



April 25, 2017

House Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Members of the House Committee on Education and the Workforce:

The Center for Law and Social Policy (CLASP), a national organization that works to improve the lives of low-income people, urges the House Committee on Education and the Workforce to oppose the **Working Families Flexibility Act (H.R. 1180/S. 801) of 2017**. Rather than addressing the significant work-life challenges many workers face, this legislation will only serve to erode critical labor protections.

Most working families, especially low-income families and families of color, face considerable struggles balancing work and family demands. Rising economic inequality, which was further exacerbated by the Great Recession and slow economic recovery, in addition to stagnant wages, has left too many families in a precarious economic situation. Over 2.6 million workers earn at or below the minimum wage while 20.6 million hourly, non-self-employed workers 18 and older make near or slightly above the minimum wage.¹ These inadequate wages keep many working families in poverty, especially families of color.² Forty percent of Black and fifty percent of Latino working parents live below 200 percent of the federal poverty level (about \$40,000 for a family of four).³

For many, the economic instability created by low wages is exacerbated by volatile work schedules and lack of paid leave. Many low-wage and hourly workers have unpredictable schedules that fluctuate from week to week and month to month. A recent study found that 40 percent of hourly workers ages 26 to 32 receive their work schedules less than one week in advance, and this number is even larger for workers of color.⁴ Additionally, over 41 million private sector workers—36 percent of the workforce—cannot earn paid sick days,⁵ and one in seven low-wage workers report losing a job in the past four years because of getting sick or caring for a child or parent.⁶ Only 14 percent of the workforce has paid family leave through their employer and less than 40 percent has personal medical leave through an employer-provided short-term disability program. Even fewer low-wage workers have access to this kind of leave, with just 5 percent of workers in the lowest 25 percent of wage earners having any access to paid family leave.⁷

These extremely challenging workplace conditions point to a great need for stronger and broader workplace policies that support and increase the economic security of working families. Unfortunately, the Working Families Flexibility Act of 2017, which purports to provide workers with greater flexibility and choice, will do nothing to help workers and will instead erode important overtime protections.

1. The Working Families Flexibility Act of 2017 Does Not Provide Real Choices

The bill would ostensibly provide workers who work more than 40 hours a week the choice between receiving additional compensation in the form of compensatory time (or time-off) in lieu of overtime pay. The rationale for this change to the Fair Labor Standards Act is that employers should be allowed to give their workers greater choice in how they would like to be compensated for the additional hours they must work. However, given the power dynamics in the workplace, for most low-wage and hourly workers, this so-called “choice” is likely to be elusive. Employees that choose overtime pay over compensatory time (comp time) may experience repercussions for their choices; there is nothing in this bill to prevent an employer from only providing overtime opportunities to workers who express a preference for compensatory time over those who choose overtime pay. Workers who need and rely on additional overtime pay to make ends meet will have little recourse in the face of such preferential treatment. Additionally, this legislation offers workers limited protection from retaliation, opening the door to greater coercion and intimidation in the workplace. Instead of providing workers with more choice, this bill only provides employers with more choice, allowing them to make decisions that could harm their employees.

2. The Working Families Flexibility Act of 2017 Does Not Provide Flexibility

The legislation will allow workers to bank up to 160 hours of comp time but without a guarantee that they can use this time when they want or need to use it, including in case of an emergency. If their requests to use comp time are denied, workers have no remedy other than requesting the comp time to be cashed-out. Additionally, if workers need to cash out their banked comp time, they must wait for up to 30 days for their employer to comply. In the face of a sick child, personal illness, or other family health emergency, comp time offers none of the flexibility that workers need.

3. The Working Families Flexibility Act of 2017 is Not a Replacement for Real Paid Sick Days or Paid Family and Medical Leave Policies

Many proponents of this bill claim workers can use comp time as a form of paid sick or paid family leave. However, an employer can deny workers’ requests to use this type of leave and also has the ability to decide unilaterally to pay out any comp time that has been banked beyond 80 hours. As a result, workers who have been banking comp time to use as parental leave or to care for a sick family member could find themselves not only without the leave, but also with less money than if they had received overtime pay. We know that many workers lose their jobs simply for taking paid sick days. One in seven, or 14 percent, of low-wage workers report losing a job from being sick or caring for a sick family member.⁸ The Working Families Flexibility Act does not guarantee paid sick or paid family leave and offers no protection from retaliation (such as being fired) if a worker has to take this kind of leave.

