

103^D CONGRESS
2^D SESSION

S. 2504

To extend the protections of Federal labor and civil rights laws to part-time, temporary, and leased employees, independent contractors, and other contingent workers, and to ensure equitable treatment of such workers.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5 (legislative day, SEPTEMBER 12), 1994

Mr. METZENBAUM (for himself and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To extend the protections of Federal labor and civil rights laws to part-time, temporary, and leased employees, independent contractors, and other contingent workers, and to ensure equitable treatment of such workers.

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 “Contingent Workforce
5 Equity Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) the number of part-time, temporary, leased,
2 and other contingent workers is increasing in num-
3 bers and as a percentage of the workforce as a
4 whole;

5 (2) Federal personnel practices have contrib-
6 uted to the increasing use of contingent workers;

7 (3) on average, contingent workers earn sub-
8 stantially less than full-time workers and are less
9 likely to receive employer-provided health, pension,
10 or other basic benefits;

11 (4) many contingent workers are excluded from
12 coverage under State unemployment insurance laws;

13 (5) many contingent workers are excluded from
14 the basic worker protections of Federal labor and
15 civil rights laws;

16 (6) many employers misclassify their employees
17 as independent contractors to avoid the require-
18 ments of social security, unemployment insurance,
19 workers' compensation, and other laws; and

20 (7) contingent workers are entitled to fair
21 wages and benefits, protections under Federal labor
22 and civil rights laws, and coverage under State un-
23 employment insurance laws, where feasible.

24 (b) PURPOSES.—The purposes of this Act are to—

1 (1) discourage employers from replacing full-
2 time positions with part-time, temporary, or other
3 contingent positions as a means of lowering labor
4 costs or avoiding the requirements of Federal or
5 State employment or employment-related laws;

6 (2) extend the protections of Federal labor and
7 civil rights laws to contingent workers; and

8 (3) extend coverage under State unemployment
9 insurance laws to contingent workers, where feasible.

10 **TITLE I—WORKER PROTECTIONS**

11 **SEC. 101. MINIMUM WAGE.**

12 Section 6(a)(1) of the Fair Labor Standards Act of
13 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

14 “(1) except as otherwise provided in this sec-
15 tion—

16 “(A) not less than—

17 “(i) \$4.25 an hour during the period
18 ending on December 31, 1994;

19 “(ii) \$4.85 an hour during the year
20 beginning on January 1, 1995;

21 “(iii) \$5.55 an hour during the year
22 beginning January 1, 1996;

23 “(iv) \$6.20 an hour during the year
24 beginning January 1, 1997; and

1 “(v) \$6.75 an hour during the year
2 beginning January 1, 1998; and

3 “(B) with respect to the year beginning on
4 January 1, 1999, and each such succeeding
5 year, not less than the amount applicable under
6 clause (v) of subparagraph adjusted on October
7 1 of the previous year to equal 50 percent of
8 the monthly average hourly earnings for non-
9 farm, nonsupervisory private workers for the
10 preceding 12 months, as determined by the Bu-
11 reau of Labor Statistics, rounded to the nearest
12 multiple of \$0.05, except that any amount de-
13 termined under this subparagraph shall not be
14 less than the amount applicable under this
15 paragraph for the preceding year;”.

16 **SEC. 102. EQUAL PAY.**

17 Section 6 of the Fair Labor Standards Act (29
18 U.S.C. 206) is amended by adding at the end thereof the
19 following:

20 “(g)(1) No employer having employees subject to any
21 provisions of this section shall discriminate, within any es-
22 tablishment in which such employees are employed, be-
23 tween employees on the basis of employment status by
24 paying wages to part-time or temporary employees in such
25 establishment at a rate less than the rate at which the

1 employer pays wages to full-time employees in such estab-
2 lishment for equal work on jobs the performance of which
3 requires equal skill, effort, and responsibility, and which
4 are performed under similar working conditions, except
5 where such payment is made pursuant to—

6 “(A) a seniority system;

7 “(B) a merit system;

8 “(C) a system that measures earnings by quan-
9 tity or quality of production; or

10 “(D) a differential based on any other factor
11 other than employment status.

12 An employer who is paying a wage rate differential in vio-
13 lation of this subsection shall not, in order to comply with
14 the provisions of this subsection, reduce the wage rate of
15 any employee.

16 “(2) No labor organization, or its agents, represent-
17 ing employees of an employer having employees subject to
18 any provisions of this section shall cause or attempt to
19 cause such an employer to discriminate against an em-
20 ployee in violation of paragraph (1).

21 “(3) For purposes of administration and enforce-
22 ment, any amounts owing to any employee that have been
23 withheld in violation of this subsection shall be deemed
24 to be unpaid minimum wages or unpaid overtime com-
25 pensation under this Act.

1 “(4) As used in this subsection, the term ‘labor orga-
2 nization’ means any organization of any kind, or any agen-
3 cy or employee representation committee or plan, in which
4 employees participate and which exists for the purpose,
5 in whole or in part, of dealing with employers concerning
6 grievances, labor disputes, wages, rates of pay, hours of
7 employment, or conditions of work.”.

8 **SEC. 103. CIVIL RIGHTS.**

9 Section 1977(a) of the Revised Statutes (42 U.S.C.
10 1981(a)) is amended to read as follows:

11 “(a)(1) All persons within the jurisdiction of the
12 United States shall have the right in every State and Ter-
13 ritory—

14 “(A) to make and enforce contracts free from
15 unlawful discrimination based on race, color, reli-
16 gion, sex, national origin, age, or disability; and

17 “(B) to sue, be parties, give evidence, and to be
18 subject to punishment, pains, penalties, taxes, li-
19 censes, and exactions, free from such unlawful dis-
20 crimination.

21 “(2) For purposes of determining the existence of un-
22 lawful discrimination under paragraph (1)—

23 “(A) in the case of a claim of unlawful discrimi-
24 nation based on race, color, religion, sex, or national
25 origin, the same legal standards shall apply as are

1 applicable under title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 20000e et seq.);

3 “(B) in the case of a claim of unlawful discrimi-
4 nation based on age, the same legal standards shall
5 apply as are applicable under the Age Discrimina-
6 tion in Employment Act of 1967 (29 U.S.C. 621 et
7 seq.); and

8 “(C) in the case of a claim of unlawful discrimi-
9 nation based on disability, the same legal standards
10 shall apply as are applicable under the Americans
11 with Disabilities Act (42 U.S.C. 12101 et seq.).”

