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**On Behalf of The
Society for Human Resource Management**

**Submitted to The
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Subcommittee on Workforce Protections**

**Hearing On
“H.R. 1180, The Working Families Flexibility Act”**

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Introduction

Good morning Chairman Byrne, Ranking Member Takano and distinguished members of the Committee. My name is Crystal Frey, and I am Vice President of Human Resources at Continental Realty Corporation located in Baltimore, Maryland. I have over 20 years' experience in HR, having worked for a federal government contractor, a real estate company and a special events planning company and in both union and non-union environments. Thank you for this opportunity to testify before the Subcommittee on H.R. 1180, the Working Families Flexibility Act of 2017.

I am pleased to appear before you today on behalf of the Society for Human Resource Management (SHRM), of which I have been a member for 21 years. I am also a member of my local SHRM chapter, the Chesapeake Human Resources Association.

SHRM is the world's largest human resource (HR) professional society, representing 285,000 members in more than 165 countries. For nearly seven decades, the Society has been the leading provider of resources serving the needs of HR professionals and advancing the practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

Continental Realty Corporation (CRC), founded in 1960, is a three-generation, family-owned company. CRC has earned a reputation for excellence and has grown into one of the most respected real estate investors and operators in the Mid-Atlantic and Southeast. Our diverse real estate portfolio comprises shopping centers, apartment communities, flex space, office parks, restaurants, undeveloped land and warehouse buildings. We have diverse in-house resources specializing in acquisitions, financing, asset management, property management, leasing, construction, information technology, marketing and legal.

In my testimony, I will share more about my business; outline my strong support for H.R. 1180, the Working Families Flexibility Act of 2017; share with you some workplace flexibility practices at my company; and offer SHRM's workplace flexibility policy recommendations for Congress.

About CRC

Many of CRC's 300 employees celebrate milestones of 10, 15, 20 and 25 years with the company each year. Approximately 200 members of our workforce are non-exempt employees who work at our various properties overseeing operations daily. Another 80 employees serve in our corporate office in Baltimore working in asset management, acquisitions, legal, IT, marketing, human resources, accounting, construction and financing.

I am proud to say that CRC takes its commitment to be a good corporate citizen seriously, providing many opportunities in the neighborhoods where we operate. We focus on hiring individuals from the local market and have developed a corporate university to provide training to employees so that they can develop skills for their current positions as well as develop themselves for future career growth. Our diverse workforce reflects the makeup of the communities around us and includes non-traditional students, single parents, grandparents who are caregivers and Millennials starting their careers. This means our employees also have diverse needs, many of which do not always fit neatly into our standard policies, procedures, or a one-size-fits-all government mandate.

CRC's unparalleled dedication to being the best in the business is evidenced by the awards we continue to receive. We have been recognized for our continuing education efforts, customer satisfaction, community service and commitment to personal health. CRC was honored as one of the "Top Workplaces in Baltimore" for several years; received the WorldatWork Seal of Distinction in 2017, as well as *SmartCEO* magazine's Healthiest Company Award in 2015; and was named a Healthiest Employer in the *Washington Business Journal* for three straight years. These accolades and recognition certainly strengthen our recruitment and retention efforts, but, more importantly, they demonstrate our commitment to and investment in our employees.

Because the real estate environment is ever-changing, our company and team members are flexible and adaptable. At CRC, we implement strategies to support employees' work-life needs, help improve engagement and morale, increase productivity, retain top performers, and, ultimately, improve our business performance. It is also worth noting that CRC competes for talent in the Washington, D.C., metro area, which has a significant federal employee presence. Federal employees have access to the type of flexibility we are discussing today: compensatory, or "comp," time. As a private employer, CRC is unable to offer this option to our workforce.

I believe a key to recruiting and retaining top talent is the ability to have a flexible workplace policy that meets the needs of our employees and the business imperatives of CRC. We are invested in our workforce, and at CRC we are always looking for additional opportunities to provide employees with flexibility. The bill we are here to discuss today would do just that.

