AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 8660

OFFERED BY MR. MACKENZIE OF PENNSYLVANIA

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Valuing Employee Stock Today Act'' or the ''VEST Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Worker Economic Opportunity Act of 2000 (Public Law 106–202) amended section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)) by adding a new paragraph (8) to such section 7(e) to exempt any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program from the determination of an employee's regular rate for purposes of calculating such employee's overtime compensation.

(2) The lack of explicit mention of restricted stock units in paragraph (8) of section 7(e) of the

Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)), as added by the Worker Economic Opportunity Act of 2000 (Public Law 106–202), was not an intentional exclusion from such paragraph (8), but a reflection that this type of equity award was not commonly used as of the date of enactment of the Worker Economic Opportunity Act of 2000 (Public Law 106–202).

(3) Congress clearly established in the Joint Statement of Legislative Intent accompanying the Worker Economic Opportunity Act of 2000 (Public Law 106–202) that such Act was designed to be broad and flexible enough ''to accommodate a wide variety of [employee equity] programs'' and to ''be flexible and forward-looking'' and interpreted consistent with its purpose ''to encourage employers to provide opportunities for equity participation to employees''.

(4) In the years since 2000, restricted stock units have become a highly common form of equity for both salaried and hourly employees that, consistent with the Joint Statement of Legislative Intent accompanying the Worker Economic Opportunity Act of 2000 (Public Law 106–202), allow employees to share in the future success of their com-

panies through a mechanism that may not otherwise be available to rank-and-file workers.

(5) Restricted stock units should qualify for the exemption from regular rate determinations under paragraph (8) of section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)(8)) because such paragraph would have explicitly mentioned restricted stock units as qualifying for such exemption had restricted stock units been a common form of employer-provided equity compensation as of the date of enactment of the Worker Economic Opportunity Act of 2000 (Public Law 106–202).

SEC. 3. CLARIFICATION OF THE EMPLOYER EQUITY EXEMPTION FROM REGULAR RATE DETERMINATIONS.

(a) CLARIFICATION.—Section 7(e)(8) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)(8)) is amended—

(1) in the matter preceding subparagraph (A), by striking ‘‘or bona fide employee stock purchase program’’ and inserting ‘‘bona fide employee stock purchase program, or restricted stock unit program’’; and

(2) in subparagraph (C), by striking ‘‘exercise’’ and inserting ‘‘exercise or acceptance’’.

(b) EFFECTIVE DATE; LIABILITY OF EMPLOYERS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

(2) LIABILITY OF EMPLOYERS.—No employer shall be liable under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), as amended by subsection (a), for any failure to include in an employee's regular rate (as defined for purposes of such Act) any income or value derived from employer-provided grants or rights obtained pursuant to any restricted stock unit program if—

(A) the grants or rights were obtained before the effective date described in paragraph (1);

(B) the grants or rights were obtained within the 12-month period beginning on the effective date described in paragraph (1), so long as such program was in existence on the date of enactment of this Act and will require shareholder approval to modify such program to comply with section 7(e)(8) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)(8)), as amended by subsection (a); or

(C) such program is provided under a collective bargaining agreement that is in effect on the effective date described in paragraph (1).