12 **SEC. 104. COLLECTIVE BARGAINING RIGHTS.**

13 (a) DETERMINATION OF BARGAINING UNITS.—Sec-
14 tion 9(b) of the National Labor Relations Act (29 U.S.C.
15 159(b)) is amended—

16 (1) by striking “; or (2)” and inserting “or”;
17 and

18 (2) by striking “or (3)” and inserting “; (3) de-
19 cide that an employee shall be excluded from a unit
20 otherwise appropriate for the purposes of collective
21 bargaining based on the employee’s part-time or
22 temporary status, if such employee (A) has a reason-
23 able expectation of continued employment; and (B)
24 is employed by the employer on the date on which
25 eligibility for participation in a representation elec-

1 tion is determined and on the date of the election;
2 or (4)''.

3 (b) JOINT EMPLOYER STATUS.—Section 2(3) of the
4 National Labor Relations Act (29 U.S.C. 152(3)) is
5 amended by adding at the end thereof the following: “An
6 individual employed by a contractor of an employer shall
7 be considered an employee of the employer if the individual
8 is assigned on a regular basis to perform work on the
9 premises of the employer, and the tasks performed by such
10 individual are functionally integrated with the operations
11 of the employer.”.

12 **SEC. 105. OCCUPATIONAL SAFETY AND HEALTH.**

13 Section 5(a)(1) of the Occupational Safety and
14 Health Act (29 U.S.C. 654(a)(1)) is amended to read as
15 follows:

16 “(1) shall furnish employment and a place of
17 employment that are free from recognized hazards
18 that are causing or are likely to cause death or seri-
19 ous physical harm to the employees of the employer
20 or to individuals who are employed by another em-
21 ployer and are performing services at such place of
22 employment;”.

1 **SEC. 106. ADVANCE NOTICE OF LAYOFFS AND PLANT CLOS-**
2 **INGS.**

3 Section 2 of the Worker Adjustment and Retraining
4 Notification Act (29 U.S.C. 2101 et seq.) is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1), to read as follows:

7 “(1) the term ‘employer’ means any business
8 enterprise that employs 100 or more employees;”;

9 (B) in paragraph (2), by striking “exclud-
10 ing any part-time employees”;

11 (C) in paragraph (3), by striking “(exclud-
12 ing any part-time employees)” each place such
13 term appears; and

14 (D) by striking paragraph (8); and

15 (2) in subsection (b)(1), by striking “(other
16 than a part-time employee)”.

17 **SEC. 107. CONTINGENT WORKFORCE SURVEY.**

18 The Secretary of Labor, acting through the Commis-
19 sioner of the Bureau of Labor Statistics, shall establish
20 and carry out an annual survey identifying—

21 (1) the characteristics of temporary workers in
22 the United States;

23 (2) the relationship between such workers and
24 the establishments at which such workers are tempo-
25 rarily employed; and

1 (3) where appropriate, the relationship between
2 such workers and their permanent employers.

3 **SEC. 108. FEDERAL SERVICE CONTRACT SUCCESSORSHIP.**

4 Section 4(c) of the Service Contract Act of 1965 (41
5 U.S.C. 353(c)) is amended—

6 (1) by striking “(c) No” and inserting “(c)(1)
7 No”; and

8 (2) by adding at the end the following new
9 paragraphs:

10 “(2)(A) Except as provided in subparagraph (B), a
11 contractor under a successor contract (under which sub-
12 stantially the same services are performed) shall, in good
13 faith, provide a right of first refusal of employment under
14 that contract to each employee employed under the prede-
15 cessor contract. If, under the successor contract, the num-
16 ber of employees to be employed is less than the number
17 of employees employed under the predecessor contract, the
18 contractor shall provide such right to the employees on
19 the basis of seniority.

20 “(B) Notwithstanding the requirements of subpara-
21 graph (A), a contractor shall not be required to provide
22 a right of first refusal of employment to an employee em-
23 ployed under the predecessor contract if—

24 “(i) the contractor reasonably believes, based on
25 the past performance of the employee under the

1 predecessor contract, that the employee is unable to
2 perform the work suitably under the successor con-
3 tract; or

4 “(ii) if such action would require the contractor
5 to lay off or discharge an employee who has worked
6 continuously for the contractor for not less than the
7 60-day period immediately preceding the commence-
8 ment of the successor contract.

9 “(C) A contractor satisfies the requirement under
10 subparagraph (A) to provide employees under the prede-
11 cessor contract with a right of first refusal of employment
12 under a successor contract on the basis of seniority if the
13 contractor provides such right first to the most senior em-
14 ployees and then to the other employees on the basis of
15 descending order of seniority until all of the positions of
16 employment are filled or all employees under the prede-
17 cessor contract have exercised the right, whichever occurs
18 first. Seniority shall be determined on the basis of length
19 of service under the predecessor contract and each con-
20 tract, if any, that preceded the predecessor contract.

21 “(D) In subparagraph (A), the term ‘contractor’,
22 with respect to a successor contract, includes a sub-
23 contractor performing the obligations of the contractor
24 under such contract.

1 “(3) The Secretary shall issue an order against any
2 contractor or subcontractor under a successor contract
3 who fails to hire an individual in accordance with this sub-
4 section. The order shall require the contractor or sub-
5 contractor to hire any individual whom the contractor or
6 subcontractor has unlawfully failed to hire and to com-
7 pensate the individual for any wages and fringe benefits
8 that the individual would have received if the individual
9 would have been hired by the contractor or subcontractor.
10 Any amount that the Secretary determines is owed to an
11 individual by a contractor or subcontractor under this
12 paragraph may be withheld from any accrued payment
13 due on the successor contract or any other contract be-
14 tween the contractor and the Federal Government.

15 “(5)(A) This subsection shall not apply to contracts
16 awarded pursuant to the Javits-Wagner-O’Day Act, or
17 under which services are provided to the Federal Govern-
18 ment on an intermittent basis.

