



# Section-by-Section

COMMITTEE ON EDUCATION & THE WORKFORCE DEMOCRATS

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The Hon. Bobby Scott • Ranking Member

## Republicans' H.R. 1180, the Working Families "Flexibility" Act

**Section 1: Short Title.** This bill is called the Working Families Flexibility Act.

### Section 2: Compensatory Time

- (1) The bill provides employers with the right to offer employees the ability to accrue compensatory time off (comp time) at the rate of one and one-half hours of every hour of overtime worked, in lieu of receiving overtime pay.
  - *Analysis: An employee who is paid \$10 an hour who worked a 50-hour week but agreed to accept comp time in lieu of overtime pay would receive \$400 in her paycheck, instead of \$550. The additional \$150 would be withheld as comp time, payable at some later date, when the employee is permitted to take time off.*
- (2) If there is a collective bargaining agreement already in place, comp time may only be offered if doing so complies with the terms of the agreement. If there is not a collective bargaining agreement in place, an arrangement to accept comp time in lieu of overtime pay may only be entered into knowingly and voluntarily. Employees are only eligible to enter into comp time agreements if they have worked at least 1,000 hours for the employer during a period of continuous employment in the 12 months before the agreement or before comp time is received.
  - *Analysis: While on paper employees are free to either agree to this arrangement or continue to receive overtime pay, the power imbalance between employers and employees is likely to result in many employees feeling compelled to forfeit their overtime pay and accept comp time instead.*
- (3) Maximum Hours
  - (A) Employees may not accrue more than 160 hours of comp time.
  - (B) Compensation date. The employer must pay the employee for any unused comp time during the preceding calendar year (or during another 12 month period the employer may designate) within 31 days of the end of that calendar year (or 12 month period).
  - (C) Excess of 80 hours. The employer may cash out (give an employee monetary payment) for any comp time earned over 80 hours, as long as the employer provides 30 days' notice.
  - (D) Policy. Unless an applicable collective bargaining agreement provides otherwise, an employer may discontinue a policy of permitting comp time, as long as the employer provides at least 30 days' notice.
  - (E) Written request. An employee can rescind an agreement to receive comp time at any time. The employer is required to provide compensation to an employee who rescinds such an agreement within 30 days of the employee's request.
    - *Analysis: In practice, what this could mean for many employees is that comp time they had banked cannot be counted on to be available when they need it – e.g., for a surgery, for parental leave, or any other important life event. An employer could unilaterally decide that it no longer wants an employee to be able to take the time, and cash out the employee.*

- (4) **Private employer actions.** An employer may not threaten or intimidate an employee related to the employee's acceptance or rejection of an offer of comp time.
- *Analysis: Despite the prohibition on retaliation against employees based on their decision to accept or reject comp time, particularly in non-union workplaces, the power differential between employers and employees means that an employee may often feel coerced to accept comp time in lieu of overtime pay. In addition, if an employee chooses not to accept comp time, the employer can preferentially award overtime hours to those employees who agree to accept comp time. Nothing in the legislation bars such preferential treatment.*
- (5) **Termination of employment.** When an employee's employment terminates, the employer must pay the employee for any accrued comp time.
- *Analysis: The employee would always be better off getting her overtime pay when she earned it, rather than waiting until she uses comp time or until her job ends. The employer is not required to pay an employee any interest on her accrued comp time, whereas if an employee puts that money in an interest-earning bank account, it will increase in value. Furthermore, allowing an employer to hold onto one's paycheck is a risky proposition, since during that time the employer could potentially go bankrupt.*
- (6) **Rate of compensation.** Comp time owed to an employee shall be paid at the employee's regular rate, or the employee's rate at the time the comp time is paid out, whichever is higher.
- (7) **Use of time.** An employee shall be permitted to use comp time "within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer."
- *Analysis: In the public sector, there has been significant litigation over when an employee may use comp time. In some cases, courts have held that it is reasonable for an employer to deny the use of comp time for up to one year. This means that an employee who wants comp time to care for a sick child, to address her own health needs, or for any other reason that requires taking time off on a specific date, has no real assurance that she will be able to take time off when she needs it.*
- (8) **Definitions.** Employee shall not include a public employee. Comp time is defined as one-and-one-half hours of time off at the employee's regular rate of pay or the employee's rate of pay at the time the comp time is taken, whichever is higher. Overtime means one and one-half hours of pay for every hour worked over 40 in a week.

**Section 3: Remedies.** An employer who fails to pay comp time owed to an employee shall be liable for the amount of unpaid comp time, plus liquidated damages.

- *Analysis: This bill would greatly increase the complexity of enforcing overtime protections. This bill will make it 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 in order to ensure compliance.*

**Section 4: Notice to Employees.** Within 30 days of enactment, the Secretary of Labor shall provide notice to employees about the provisions of this Act.

**Section 5: GAO Report.** Within two years after enactment, the GAO shall provide a report on the implementation of comp time as provided in this legislation, including claims for unpaid wages, enforcement actions brought by the Secretary of Labor, and the amounts recovered.

**Section 6: Sunset.** This Act shall sunset within five years of enactment.