

## Key provisions of the proposed CLEAR Act (H.R. 3534)

(As passed by the House on 30 July 2010: Awaiting action in the Senate)

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**(Provisions likely to be of particular interest to drilling contractors  
are shown in red)**

- Establishes in the Department of the Interior:
  - A Bureau of Energy and Resource Management – governing the issuance of leases for the exploration, development, and production of energy and mineral resources on the OCS and on Federal lands);
  - A Bureau of Safety and Environmental Enforcement – governing the administration of safety and environment enforcement activities related to energy and mineral resources on the OCS and on Federal lands).
  - An Office of Natural Resources Revenue – governing royalty and revenue collection and distribution, auditing, compliance, investigation and enforcement and asset management.

Abolishes the Minerals Management Service and reassign previous duties of the Service to the Office and Bureaus.
- Establishes under the Federal Advisory Committee Act, an OCS Safety and Environmental Advisory Board:
  - Comprised of not more than 12 members, chosen in consultation with the National Academy of Science and the National Academy of Engineering, with a balanced representation of industry- and non-industry interests.
  - To meet not less than 3 times per year and at least once a year host a public forum to review and assess overall safety and environmental performance of the OCS energy and mineral resource activities.
  - To prepare an initial report within 180 days and every 5 years thereafter:
    - Assessing a offshore oil and gas well control technologies, practices, voluntary standards, and regulations in the United States and elsewhere;
    - Assessing whether existing well control regulations issued by the Secretary under OCSLA adequately protect safety and the environment; and
    - Recommends modifications to the regulations to ensure adequate protection of safety and the environment.
    - Reports are to be submitted to Congress and made available to the public in electronically accessible form.
- Revises the legislative statement of policy for the OCS to emphasize that energy and mineral development should be allowed only when those activities can be accomplished in a manner that minimizes harm to the environment.
- Clarifies the jurisdiction of OCSLA over activities on the OCS.
- Revises section 5 of the OCSLA for the standards for OCS leasing to:
  - Emphasize the need for consideration of the potential environmental consequences of operations;
  - Require development of regulations to:
    - **Mandate independent third-party certification of safety systems related to well control;**

- Mandate independent third-party certification requirements of well casing and cementing programs and procedures;
  - Establish performance requirements for blowout preventers, including quantitative risk assessment standards, subsea testing, and secondary activation methods; and
  - Establish mandatory safety and environmental management systems by operators on the OCS;
  - Develop procedures and technologies to be used during drilling operations to minimize the risk of ignition and explosion of hydrocarbons; and
  - Ensure compliance with other applicable environmental and natural resource conservation laws.
  
- Mandates that any documents incorporated by reference in regulations promulgated by the Secretary of Interior under OCSLA be made available to the public, free of charge, on a website maintained by the Secretary.
  
- Mandates that the regulatory standards for blowout preventers, well design and cementing. Such regulations shall:
  - Require independent third-party certification of blowout preventers, well design, and cementing programs and procedures prior to the commencement of drilling operations.
  - Require re-certification by an independent third-party certifier of a blowout preventer upon any material modification to the blowout preventer or well design and of a well design upon any material modification to the well design.
  - Include the following minimum requirements for blowout preventers:
    - Two sets of blind shear rams appropriately spaced to prevent blowout preventer failure if a drill pipe joint or drill tool is across one set of blind shear rams during a situation that threatens loss of well control.
    - Redundant emergency backup control systems capable of activating the relevant components of a blowout preventer, including when the communications link or other critical links between the drilling rig and the blowout preventer are destroyed or inoperable.
    - Regular testing of the emergency backup control systems, including testing during deployment of the blowout preventer.
    - As appropriate, remotely operated vehicle intervention capabilities for secondary control of all subsea blowout preventer functions, including adequate hydraulic capacity to activate blind shear rams, casing shear rams, and other critical blowout preventer components.
  - Include the following minimum requirements for well design:
    - In connection with the installation of the final casing string, the installation of at least two independent, tested mechanical barriers, in addition to a cement barrier, across each flow path between hydrocarbon bearing formations and the blowout preventer.
    - That wells shall be designed so that a failure of one barrier does not significantly increase the likelihood of another barrier's failure.
    - That the casing design is appropriate for the purpose for which it is intended under reasonably expected wellbore conditions.
    - The installation and verification with a pressure test of a lockdown device at the time the casing is installed in the wellhead.
  - Include the following minimum requirements for cementing:
    - Adequate centralization of the casing to ensure proper distribution of cement.
    - A full circulation of drilling fluids prior to cementing.