19 “(B) In subparagraph (A), the term ‘Javits-Wagner-
20 O’Day Act’ means the Act entitled ‘An Act to create a
21 Committee on Purchases of Blind-made Products, and for
22 other purposes’, approved June 25, 1938 (41 U.S.C. 46-
23 48c), commonly referred to as the Wagner-O’Day Act,
24 that was revised and reenacted in the Act of June 23,

1 1971 (85 Stat. 77), commonly referred to as the Javits-
2 Wagner-O'Day Act.”.

3 **TITLE II—EMPLOYEE BENEFITS**

4 **SEC. 201. FAMILY AND MEDICAL LEAVE.**

5 Section 101(2)(A) of the Family and Medical Leave
6 Act (29 U.S.C. 2611(2)(A)) is amended—

7 (1) by striking “at least 12 months” and insert-
8 ing “at least 3 months”; and

9 (2) by striking “at least 1,250 hours of service
10 with such employer during the previous 12-month
11 period” and inserting “at least 125 hours of service
12 with such employer during the previous 3-month pe-
13 riod”.

14 **SEC. 202. RETIREMENT AND HEALTH CARE BENEFITS.**

15 (a) TREATMENT OF EMPLOYEES WORKING AT LESS
16 THAN FULL-TIME UNDER PARTICIPATION, VESTING, AND
17 ACCRUAL RULES GOVERNING PENSION PLANS.—

18 (1) PARTICIPATION RULES.—

19 (A) IN GENERAL.—Section 202(a)(3) of
20 the Employee Retirement Income Security Act
21 of 1974 (29 U.S.C. 1052(a)(3)) is amended by
22 adding at the end the following new subpara-
23 graph:

1 “(E)(i) For purposes of this paragraph, in the case
2 of any employee who, as of the beginning of the 12-month
3 period referred to in subparagraph (A)—

4 “(I) has customarily completed 500 or more
5 hours of service per year but less than 1,000 hours
6 of service per year, or

7 “(II) is employed in a type of position in which
8 employment customarily constitutes 500 or more
9 hours of service per year but less than 1,000 hours
10 of service per year,

11 completion of 500 hours of service within such 12-month
12 period shall be treated as completion of 1,000 hours of
13 service.

14 “(ii) For purposes of this subparagraph, the extent
15 to which employment in any type of position customarily
16 constitutes less than 1,000 hours of service per year shall
17 be determined with respect to each pension plan in accord-
18 ance with such regulations as the Secretary shall prescribe
19 providing for consideration of facts and circumstances pe-
20 culiar to the workforce constituting the participants in
21 such plan.”.

22 (B) CONFORMING AMENDMENT.—Section
23 204(b)(1)(E) of such Act (29 U.S.C.
24 1054(b)(1)(E)) is amended by striking “section

1 202(a)(3)(A)” and inserting “subparagraphs
2 (A) and (E) of section 202(a)(3)”.

3 (2) VESTING RULES.—

4 (A) IN GENERAL.—Section 203(b)(2) of
5 such Act (29 U.S.C. 1053(b)(2)) is amended by
6 adding at the end the following new subpara-
7 graph:

8 “(E)(i) For purposes of this paragraph, in the case
9 of any employee who, as of the beginning of the period
10 designated by the plan pursuant to subparagraph (A)—

11 “(I) has customarily completed 500 or more
12 hours of service per year but less than 1,000 hours
13 of service per year, or

14 “(II) is employed in a type of position in which
15 employment customarily constitutes 500 or more
16 hours of service per year but less than 1,000 hours
17 of service per year,

18 completion of 500 hours of service within such period shall
19 be treated as completion of 1,000 hours of service.

20 “(ii) For purposes of this subparagraph, the extent
21 to which employment in any type of position customarily
22 constitutes less than 1,000 hours of service per year shall
23 be determined with respect to each pension plan in accord-
24 ance with such regulations as the Secretary shall prescribe
25 providing for consideration of facts and circumstances pe-

1 culiar to the workforce constituting the participants in
2 such plan.”.

3 (B) 1-YEAR BREAKS IN SERVICE.—Section
4 203(b)(3) of such Act (29 U.S.C. 1053(b)(3))
5 is amended by adding at the end the following
6 new subparagraph:

7 “(F)(i) For purposes of this paragraph, in the case
8 of any employee who, as of the beginning of the period
9 designated by the plan pursuant to subparagraph (A)—

10 “(I) has customarily completed 500 or more
11 hours of service per year but less than 1,000 hours
12 of service per year, or

13 “(II) is employed in a type of position in which
14 employment customarily constitutes 500 or more
15 hours of service per year but less than 1,000 hours
16 of service per year,

17 completion of 250 hours of service within such period shall
18 be treated as completion of 500 hours of service.

19 “(ii) For purposes of this subparagraph, the extent
20 to which employment in any type of position customarily
21 constitutes less than 1,000 hours of service per year shall
22 be determined with respect to each pension plan in accord-
23 ance with such regulations as the Secretary shall prescribe
24 providing for consideration of facts and circumstances pe-

1 culiar to the workforce constituting the participants in
2 such plan.”.

3 (3) ACCRUAL RULES.—Section 204(b)(4)(C) of
4 such Act (29 U.S.C. 1054(b)(4)(C)) is amended—

5 (A) by inserting “(i)” after “(C)”; and

6 (B) by adding at the end the following new
7 clauses:

8 “(ii) For purposes of this subparagraph, in the case
9 of any employee who, as of the beginning of the period
10 designated by the plan pursuant to clause (i)—

11 “(I) has customarily completed 500 or more
12 hours of service per year but less than 1,000 hours
13 of service per year, or

14 “(II) is employed in a type of position in which
15 employment customarily constitutes 500 or more
16 hours of service per year but less than 1,000 hours
17 of service per year,

18 completion of 500 hours of service within such period shall
19 be treated as completion of 1,000 hours of service.

20 “(iii) For purposes of clause (ii), the extent to which
21 employment in any type of position customarily constitutes
22 less than 1,000 hours of service per year shall be deter-
23 mined with respect to each pension plan in accordance
24 with such regulations as the Secretary shall prescribe pro-
25 viding for consideration of facts and circumstances pecu-

1 liar to the workforce constituting the participants in such
2 plan.”.

3 (b) TREATMENT OF EMPLOYEES WORKING AT LESS
4 THAN FULL-TIME UNDER GROUP HEALTH PLANS.