4. *The Working Families Flexibility Act of 2017 Offers Limited Protection and no Additional Enforcement Funds*

The Working Families Flexibility Act offers only one remedy, a private right of action (i.e. the right to sue in court), if a worker is threatened or coerced by an employer. While the private right of action is an important remedy, many low-wage workers would be unable to take advantage of this remedy, which can be cost-prohibitive and time-intensive. This remedy is most effective when it is combined with an administrative enforcement option. However, there is also no language in the bill legislating additional funds to the U.S. Department of Labor to investigate or enforce this new provision of the Fair Labor Standards Act.

Moreover, there is no remedy for workers with banked comp time if an employer declares bankruptcy or goes out of business without paying out the comp time. This can further exacerbate the problem of wage theft, which already costs low-wage workers billions.⁹

5. *There are Better Legislative Options*

Working families need policies that protect and strengthen job quality. There are a number of policies and existing bills that promote family-friendly and flexible workplace options without eroding critical workplace rights. These policies should be considered and adopted, including:

- ***The Healthy Families Act*** (H.R. 1516/ S. 636) would ensure millions of workers have access to earned sick days. Paid sick days legislation has been successfully adopted in seven states and thirty-two localities.
- ***The Family and Medical Insurance Leave (FAMILY) Act*** (H.R. 947/ S. 337) would create a national paid leave insurance program, modeled on the successful programs in California, New Jersey, and Rhode Island, allowing workers to take paid leave to care for a new child, seriously ill family member or for their own serious illness.
- ***The Schedules That Work Act***, which would ensure workers have the right to request more flexible or predictable work schedules.
- ***Increasing the minimum wage*** and eliminating the tipped sub-minimum wage (a lower minimum wage currently set at \$2.13) that will benefit and potentially lift millions out of poverty.

The goal of the overtime rule in the Fair Labor Standards Act (FLSA) is to create a disincentive for employers to overwork their employees. If workers are asked to work long hours, they must be fairly compensated for that valuable time away from their families. Furthermore, the FLSA already provides employers significant flexibility to offer their workers a wide range of flexible scheduling options. The Working Families Flexibility Act does not improve upon those flexibilities for workers nor does it improve the economic security of low-wage working families.

Sincerely,



Olivia Golden
Executive Director

The Center for Law and Social Policy (CLASP) is a national organization that works to improve the lives of low-income people by developing and advocating for federal, state, and local policies that strengthen families and create pathways to education and work. We advocate for and conduct research and analysis on job quality policies, including paid sick days, paid family and medical leave, and fair scheduling. Further, we work with community and government partners to promote effective implementation and enforcement of labor standards policies.

Endnotes

¹ Drew Desilver, “5 Facts about the minimum wage,” Pew Research Center, January 2017.

<http://www.pewresearch.org/fact-tank/2017/01/04/5-facts-about-the-minimum-wage/>

² Zoe Zilak Michel and Liz Ben-Ishai, Good Jobs for All: Racial Inequities in Job Quality, Center for Law and Social Policy, 2016. http://www.clasp.org/resources-and-publications/publication-1/Race-and-Job-Quality-Brief-3_30ar.docx-FINAL.pdf.

³ “Working Parents Living Below 200% of the Federal Poverty Line (Share) by Race/Ethnicity,” Diversity Data Kids, <http://www.diversitydatakids.org/data/ranking/562/working-parents-living-below-200-of-the-federal-poverty-line-shareby-raceethnic/#loct=2&cat=46,31&tf=17&ch=1,2,3,4>.

⁴ Susan Lambert, Peter Fugiel and Julia Henly, *Precarious Work Schedules Among Early-Career Employees in the US: A National Snapshot*, University of Chicago, August 2014.

https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly_precarious_work_schedules.august2014_0.pdf.

⁵ Bureau of Labor Statistics, “Employee Benefits in the United States,” U.S. Department of Labor, July 2016, <https://www.bls.gov/news.release/pdf/ebs2.pdf>.

⁶ *Hard Work Hard, Hard Lives: Survey Exposes Harsh Reality Faced By Low-Wage Workers in the US*, Oxfam America, 2013. <https://www.oxfamamerica.org/static/oa4/low-wage-worker-report-oxfam-america.pdf>.

⁷ Bureau of Labor Statistics, “Leave Benefits: Access,” U.S. Department of Labor, Employee Benefits Survey, March 2014. <http://www.bls.gov/ncs/ebs/benefits/2014/ownership/civilian/table32a.htm>.

⁸ *Hard Work Hard, Hard Lives: Survey Exposes Harsh Reality Faced By Low-Wage Workers in the US*, Oxfam America

⁹ Brady Meixell and Ross Eisenbrey, *An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year*, Economic Policy Institute, 2014. <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>.