- The use of an adequate volume of cement to prevent any unintended flow of hydrocarbons between any hydrocarbon-bearing formation zone and the wellhead.
  - Cement bond logs for all cementing jobs intended to provide a barrier to hydrocarbon flow.
  - Cement bond logs or such other integrity tests as the Secretary may prescribe for other cement jobs.
- Requires the Secretary of Interior to establish appropriate standards for the approval of independent third-party certifiers capable of exercising certification functions for blowout preventers, well design, and cementing. For any certification required for regulations related to blowout preventers, well design, or cementing, requires that the operator use a qualified independent third-party certifier chosen by the Secretary and requires that the costs of certification be borne by the operator.
- Requires that offshore drilling activities in State waters (seaward of the line of mean high tide) that could, in the event of a blowout, lead to extensive and widespread harm to safety or the environment, meet the standards for a well drilled on the OCS, or those of a State regulatory regime determined, after the opportunity for public comment, to meet a comparable standard.
- Requires the Secretary of Interior to establish special provisions for rulemaking dockets that would require:
  - All documents that become available after a proposed rule is published and that the Secretary determines are of central relevance to the rulemaking, be made part of the docket as soon as possible after their availability.
  - Inclusion in the docket of:
    - Each draft proposed rule submitted by the Secretary to the Office of Management and Budget for any interagency review process prior to proposal of such rule, all documents accompanying such draft, all written comments there on by other agencies, and all written responses to such written comments by the Secretary, by no later than the date of proposal of the rule; and
    - Each draft final rule submitted by the Secretary for such review process before issuance of the final rule, all such written comments thereon, all documents accompanying such draft, and all written responses thereto, by no later than the date of issuance of the final rule.
- Specifies that no bid or request for a lease, easement, or right-of-way, or for a permit to drill may be submitted by any person unless the person certifies to the Secretary that the person (including any related person and any predecessor of such person or related person) meets each of the following requirements:
  - The person is meeting due diligence, safety, and environmental requirements on other leases, easements, and rights-of-way.
  - In the case of a person that is a responsible party for a vessel or a facility from which oil is discharged, for purposes of section 1002 of OPA 90 (33 20 U.S.C. 2702), the person has met all of its obligations under that Act to provide compensation for covered removal costs and damages.
  - In the 7-year period ending on the date of certification, the person, in connection with activities in the oil industry (including exploration, development, production, transportation by pipeline, and refining):

- Was not found to have committed willful or repeated violations under the Occupational Safety and Health Act (29 U.S.C. 651 et seq.) (including State plans approved under section 18(c) of such Act (29 U.S.C. 667(c))) at a rate that is higher than five times the rate determined by the Secretary to be the oil industry average for such violations for such period;
  - Was not convicted of a criminal violation for death or serious bodily injury;
  - Did not have more than 10 fatalities at its exploration, development, and production facilities and refineries as a result of violations of Federal or State health, safety, or environmental laws;
  - Was not assessed, did not enter into an agreement to pay, and was not otherwise required to pay, civil penalties and criminal fines for violations the person was found to have committed under the FWCPA (25 U.S.C. 1251 et seq.) (including State programs approved under sections 402 and 404 of such Act (33 U.S.C. 1342 and 1344)) in a total amount that is equal to more than \$10,000,000; and
  - Was not assessed, did not enter into an agreement to pay, and was not otherwise required to pay, civil penalties and criminal fines for violations the person was found to have committed under the CAA (42 U.S.C. 7401 et seq.) (including State plans approved under section of such Act (42 U.S.C. 7410)) in a total amount that is equal to more than \$10 million.