5 (1) IN GENERAL.—Part 2 of subtitle B of title
6 I of such Act is amended—

7 (A) by redesignating section 211 (29
8 U.S.C. 1061) as section 212; and

9 (B) by inserting after section 210 (29
10 U.S.C. 1060) the following new section:

11 “TREATMENT OF PART-TIME WORKERS UNDER GROUP
12 HEALTH PLANS

13 “SEC. 211. (a) IN GENERAL.—A reduction in the em-
14 ployer-provided premium under a group health plan with
15 respect to any employee for any period of coverage solely
16 because the employee’s customary employment is less than
17 full-time may be provided under such plan only if the em-
18 ployee is described in subsection (b) and only to the extent
19 permitted under subsection (c).

20 “(b) REDUCTIONS APPLICABLE TO EMPLOYEES
21 WORKING LESS THAN FULL-TIME.—

22 “(1) IN GENERAL.—An employee is described in
23 this subsection if such employee, as of the beginning
24 of the period of coverage referred to in subsection
25 (a)—

1 “(A) has customarily completed less than
2 30 hours of service per week, or

3 “(B) is employed in a type of position in
4 which employment customarily constitutes less
5 than 30 hours of service per week.

6 “(2) REGULATIONS.—For purposes of para-
7 graph (1), whether employment in any type of posi-
8 tion customarily constitutes less than 30 hours of
9 service per week shall be determined with respect to
10 each group health plan in accordance with such reg-
11 ulations as the Secretary shall prescribe providing
12 for consideration of facts and circumstances peculiar
13 to the workforce constituting the participants in
14 such plan.

15 “(c) AMOUNT OF PERMISSIBLE REDUCTION.—The
16 employer-provided premium under a group health plan
17 with respect to any employee for any period of coverage,
18 after the reduction permitted under subsection (a), shall
19 not be less than a ratable portion of the employer-provided
20 premium which would be provided under such plan for
21 such period of coverage with respect to an employee who
22 completes 30 hours of service per week.

23 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) GROUP HEALTH PLAN.—The term ‘group
2 health plan’ has the meaning provided such term in
3 section 607(1).

4 “(2) EMPLOYER-PROVIDED PREMIUM.—

5 “(A) IN GENERAL.—The term ‘employer-
6 provided premium’ under a plan for any period
7 of coverage means the portion of the applicable
8 premium under the plan for such period of cov-
9 erage which is attributable under the plan to
10 employer contributions.

11 “(B) APPLICABLE PREMIUM.—For pur-
12 poses of subparagraph (A), in determining the
13 applicable premium of a group health plan,
14 principles similar to the principles applicable
15 under section 604 shall apply.”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 201(1) of such Act (29 U.S.C.
18 1051(1)) is amended by inserting “, except with
19 respect to section 211” before the semicolon.

20 (B) The table of contents in section 1 of
21 such Act is amended by striking the item relat-
22 ing to section 211 and inserting the following
23 new items:

“Sec. 211. Treatment of part-time workers under group health plans.
“Sec. 212. Effective date.”.

1 (c) EXPANSION OF DEFINITION OF EMPLOYEE TO
2 INCLUDE CERTAIN INDIVIDUALS WHOSE SERVICES ARE
3 LEASED OR CONTRACTED FOR.—Paragraph (6) of section
4 3 of such Act (29 U.S.C. 1002(6)) is amended—

5 (1) by inserting “(A)” after “(6)”; and

6 (2) by adding at the end the following new sub-
7 paragraph:

8 “(B) Such term includes, with respect to any em-
9 ployer, any person who is not an employee (within the
10 meaning of subparagraph (A)) of such employer and who
11 provides services to such employer, if—

12 “(i) such person has (pursuant to an agreement
13 with such employer or any other person) performed
14 such services for such employer (or for such em-
15 ployer and related persons (within the meaning of
16 section 144(a)(3) of the Internal Revenue Code of
17 1986)) for a period of at least 1 year (6 months in
18 the case of core health benefits) at the rate of at
19 least 500 hours of service per year, and

20 “(ii) such services are of a type historically per-
21 formed, in the business field of the employer, by em-
22 ployees (within the meaning of subparagraph (A)).”.

23 (d) EFFECTIVE DATES.

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the amendments made by this section

1 shall apply with respect to plan years beginning on
2 or after January 1, 1995.

3 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
4 GAINED PLANS.—In the case of a plan maintained
5 pursuant to 1 or more collective bargaining agree-
6 ments between employee representatives and 1 or
7 more employers ratified on or before the date of the
8 enactment of this Act, paragraph (1) shall be ap-
9 plied to benefits pursuant to, and individuals covered
10 by, any such agreement by substituting for “Janu-
11 ary 1, 1995” the date of the commencement of the
12 first plan year beginning on or after the earlier of—

13 (A) the later of—

14 (i) January 1, 1995, or

15 (ii) the date on which the last of such
16 collective bargaining agreements termi-
17 nates (determined without regard to any
18 extension thereof after the date of the en-
19 actment of this Act), or

20 (B) January 1, 1997.

21 (3) PLAN AMENDMENTS.—If any amendment
22 made by this section requires an amendment to any
23 plan, such plan amendment shall not be required to
24 be made before the first plan year beginning on or
25 after January 1, 1996, if—

1 (A) during the period after such amend-
2 ment made by this section takes effect and be-
3 fore such first plan year, the plan is operated
4 in accordance with the requirements of such
5 amendment made by this section, and

6 (B) such plan amendment applies retro-
7 actively to the period after such amendment
8 made by this section takes effect and such first
9 plan year.

10 A plan shall not be treated as failing to provide defi-
11 nitely determinable benefits or contributions, or to
12 be operated in accordance with the provisions of the
13 plan, merely because it operates in accordance with
14 this paragraph.

