, the amount of tax imposed under such section for any calendar year in which an employer is required to pay amounts under this section shall be equal to the sum of—

(i) the product of the rate in effect under section 3111(a) of such Code and the compensation (reduced by any amounts required to be paid by reason of this sec-

tion) paid during any calendar year by such employer for services rendered to such employer; and

(ii) the product of the rate in effect under section 3111(b) of such Code and the compensation paid during any calendar year by such employer for services rendered to such employer.

(C) SELF-EMPLOYED INDIVIDUALS.—

(i) IN GENERAL.—In the case of the tax imposed by section 1401(a) of the Internal Revenue Code of 1986, the self-employment income for any taxable year in which the individual received a payment required to be made under this section shall be reduced by 50 percent of the amount of payments so made.

(ii) REGULATORY AUTHORITY.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe regulations or other guidance for the application of sections 164(f) and 1402(a)(12) of the Internal Revenue Code of 1986 with respect to amounts to which clause (i) applies.

(D) TRANSFERS TO TRUST FUNDS.—There are hereby appropriated to the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this paragraph (without regard to this subparagraph). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this subsection not been enacted.

(f) CLARIFICATION OF COORDINATION WITH OTHER LAWS.—

(1) ESSENTIAL WORKERS RIGHTS AND BENEFITS.—Nothing in this section shall be construed to allow noncompliance with or in any way to diminish, and shall instead be construed to be in addition to,

the rights or benefits that an essential worker is entitled to under any—

(A) Federal, State, or local law, including regulation;

(B) collective bargaining agreement; or

(C) employer policy.

(2) TITLE 5.—Nothing in this section shall be construed to affect the application of the provisions of sections 5343 or 5545 of title 5, United States Code, with respect to pay differentials for duty involving unusual physical hardship or hazard, or environmental differentials.

(g) APPLICABILITY OF FAIR LABOR STANDARDS ACT OF 1938 TO SOVEREIGN TRIBAL EMPLOYERS.—

(1) IN GENERAL.—The receipt of any funds under subsection (b), (c), or (d) by a sovereign Tribal employer shall not expand, constrict, or alter the application of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to such sovereign Tribal employer.

(2) DEFINITIONS.—In this subsection—

(A) the term ''Tribal employer'' means—

(i) any Tribal government, a subdivision of a Tribal government (determined in accordance with section 7871(d) of the In-

ternal Revenue Code), or an agency or instrumentality of a Tribal government or subdivision thereof;

(ii) any Tribal organization (as the term ''tribal organization'' is defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l));

(iii) any corporation if more than 50 percent (determined by vote and value) of the outstanding stock of such corporation is owned, directly or indirectly, by any entity described in subparagraph (A) or (B); or

(iv) any partnership if more than 50 percent of the value of the capital and profits interests of such partnership is owned, directly or indirectly, by any entity described in subparagraph (A) or (B); and

(B) the term ''Trival government'' means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation individually identified (including parenthetically) in the list published most

recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

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