The Secretary shall cancel any lease, easement, or right of way and shall revoke any permit with respect to which the certification is found to be false.
- Requires the Secretary of Interior to request a review by the Secretary of Commerce of the proposed sale with respect to impacts on the marine and coastal environment at least 60 days prior to any lease sale.
- Extends the period for review of Exploration Plans to 90 days, with provisions to allow the review period to be further extended.
- Requires the Secretary to promulgate regulations to detail in regulations for exploration plans:
  - A schedule of exploration activities to be undertaken;
  - A detailed and accurate description of the equipment to be used, including:
    - A description of the drilling unit;
    - A statement of the design and condition of major safety-related equipment
    - A description of any new technology to be used;
  - A scenario for the potential blowout of the well involving the highest potential volume of liquid hydrocarbons, along with a complete description of a response plan to control the blowout and manage the discharge; and
  - An analysis of the potential impacts of the worst-case discharge scenario.
- Requires the Secretary to prohibit issuance of a drilling permit or modification prior to completion of:
  - A full engineering review of the well system, including a determination that critical safety systems, including blowout prevention, will utilize best available technology and that blowout prevention systems will include redundancy and remote triggering capability; and
  - A safety and environmental management plan to be utilized by the operator during all well operations.
- Permits issuance of an exploration permit only after the Secretary has determined that:

- The exploration will be conducted in accordance applicable environmental and natural resource conservation laws;
  - In the case of geophysical surveys, the applicant will use the best available technologies and methods to minimize impacts on marine life; and
  - In the case of drilling operations, the applicant has available oil spill response and clean-up equipment and technology that have been demonstrated to be capable of effectively remediating a worst-case release of oil.
- Requires the Secretary to treat the issuance or significant revision of a deepwater exploration plan as an agency action requiring preparation of an EA or EIS in accordance with NEPA and require such plans:
    - To be based on the best available technology to ensure safety in carrying out both the drilling of the well and any oil spill response; and;
    - Contain a technical systems analysis of the safety of the proposed activity, the blowout prevention technology, and the blowout and spill response plans.
- Requires the OCS leasing program to balance energy needs against the protection of the coastal and marine environment.
- Requires the Secretary to carry out a program of research and development characterizing resources of the OCS and conditions that may affect the ability to develop and use those resources in a safe, sound, and environmentally responsible manner. Such research and development activities may include activities to provide accurate estimates of energy and mineral reserves and potential on the OCS and any activities that may assist in filling gaps in environmental data needed to develop each leasing program.
- Requires, within 6 months of enactment, and every three years thereafter, the Secretary of Interior and the Secretary of the Department in which the Coast Guard is operating to commence a joint study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of the minerals of the outer Continental Shelf.
- Removes the criterion of economic feasibility from the consideration of best available technology to be required for existing operations.
- Requires, within 6 months of enactment, the Secretary of Interior to promulgate regulations requiring a safety case to be submitted with each new application for permit to drill and requires the effectiveness of these regulations to be reviewed every five years by the National Academy of Engineering.
- Requires the Secretary to carry out a program of research, development and risk assessment to focus on:
    - Risk assessment, using all available data from safety and compliance records both within the US and internationally'
    - Analysis of industry trends in technology, investment, and frontier areas;
    - Reviews of best available technologies, including those associated with pipelines, blowout preventer mechanisms, casing, well design, and other associated infrastructure related to offshore energy development;
    - Oil spill response and mitigation, including reviews of the best available technology for oil spill response and mitigation and the availability and accessibility of such technology in each region where leasing is taking place;