15 **SEC. 203. PENSION PORTABILITY.**

16 (a) REQUIREMENT OF PORTABLE PENSION AC-
17 COUNTS.—

18 (1) IN GENERAL.—Part 2 of subtitle B of title
19 I of the Employee Retirement Income Security Act
20 of 1974 (29 U.S.C. 1051 et seq.) is amended by in-
21 sserting after section 205 the following new section:

22 **“SEC. 205A. PORTABILITY REQUIREMENTS FOR DEFINED**
23 **CONTRIBUTION PLANS.**

24 **“(a) DIRECT TRANSFERS.—**

1 “(1) IN GENERAL.—Each defined contribution
2 plan shall, at the election of an employee upon separa-
3 tion from service, make a direct trustee-to-trustee
4 transfer of the portion of the employee’s eligible
5 amount specified in the election to a portable pen-
6 sion account specified in the election which—

7 “(A) is maintained by a qualified pension
8 plan which agrees to accept the transfer, or

9 “(B) is established by the individual on the
10 individual’s own behalf.

11 “(2) TIME FOR TRANSFER.—The transfer
12 under paragraph (1) shall be made no later than 60
13 days after the date of the employee’s separation
14 from service.

15 “(b) PORTABLE PENSION ACCOUNTS.—For purposes
16 of this section—

17 “(1) IN GENERAL.—The term ‘portable pension
18 account’ means—

19 “(A) in the case of a qualified pension
20 plan, an individual account plan, an individual
21 account within the plan, or simplified employee
22 pension under section 408(k) of the Internal
23 Revenue Code of 1986 meeting the require-
24 ments of the following paragraphs of this sub-
25 section, and

1 “(B) in the case of an individual, an indi-
2 vidual retirement plan meeting such require-
3 ments.

4 “(2) DISTRIBUTION REQUIREMENTS.—

5 “(A) IN GENERAL.—The requirements of
6 this paragraph are met if distributions from the
7 account—

8 “(i) may only be made in a permitted
9 retirement income form, and

10 “(ii) may only be made with the con-
11 sent of the participant.

12 “(B) PERMITTED RETIREMENT INCOME
13 FORM.—For purposes of subparagraph (A), a
14 permitted retirement income form is as follows:

15 “(i) A qualified joint and survivor an-
16 nuity (within the meaning of section
17 205(d)).

18 “(ii) Any other joint life annuity (in-
19 cluding a cash refund annuity).

20 “(iii) A single life annuity (including a
21 cash refund annuity).

22 “(iv) Any series of substantially equal
23 periodic payments described in section
24 72(t)(2)(A)(iv) of the Internal Revenue

1 Code of 1986 which are not part of an an-
2 nuity described in the preceding clauses.

3 “(3) SPOUSAL CONSENT.—The requirements of
4 this paragraph shall not be met unless the account
5 provides that any election as to form of benefit must
6 meet spousal consent requirements which are iden-
7 tical to the requirements of section 205(c)(2).

8 “(c) ELIGIBLE AMOUNT.—For purposes of this sec-
9 tion, the term ‘eligible amount’ means, with respect to any
10 participant, the balance to the credit of the participant
11 as of the date of the distribution, including interest on
12 such balance through the date of the distribution.

13 “(d) OTHER DEFINITIONS AND RULES.—For pur-
14 poses of this section—

15 “(1) QUALIFIED PLAN.—The term ‘qualified
16 plan’ means—

17 “(A) a plan described in section 401(a) of
18 the Internal Revenue Code of 1986 which in-
19 cludes a trust which is exempt from tax under
20 section 501(a) of such Code,

21 “(B) an annuity plan described in section
22 403(a) of such Code, and

23 “(C) an annuity contract described in sec-
24 tion 403(b) of such Code.

1 “(2) INDIVIDUAL RETIREMENT PLAN.—The
2 term ‘individual retirement plan’ means—

3 “(A) an individual retirement account de-
4 scribed in section 408(a) of such Code, and

5 “(B) an individual retirement annuity de-
6 scribed in section 408(b) of such Code.

7 “(3) BENEFICIARIES OR ALTERNATE PAYEES.—
8 In the case of an individual who is a beneficiary of
9 the participant or an alternate payee (within the
10 meaning of section 206(d)(3)(K)) under a plan, such
11 individual shall be treated in the same manner as if
12 a participant in the plan.”

13 (2) CONFORMING AMENDMENTS.—

14 (A) Section 204(g)(2) of the Employee Re-
15 tirement Income Security Act of 1974 (29
16 U.S.C. 1054(g)(2)) is amended by adding at
17 the end the following new sentence: “Except as
18 otherwise provided in regulations of the Sec-
19 retary of Labor and the Secretary of the Treas-
20 ury, the requirements of subparagraph (B) shall
21 not be treated as violated in the case of a direct
22 trustee-to-trustee transfer described in section
23 205A.”

1 (B) Section 204(d) of the Employee Re-
2 tirement Income Security Act of 1974 (29
3 U.S.C. 1054(d)) is amended—

4 (i) in paragraph (1), by striking “or”,

5 (ii) in paragraph (2), by striking the
6 period and inserting “, or”, and

7 (iii) by inserting after paragraph (2)
8 the following new paragraph:

9 “(3) a direct trustee-to-trustee transfer de-
10 scribed in section 205A.”

11 (C) The table of contents for part 2 of
12 subtitle B of title I of the Employee Retirement
13 Income Security Act of 1974 is amended by in-
14 serting after the item relating to section 205
15 the following new item:

“Sec. 205A. Portability requirements for defined contribution plans.”

16 (b) RECIPROCITY AGREEMENTS BETWEEN INDUSTRY
17 AND LABOR FUNDS.—

18 (1) ESTABLISHMENT.—The Secretary of Labor
19 shall establish standards for plans maintained pur-
20 suant to collective bargaining agreements between
21 employers and employee representatives which pro-
22 vide that 2 or more of the plans may enter into
23 agreements under which—

24 (A) the plans would maintain portable pen-
25 sion accounts described in section 205A of the

1 Employee Retirement Income Security Act of
2 1974 (as added by section 121) for employees
3 who terminate employment covered by 1 plan
4 and begin employment covered by another, or

5 (B) the plans would make arrangements
6 for employees to transfer accrued benefits and
7 vesting rights from one plan to another.

8 (2) STANDARDS MADE AVAILABLE.—The Sec-
9 retary of Labor shall make any standards developed
10 under paragraph (1) available to employers and em-
11 ployee representatives.

