



H.R. 1180, Working Families “Flexibility” Act – FAQs

Q. What is compensatory time off (comp time)? Compensatory time off is a policy of offering one and one-half hours of paid time off at the employee’s regular rate of pay for hours worked beyond 40 in a week, instead of providing overtime pay for those hours. Comp time is currently only available in the public sector.

Q. Is comp time mandatory or voluntary under this legislation?

A. At first glance, the legislation is voluntary. However, the reality in most workplaces is that given the power differential between employers and employees, employees may feel compelled to accept comp time in lieu of overtime pay when asked to do so by their employers. This will be particularly true in non-union workplaces.

Q. Who does this bill apply to?

A. This legislation applies only to workers who are eligible for overtime pay and have worked at least 1,000 hours for their employer during the previous 12 months of continuous employment. The bill would not affect workers who are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), including those subject to the exemptions for executive, administrative, and professional employees.

Q. Can an employee take comp time when she needs it?

A. An employee may not be able to take comp time when she needs it. The language in the FLSA permitting employers to provide comp time to public sector employees provides that the employer must permit the employee “to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations” of the public agency. The language in H.R. 1180 is the same as the public sector language. There has been significant litigation over whether an employee may take comp time when she chooses or only when the employer allows it. The Ninth Circuit determined that granting “...comp time and other leave requests within a year of the date the request was made ...complied with the FLSA.” The courts’ deference to the employers’ definition of “reasonable period” suggests that under H.R. 1180, employers may be able to prohibit employees from taking take comp time when they need it—such as when they are sick, or a parent in need of help has a scheduled surgery.

Q. How many hours of comp time may an employee accrue?

A. Under H.R. 1180, an employee can accrue up to 160 hours, but an employer can decide unilaterally to provide monetary compensation for up to 80 of those hours.

Q. Can an employer force an employee to take comp time?

A. Nothing in this legislation says that employers may force employees to take comp time; however, an employer may deny an employee’s request to take comp time on a specific date, if the employer decides that granting the request would “unduly disrupt the operations” of the company. Furthermore, since employers

must compensate employees for any unused comp time at the end of the designated 13-month period, this means in practice that employees who want to use their comp time will have to do so before it expires.

Q. Can an employer unilaterally discontinue its comp time program?

A. Yes, with 30 days' notice an employer can discontinue offering comp time, unless a collective bargaining agreement says otherwise.

Q. Can an employee withdraw from the comp time program at any time?

A. Yes, if an employee submits written notice of withdrawal, the employer must provide payment to the employee for the comp time owed within 30 days.

Q. How long can an employer hold onto an employee's comp time balance?

A. On January 31 of each year, the employer must provide monetary compensation for the employees' unused compensatory time off accrued during the preceding calendar year, unless the employer designates a different 13 month period as a payout deadline instead of a calendar year.

Q. Can an employee's accrued comp time roll over to the following year?

A. Under H.R. 1180, an employee's accrued comp time cannot roll over to the following year. The bill requires all employers to compensate their employees for unused compensatory time no later than 13 months after it was earned.

Q. How much compensation must an employee be paid for each hour of comp time earned?

A. An employee who chooses comp time instead of overtime pay earns 1.5 hours at her regular rate or 1.5 hours at her rate when comp time is paid out—whichever is higher.

Q. Would this legislation make it any more likely that employees would be cheated out of their overtime pay?

A. Yes, H.R. 1180 would greatly increase the complexity of enforcing overtime protections. It will be harder to determine whether an overtime violation has occurred where an employer asserts that comp time was granted in lieu of overtime pay. The bill does not provide any additional resources to DOL to ensure compliance. Furthermore, the legislation does not provide any additional funding to DOL to provide technical assistance or conduct enforcement.