- Risk associated with human factors;
  - Technologies and methods to reduce the impact of geophysical exploration activities on marine life; and
  - Renewable energy operations.
- Requires the Secretary of Interior and the Secretary of the Department in which the Coast Guard is operating, jointly or individually, to issue regulations requiring:
    - Scheduled onsite inspection, at least once a year, of each facility on the OCS which is subject to any environmental or safety regulation to include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents;
    - Scheduled onsite inspection, at least once a month, of each facility on the OCS engaged in drilling operations, to include validation of the safety case required for the facility and identifications of deviations from the safety case, and all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents;
    - Periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations; and
    - Periodic audits of each required safety and environmental management plan, and any associated safety case, both with respect to their implementation at each facility for which such a plan or safety case is required and with respect to onshore management support for activities at such a facility.
  - Makes cooperation in investigations a condition of the lease or permit and requires all data and reports related to any incident to be maintained in a database available to the public.
  - Requires the Secretary of Interior and the Secretary of the Department in which the Coast Guard is operating to require all operators of all new and existing drilling and production operations to annually certify that their operations are being conducted in accordance with applicable law and regulations. The certification is to include statements that the operator has:
    - Examined all well control system equipment (both surface and subsea) being used to ensure that it has been properly maintained and is capable of shutting in the well during emergency operations;
    - Examined and conducted tests to ensure that the emergency equipment has been function-tested and is capable of addressing emergency situations;
    - Reviewed all rig drilling, casing, cementing, well abandonment (temporary and permanent), completion, and workover practices to ensure that well control is not compromised at any point while emergency equipment is installed on the wellhead;
    - Reviewed all emergency shutdown and dynamic positioning procedures that interface with emergency well control operations;
    - Taken the necessary steps to ensure that all personnel involved in well operations are properly trained and capable of performing their tasks under both normal drilling and emergency well control operations; and
    - Updated the operator's response plan and exploration plans to reflect the best available technology, including the availability of such technology.
  - Beginning 6 months after enactment, prohibits the approval of any application for a permit to drill unless the application is accompanied by a statement in which the applicant's chief executive officer attests that:

- The applicant is in compliance with all applicable environmental and natural resource conservation laws;
- The applicant has the capability and technology to respond immediately and effectively to a worst-case oil spill in real-world conditions in the area of the proposed activity under the permit;
- The applicant has an oil spill response plan that ensures that the applicant has the capacity to promptly control and stop a blowout in the event that well control measures fail;
- **The blowout preventer to be used during the drilling of the well has redundant systems to prevent or stop a blowout for all foreseeable blowout scenarios and failure modes;**
- The well design is safe; and
- The applicant has the capability to expeditiously begin and complete a relief well if necessary in the event of a blowout.

A false certification by the CEO is subject to civil penalties.

- Requires that operators that modify or upgrade any emergency equipment placed on any operation to prevent blowouts or other well control events, have an independent third party conduct a detailed physical inspection and design review of such equipment within 30 days of its installation. The third party shall certify that the equipment will operate as originally designed and any modifications or upgrades conducted after delivery have not compromised the design, performance, or functionality of the equipment. Failure to comply with this subsection shall result in suspension of the lease.
- Raises civil penalties from \$20K per day per violation to \$75K per day per violation. Civil penalty amounts are to be adjusted for inflation each three years. If non-compliance constitutes or constituted a threat of harm or damage to life, property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty of not more than \$150K must be assessed for each day of the continuance of the failure. The fine for criminal (knowing and willful violations) is increased from \$100K to \$10 million.
- Eliminates special development and production plan provisions for the Gulf of Mexico and establishes national requirements that that such a plans must address the following additional new provisions:
  - A detailed and accurate description of equipment to be used for the drilling of wells pursuant to activities included in the development and production plan, including:
    - **A description of the drilling unit or units;**
    - **A statement of the design and condition of major safety-related pieces of equipment, including independent third-party certification of such equipment; and**
    - **A description of any new technology to be used;**
  - A scenario for the potential blowout of each well to be drilled as part of the plan involving the highest potential volume of liquid hydrocarbons, along with a complete description of a response plan to both control the blowout and manage the accompanying discharge of hydrocarbons, including the likelihood for surface intervention to stop the blowout, the availability of a rig to drill a relief well, an estimate of the time it would take to drill a relief well, a description of other technology that may be used to regain control of the well or capture escaping hydrocarbons and the potential timeline for using that