12 (c) INFLATION ADJUSTMENT FOR DEFERRED VEST-
13 ED BENEFITS.—

14 (1) IN GENERAL.—Section 203 of the Employee
15 Retirement Income Security Act of 1974 (29 U.S.C.
16 1053) is amended by adding at the end the following
17 new subsection:

18 “(f) DEFERRED NONFORFEITABLE BENEFITS.—If
19 an employee’s participation in a plan is terminated before
20 the date the employee is eligible for payment of an imme-
21 diate annuity under the plan—

22 “(1) subsection (e) shall not apply, and

23 “(2) the plan shall provide that the employee
24 may elect—

1 “(A) to have the plan immediately distrib-
2 ute the present value (using the interest rate
3 specified by the Secretary) of the employee’s
4 nonforfeitable benefit, or

5 “(B) to have the plan provide inflation ad-
6 justments (at the rates specified by the Sec-
7 retary) to such benefit during the period begin-
8 ning with the date of separation and ending
9 with the date an annuity is first payable.”

10 (2) ACCRUED BENEFIT.—Section 204(d) of the
11 Employee Retirement Income Security Act of 1974
12 (29 U.S.C. 1054(d)) is amended by adding at the
13 end the following new sentence: “An employee’s ac-
14 crued benefit under a plan shall be increased by any
15 inflation adjustment under section 203(f)(2)(B).”

16 **SEC. 204. UNEMPLOYMENT COMPENSATION.**

17 (a) PART-TIME EMPLOYEES; INDEPENDENT CON-
18 TRACTORS.—Subsection (a) of section 3304 of the Inter-
19 nal Revenue Code of 1986 (relating to requirements for
20 approval of State unemployment compensation laws) is
21 amended by striking “and” at the end of paragraph (17),
22 by redesignating paragraph (18) as paragraph (20), and
23 by inserting after paragraph (17) the following new para-
24 graphs:

1 “(18) in applying the State law provisions relat-
2 ing to availability for work, active search for work,
3 or refusal to accept work, to an individual seeking
4 part-time employment, the term ‘suitable work’ shall
5 not include any work where the individual would
6 normally perform services for more hours per week
7 than the number of hours per week for which the in-
8 dividual is available, if the individual demonstrates
9 good cause for the individual’s limited availability
10 and such limitation does not substantially impair the
11 individual’s current attachment to the labor force;

12 “(19) the determination of whether an individ-
13 ual is an employee of another person shall be made
14 in accordance with section 3306(i); and”.

15 (b) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall take effect on November 1, 1995.

19 (2) SPECIAL RULE.—In the case of any State
20 the legislature of which has not been in session for
21 at least 30 calendar days (whether or not successive)
22 between the date of the enactment of this Act and
23 November 1, 1995, the amendments made by this
24 section shall take effect 30 calendar days after the

1 1st day on which such legislature is in session on or
 2 after November 1, 1995.

3 **TITLE III—MISCLASSIFICATION**
 4 **OF EMPLOYEES AS INDE-**
 5 **PENDENT CONTRACTORS**

6 **SEC. 301. INTERNAL REVENUE SERVICE PROCEDURES.**

7 (a) WAIVER OF EMPLOYMENT TAX LIABILITY FOR
 8 REASONABLE GOOD FAITH MISCLASSIFICATION BASED
 9 ON COMMON LAW RULES.—Section 3509 of the Internal
 10 Revenue Code of 1986 (relating to determination of em-
 11 ployer’s liability for certain employment taxes) is amended
 12 by adding at the end the following new subsection:

13 “(e) WAIVER OF EMPLOYMENT TAX LIABILITY FOR
 14 REASONABLE GOOD FAITH MISCLASSIFICATION BASED
 15 ON COMMON LAW RULES.—

16 “(1) IN GENERAL.—For purposes of determin-
 17 ing the liability of any taxpayer for employment
 18 taxes with respect to any individual for any period,
 19 such individual shall be deemed not to have been an
 20 employee of the taxpayer for such period if—

21 “(A) the taxpayer did not treat such indi-
 22 vidual as an employee for purposes of the em-
 23 ployment taxes for such period,

24 “(B) the taxpayer’s treatment of such indi-
 25 vidual as not being an employee was based on

1 a reasonable good faith misapplication of the
2 common law rules used for determining the em-
3 ployer-employee relationship,

4 “(C) all Federal tax returns (including in-
5 formation returns) required to be filed by the
6 taxpayer with respect to such individual for
7 such period were filed on a basis consistent with
8 the taxpayer’s treatment of such individual as
9 not being an employee,

10 “(D) the taxpayer (and any predecessor)
11 did not treat any other individual holding a
12 substantially similar position as an employee for
13 purposes of the employment taxes for any pe-
14 riod beginning after December 31, 1977, and

15 “(E) the taxpayer enters into a closing
16 agreement under section 7121 with the Sec-
17 retary (in the time and manner determined by
18 the Secretary) agreeing to treat such individual,
19 and any other individual holding a substantially
20 similar position, as employees and to file all
21 Federal employment tax returns with respect to
22 such individuals on a basis consistent with the
23 taxpayer’s treatment of such individuals as em-
24 ployees.

25 “(2) DEFINITIONS AND SPECIAL RULES.—

1 “(A) EMPLOYMENT TAX.—For purposes of
2 this subsection, the term ‘employment tax’
3 means any tax imposed by subtitle C, including
4 any interest, penalty, or additional amount with
5 respect to such tax.

6 “(B) NO REFUND OR CREDIT OF OVERPAY-
7 MENT.—No refund or credit of any overpay-
8 ment of an employment tax resulting from the
9 application of paragraph (1) shall be allowed,
10 notwithstanding that the period for filing a
11 claim for refund or credit of such overpayment
12 is not barred on the effective date of this sub-
13 section.”

14 (b) MODIFICATIONS TO SAFE HARBOR FOR CLASSI-
15 FICATIONS OF INDIVIDUALS AS NONEMPLOYEES.—

16 (1) REQUIREMENT OF REASONABLE BASIS.—
17 Paragraph (1) of section 530(a) of the Revenue Act
18 of 1978 (relating to controversies involving whether
19 individuals are employees for purposes of the em-
20 ployment taxes) is amended by striking “unless the
21 taxpayer had no reasonable basis” and inserting the
22 following: “if the taxpayer had a reasonable basis”.

23 (2) REPEAL OF PRIOR AUDIT AS REASONABLE
24 BASIS, ETC.—Paragraph (2) of section 530(a) of the
25 Revenue Act of 1978 is amended—

1 (A) by striking the paragraph caption and
2 inserting the following: “REASONABLE BASIS
3 FOR NOT TREATING INDIVIDUAL AS EM-
4 PLOYEE.—”,

5 (B) in the matter preceding subparagraph
6 (A)—

7 (i) by striking “in any case”, and

8 (ii) by inserting “only” before “if the
9 taxpayer’s”,

10 (C) by adding “or” at the end of subpara-
11 graph (A), and

12 (D) by striking subparagraph (B) and by
13 redesignating subparagraph (C) as subpara-
14 graph (B).

15 (c) AUTHORITY FOR REGULATIONS AND RULINGS ON
16 EMPLOYMENT STATUS.—Section 530 of the Revenue Act
17 of 1978 is amended by striking subsection (b) and by re-
18 designating subsections (c) and (d) as subsections (b) and
19 (c), respectively.

20 (d) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall take effect beginning on the date
23 which is 120 days after the date of the enactment
24 of this Act.

1 ter that is the subject of the determination, have been ex-
2 hausted or have lapsed.

3 “(b) CERTIFICATION OF ADEQUACY OF BIDS TO PAY
4 EMPLOYMENT TAXES.—A person who submits a bid or
5 proposal for a contract shall certify that the amount of
6 the bid or proposal is adequate to pay all employment
7 taxes with respect to all work to be performed under the
8 contract by employees of the person.

9 “(c) NOTIFICATION OF INDEPENDENT CONTRAC-
10 TORS.—Each contract shall include a requirement that the
11 contractor provide, to each person who performs work
12 under the contract and who is treated by the contractor
13 as an independent contractor for purposes of employment
14 taxes, a notification regarding—

15 “(1) all obligations of the independent contrac-
16 tor under Federal and State law to withhold and pay
17 employment taxes with respect to work performed
18 under the contract by the independent contractor
19 (including work performed by employees of the inde-
20 pendent contractor); and

21 “(2) all statutory rights and protections that
22 are available under Federal and State law to em-
23 ployees of the contractor and are not available to the
24 independent contractor (including employees of the
25 independent contractor), including rights and protec-

1 tions under the Fair Labor Standards Act of 1938,
2 the Occupational Safety and Health Act of 1978,
3 and title VII of the Civil Rights Act of 1964.

4 “(d) RIGHT OF ACTION.—A person who submits a
5 bid or proposal for a contract and who suffers damages
6 as a result of the award of the contract to a person who
7 knowingly and willfully submits a certification under sub-
8 section (b) with respect to the contract that is false, may
9 bring an action for damages against the person awarded
10 the contract in any district court of the United States in
11 which the defendant is located.

12 “(e) DEFINITIONS.—As used in this section:

13 “(1) The term ‘employment tax’ means any tax
14 imposed by subtitle C of the Internal Revenue Code
15 of 1986.

16 “(2) The term ‘contract’ means a contract that
17 is entered into by an executive agency under this
18 title, and all subcontracts under such a contract.

19 “(3) The term ‘misclassify’ means to treat as
20 an independent contractor an individual who is an
21 employee.”.

22 (2) The table of contents in the first section of the
23 Federal Property and Administrative Services Act of 1949
24 is amended by inserting after the item relating to the last
25 section in title III the following new item:

“Sec. 312. Classification of persons as employees and independent contractors.”.

1 (b) APPLICABILITY.—Section 312 of the Federal
2 Property and Administrative Services Act of 1949, as
3 added by subsection (a), shall apply to—

4 (1) contracts entered into under title III of
5 such Act after the expiration of the 180-day period
6 beginning on the date of the enactment of this Act;

7 (2) subcontracts under contracts covered by
8 paragraph (1); and

9 (3) options exercised under any such contract
10 after the expiration of the 180-day period beginning
11 on the date of the enactment of this Act.

12 **SEC. 303. DEFENSE CONTRACTS.**

13 (a) CLASSIFICATION OF PERSONS AS EMPLOYEES
14 AND INDEPENDENT CONTRACTORS UNDER DEFENSE
15 CONTRACTS.—(1) Chapter 141 of title 10, United States
16 Code, is amended by inserting after section 2393 the fol-
17 lowing new section:

18 **“§ 2393a. Classification of persons as employees and**
19 **independent contractors**

20 “(a) INELIGIBILITY FOR DEFENSE CONTRACTS AND
21 SUBCONTRACTS.—(1) A person (including any subsidiary,
22 successor, or related entity of a person) shall not be eligi-
23 ble for a contract during the 2-year period beginning on
24 the date of the issuance of any final determination under
25 Federal law that the person (including any subsidiary or

1 related entity of the person) willfully misclassified an indi-
2 vidual for purposes of any employment tax.

3 “(2) For purposes of this subsection, a determination
4 is final if all rights to appeal the determination, or to re-
5 quest a review, rehearing, or redetermination of the mat-
6 ter that is the subject of the determination, have been ex-
7 hausted or have lapsed.

8 “(b) CERTIFICATION OF ADEQUACY OF BIDS TO PAY
9 EMPLOYMENT TAXES.—A person who submits a bid or
10 proposal for a contract shall certify that the amount of
11 the bid or proposal is adequate to pay all employment
12 taxes with respect to all work to be performed under the
13 contract by employees of the person.

14 “(c) NOTIFICATION OF INDEPENDENT CONTRAC-
15 TORS.—Each contract shall include a requirement that the
16 contractor shall provide, to each person who performs
17 work under the contract and who is treated by the contrac-
18 tor as an independent contractor for purposes of employ-
19 ment taxes, a notification regarding—

20 “(1) all obligations of the independent contrac-
21 tor under Federal and State law to withhold and pay
22 employment taxes with respect to work performed
23 under the contract by the independent contractor
24 (including work performed by employees of the inde-
25 pendent contractor); and

1 “(2) all statutory rights and protections that
2 are available under Federal and State law to em-
3 ployees of the contractor and are not available to the
4 independent contractor (including employees of the
5 independent contractor), including rights and protec-
6 tions under the Fair Labor Standards Act of 1938,
7 the Occupational Safety and Health Act of 1978,
8 and title VII of the Civil Rights Act of 1964.