- technology for its intended purpose, and the strategy, organization, and resources necessary to avoid harm to the environment from hydrocarbons;
  - An analysis of the potential impacts of the worst-case-scenario discharge on the marine and coastal environments for activities conducted pursuant to the proposed development and production plan;
  - A comprehensive survey and characterization of the coastal or marine environment within the area of operation, including bathymetry, currents and circulation patterns within the water column, and descriptions of benthic and pelagic environments;
  - A description of the technologies to be deployed on the facilities to routinely observe and monitor in real time the marine environment throughout the duration of operations, and a description of the process by which such observation data and information will be made available to Federal regulators and to Integrated Coastal and Ocean Observing System.
- The Secretary is required to treat the approval of a development and production plan, or a significant revision of a plan as an agency action requiring preparation of an EA or EIS in accordance with NEPA.
- The Secretary is prohibited from approving a development and production plan, or significant revision of such a plan, unless:
  - The plan is in compliance with all applicable environmental and natural resource conservation laws; and
  - The applicant has available oil spill response and clean-up equipment and technology that has been demonstrated to be capable of effectively remediating the projected worst-case release from activities under the plan.
- Lessees engaged in drilling operations are required to provide to the Secretary:
  - All daily reports generated by the lessee, or any daily reports generated by contractors or subcontractors engaged in or supporting drilling operations on the lessee's lease, no more than 24 hours after the end of the day for which they should have been generated;
  - Documentation of blowout preventer maintenance and repair, and any changes to design specifications of the blowout preventer, within 24 hours after such activity; and
  - Prompt or real-time transmission of the electronic log from a blowout preventer control system.
- Effectively eliminates the royalty in kind program.
- Repeals the royalty relief provisions of the Energy Policy Act of 2005 for deep wells in shallow waters, and deep water production in the Gulf of Mexico, and in the planning areas offshore Alaska.
- Requires the Coast Guard to revise their regulations governing the employment of foreign nationals on the OCS.
- Announces Congresses intent to monitor the deployment of personnel and material on the OCS to encourage the development of American technology and manufacturing.

- Specifies certain responsibilities for the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling established under Executive Order No. 13543 of 21 May 2010, and provides it with subpoena power.
- Prohibits issuance of new leases to persons that have not renegotiated the royalty payments from certain leases subject to royalty relief.
- Provides that the decision memorandum of the Secretary of the Interior entitled "Decision memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf" and dated July 12, 2010, and any suspension of operations issued in connection with the moratorium, shall not apply to an application for a permit to drill submitted on or after the effective date of the Act if it has been determined that the applicant:
  - Has complied with NTL No. 2010–N05 and NTL No. 2010–N06;
  - Has complied with additional safety measures recommended by the Secretary as of the date of the enactment; and
  - Has completed all required safety inspections.
- Establishes the Gulf of Mexico Restoration Program.
- Establishes additional civil penalties for spills from offshore facilities in violation of section 311(b)(3) of the FWCPA larger than 1 million barrels.
- Requires the Chairman of the Council on Environmental Quality, within 180 days of enactment, to establish eight Regional Coordination Councils to:
  - Foster better coordination, communication, and collaboration between Federal agencies with authorities for ocean, coastal, and Great Lakes management; and
  - Undertake coordinated and collaborative regional planning efforts using the best available science, and to ensure the protection and maintenance of marine ecosystem health, in decisions affecting the sustainable development and use of Federal renewable and nonrenewable resources on, in, or above the ocean (including the Outer Continental Shelf) and the Great Lakes for the long-term economic and environmental benefit of the United States.
- **Modifies the limit of liability for MODUs under 33 U.S.C. 2704(b)(2) regarding excess liability.**
- Requires the President to review the limits of liability in 33 U.S.C. 2704(a) at least once every three years and revise them upward to reflect the amount of liability that is determined commensurate with the risk for the particular category of vessel, facility, or port, or any increase in the CPI.
- Revises the required demonstrations of financial responsibility under 33 USC 2716 by raising the amount for offshore facilities to \$300 million from \$35 million (OCS) and \$10 million (State waters), and allowing the President to determine that for specific facilities higher amounts may be required
- Adds damages to human health, including fatal injuries and mental health, as damages subject to 33 U.S.C. 2702(b)(2).
- **Adds a new requirement that, except for activities requiring a Coastwise or Fisheries endorsement under, only a vessel for which a certificate of**

documentation with a registry endorsement is issued and that is owned by a citizen of the United States (as determined under 46 U.S.C 50501(d)) may engage in support of exploration, development, or production of resources in, on, above, or below the exclusive economic zone or any other activity in the exclusive economic zone to the extent that the regulation of such activity is not prohibited under customary international law. The requirement applies to exploration, development, production, and support activities that commence on or after 1 July 2011. The Coast Guard is required to provide training to its personnel to enforce this requirement.

- Requires that the safety management system (required under 46 U.S.C. 3306 for self-propelled units) for a MODU operating in waters subject to the jurisdiction of the United States (including the EEZ) includes processes, procedures, and policies related to the safe operation and maintenance of the machinery and systems on board the vessel that may affect the seaworthiness of the vessel in a worst-case event. This provision is effective 6 months after enactment.
- Require the Coast Guard, in prescribing regulations under 46 U.S.C. 3306 for MODUs, develop standards to address a worst-case event on the vessel. This provision is effective 6 months after enactment.
- Specifies that a license as master of a mobile offshore drilling unit may be issued only to an applicant who has been issued a license as master under 46 U.S.C. 7101(c)(1) and has demonstrated the knowledge, understanding, proficiency, and sea service for all industrial business or functions of a mobile offshore drilling unit. This provision is effective 6 months after enactment.
- Revises 46 U.S.C. 8101(a)(2) to require that a MODU (irrespective of its propulsion or lack thereof) shall at all times be under the command of a master licensed under 46 U.S.C. 7104". This provision is effective 6 months after enactment.
- Amends 33 U.S.C. 1321 to state that a MODU (as defined in 33 U.S.C. 1001) is not eligible to operate without a Coast Guard approved response plan.
- Requires the creation of a publically accessible database to track all discharges of oil or hazardous substances into the waters of the United States, adjoining shorelines, or waters of the contiguous zone, or in connection with OCS or Deepwater Port activities, that includes the name of the vessel or facility, name of the owner, operator or person in charge, date and volume of the discharge, location, information regarding dispersant use, record of any determination of a violation, and any enforcement action taken.
- Increases the Class I civil penalty amount under 33 U.S.C. 1321(b)(6)(B) from \$10K to \$100K, not to exceed \$250K, the Class II amount from \$10K to \$100K, not to exceed \$1 million, and the amount under 33 U.S.C. 1321(b)(7) from \$25K to \$100K per day per violation and from \$1,000 to \$2500 per barrel.
- Requires the revision of agency memorandums of understanding to clarify the roles and jurisdictional responsibilities of the EPA, the Coast Guard, DOI, DOT and other Federal Agencies relating to OPA 90.

- Establishes a new “Build America” requirement that a person may not use an offshore facility to engage in support of exploration, development, or production of oil or natural gas in, on, above, or below the EEZ unless the facility was built in the United States, including construction of any major component of the hull or superstructure of the facility. This may be waived if the Secretary of the Department in which the Coast Guard is operating finds:
  - The offshore facility was built in a foreign country and is under contract, on the date of enactment, in support of exploration, development, or production of oil or natural gas in, on, above, or below the EEZ;
  - An offshore facility built in the United States is not available within the time needed to meet the requirements in the primary lease term, or of sufficient quality to perform drilling operations required under a contract; or
  - An emergency requires the use of an offshore facility built in a foreign country.

The Secretary must issue a detailed written justification as to why a waiver meets the specified criteria and publish the justification in the Federal Register allowing 45 days for public notice and comment.

- Requires OCS facilities located in more than 500 feet of water to be equipped with sensing and monitoring systems to allow their integration into the Integrated Coastal and Ocean Observing System. The Coast Guard is required to determine the most capable and efficient domestic systems for this purpose and issue implementing regulations within 180 days of enactment.
- Specifies that the Secretary of Interior may not issue any license or permit authorizing drilling for oil and gas on the Outer Continental Shelf unless the applicant for the license or permit has a response plan approved under section 311(j)(5)(D) of the Federal Water Pollution Control Act (33 U.S.C. 1331(j)(5)(D)) for the vessel or facility that will be used to conduct such drilling.
- Requires, within 60 days of enactment, the Secretary of Interior to enter into an arrangement with the National Academy of Engineering under which the Academy shall, within 1 year after such arrangement is entered into, submit to the Secretary and to Congress a report that assesses the economic, safety, and environmental impacts of requiring that 1 or more relief wells be drilled in tandem with the drilling of some or all wells subject to the requirements of this Act and the amendments made by this Act.
- Establishes a program to provide whistleblower protection to OCS employees.