9 “(d) RIGHT OF ACTION.—A person who submits a
10 bid or proposal for a contract and who suffers damages
11 as a result of the award of the contract to a person who
12 knowingly and willfully submits a certification under sub-
13 section (b) with respect to the contract that is false, may
14 bring an action for damages against the person awarded
15 the contract in any district court of the United States in
16 which the defendant is located.

17 “(e) APPLICABILITY.—This section applies to con-
18 tracts entered into under chapter 137 of this title.

19 “(f) DEFINITIONS.—In this section:

20 “(1) The term ‘employment tax’ means any tax
21 imposed by subtitle C of the Internal Revenue Code
22 of 1986.

23 “(2) The term ‘contract’ includes subcontracts.

1 “(3) The term ‘misclassify’ means to treat as
2 an independent contractor an individual who is an
3 employee.”.

4 (2) The table of sections at the beginning of such
5 chapter is amended by adding at the end the following
6 new item:

“2393a. Classification of persons as employees and independent contractors.”.

7 (b) APPLICABILITY.—Section 2393a of title 10, Unit-
8 ed States Code, as added by subsection (a), shall apply
9 to—

10 (1) contracts entered into under chapter 137 of
11 title 10, United States Code, after the expiration of
12 the 180-day period beginning on the date of the en-
13 actment of this Act;

14 (2) subcontracts under contracts covered by
15 paragraph (1); and

16 (3) options exercised under any such contract
17 after the expiration of the 180-day period beginning
18 on the date of the enactment of this Act.

19 **TITLE IV—FEDERAL**
20 **TEMPORARY EMPLOYEES**

21 **SEC. 401. LIMITATION ON TEMPORARY EMPLOYMENT.**

22 It is the sense of Congress that—

23 (1) the Federal Government has appointed and
24 maintained employees in temporary positions that
25 are not appropriate for temporary appointments,

1 both by virtue of the type of work and the extended
2 lengths of service in some cases;

3 (2) when a vacancy occurs in a position that
4 was filled continuously by a temporary employee in
5 the year preceding the vacancy, the Federal Govern-
6 ment should not fill such vacancy with a temporary
7 employee, regardless of whether the individual pre-
8 viously employed would refill such position;

9 (3) when a vacancy occurs in a position as de-
10 scribed under paragraph (2), the Federal Govern-
11 ment should not establish a successor position and
12 fill it with a temporary employee; and

13 (4) when a vacancy occurs in a position that
14 was filled continuously by a temporary employee in
15 the year preceding the vacancy, and the Federal
16 Government determines there is a need for the serv-
17 ices performed in such position, the Federal Govern-
18 ment should establish a permanent or term position
19 to fill such need whenever feasible.

20 **SEC. 402. HEALTH BENEFITS.**

21 (a) **ELIMINATION OF SERVICE REQUIREMENT AND**
22 **EMPLOYEE PAYMENT OF GOVERNMENT CONTRIBU-**
23 **TION.**—Section 8906a of title 5, United States Code, is
24 amended to read as follows:

1 **“§ 8906a. Temporary employees**

2 “The Office of Personnel Management shall prescribe
3 regulations to provide for offering health benefits plans
4 to temporary employees under the provisions of this chap-
5 ter.”.

6 (b) INCLUSION OF TEMPORARY EMPLOYEES.—Sec-
7 tion 8913(b) of title 5, United States Code, is amended—

8 (1) in the second sentence by striking out “,
9 such as short-term appointment, seasonal or inter-
10 mittent employment, and employment of like na-
11 ture”; and

12 (2) in paragraph (4) by striking out “and is eli-
13 gible under section 8906a(a)”.

14 **SEC. 403. RETIREMENT BENEFITS.**

15 (a) INCLUSION OF CERTAIN TEMPORARY EMPLOY-
16 EES UNDER CIVIL SERVICE RETIREMENT SYSTEM.—The
17 second sentence of section 8347(g) of title 5, United
18 States Code, is amended by inserting before the period “or
19 any temporary employee who, in the aggregate, has com-
20 pleted 5 years of service (in the same or different posi-
21 tions), including service as a temporary employee.”.

22 (b) INCLUSION OF CERTAIN TEMPORARY EMPLOY-
23 EES UNDER FEDERAL EMPLOYEES RETIREMENT SYS-
24 TEM.—Section 8402(c)(1) of title 5, United States Code,
25 is amended by inserting before the period “or any tem-
26 porary employee who, in the aggregate, has completed 5

1 years of service (in the same or different positions), in-
2 cluding service as a temporary employee”.

3 (c) CREDITABILITY OF SERVICE.—In administering
4 the amendments made under this section, service may be
5 taken into account whether performed before, on, or after
6 the date of the enactment of this Act, for all purposes
7 of chapters 83 and 84 of title 5, United States Code (in-
8 cluding employee and Government contributions relating
9 to such service and the computation of annuities). An em-
10 ployee shall have service as a temporary employee (which
11 would otherwise be excluded except for the amendments
12 made under subsections (a) and (b) and for which no em-
13 ployee contributions have been made) used for the com-
14 putation of an annuity under chapters 83 and 84 of title
15 5, United States Code (as amended by this Act) if the
16 employee deposits such contributions (including interest)
17 as determined by the Office of Personnel Management re-
18 lating to such service into the Civil Service Retirement and
19 Disability Fund. All appropriate employing agencies shall
20 pay the applicable contributions into the Civil Service Re-
21 tirement and Disability Fund. The Office of Personnel
22 Management shall prescribe regulations to carry out the
23 provisions of this subsection.

1 **SEC. 404. LIFE INSURANCE BENEFITS.**

2 Section 8716(b) of title 5, United States Code, is
3 amended—

4 (1) in the second sentence, by striking out “,
5 such as short-term appointment, seasonal, intermit-
6 tent employment, and employment of like nature”;

7 (2) in paragraph (2) by striking out “or” after
8 the semicolon;

9 (3) in paragraph (3) by striking out the period
10 and inserting in lieu thereof “; or”; and

11 (4) by adding at the end thereof the following:

12 “(4) a temporary employee who has completed
13 6 months of current continuous employment (in the
14 same position or different positions), including serv-
15 ice as a temporary employee, excluding any break in
16 service of 5 days or less.”.

○

S 2504 IS—2

S 2504 IS—3

S 2504 IS—4