Background on Compensatory Time

In 1938, Congress passed the Fair Labor Standards Act (FLSA). Among the act's provisions was the requirement that hours of work by non-exempt employees beyond 40 hours in a seven-day period must be compensated at a rate of one and a half times the employee's regular rate of pay. In 1978, Congress passed a temporary bill, the Federal Employees Flexible and

Compressed Work Schedules Act, which changed the FLSA, authorizing comp time for federal employees. In 1985, the Federal Employees Flexible and Compressed Work Schedules Act was reauthorized and made permanent. At the same time, Congress amended the FLSA to expand overtime coverage requirements and protections to state and local agencies and their employees. During that same year, the choice to select paid leave or overtime compensation was expanded to state and local agencies and their employees.

As you can see, the concept of giving employees the choice to select paid time off for overtime hours worked is nothing new—it has been an option widely available to federal and public-sector employees for nearly 40 years, and, by all accounts, it has worked well. While the U.S. House of Representatives has considered legislation to allow for comp time in the private sector several times, dating back to the 106th Congress, it is troubling that Congress has not yet extended this same benefit to hardworking private-sector employees. In the 21st century workplace, it's time to give private-sector non-exempt employees the opportunity to choose for themselves whether to receive cash wages or paid time off for working overtime.

Need for Compensatory Time

The FLSA was enacted toward the end of the Great Depression and reflects the realities of the industrial workplace of the 1930s, not the workplace of the 21st century. The act itself has remained relatively unchanged in the nearly 80 years since its enactment, despite the dramatic changes that have occurred in where, when and how work is done.

The increased diversity and complexity within the American workforce—combined with global competition in a 24/7 economy—is driving the need for more workplace flexibility, to include both paid leave and flexible work options. According to national data, 99 percent of employers with 50 or more employees have some form of time off with pay for their full-time employees¹. Research further demonstrates that employees value workplace flexibility. Employees rate workplace flexibility among the top three benefits offered by an employer that are very important to their job satisfaction.²

Yet work-family conflict continues to be an issue for most working Americans, among both male and female employees. Working parents (56 percent) say that it is difficult for them to balance work and family responsibilities. In addition, 50 percent of fathers say they spend too little time with their children and 40 percent of mothers say they always feel rushed.

Given these statistics, there is no doubt that employees today are juggling ever more responsibilities between work and home, which is why many

¹ Paid Time Off, Vacations, Sick Days and Short-term Caregiving in the United States (2015).

² Employee Benefits research report (2016). Society for Human Resource Management.

employees are requesting more flexibility at work. In fact, a recent study found that adults who are employed or looking for work value flexibility as much as they value having paid family or medical leave³. Therefore, public policy proposals that encourage or allow employers to offer more voluntary flexible work options are welcomed.

H.R. 1180, the Working Families Flexibility Act of 2017

SHRM commends Representative Martha Roby (R-AL) for introducing H.R. 1180, the Working Families Flexibility Act of 2017, which would modernize the application of the FLSA to the private sector by permitting employers to offer their employees the *voluntary* choice of taking overtime in cash payments, as they do today, or in the form of paid time off from work.

Just as with overtime payments, paid time off would accrue at a rate of one and a half hours for each hour of overtime worked. Employees would be able to accrue up to 160 hours of comp time per year, although an employer could choose to “cash out” the comp time after 80 hours after providing the employee with 30 days of notice. An employer would also be required to cash out any unused comp time at year’s end at the higher of either the regular time-and-a-half rate at which time was earned or the final regular rate.

The Working Families Flexibility Act also includes important employee protections. For example, employees can *choose* whether to participate in a comp time arrangement, giving employees choice and control. Under the bill, an employee must **voluntarily** enter into a written comp time arrangement with the employer. Any employer coercion is prohibited, as is conditioning employment based on participation in a comp time program. These rights may be enforced in the same way as other rights and protections of the FLSA. It is also important to note that this legislation does not affect the 40-hour workweek or change the way overtime is calculated.

Providing this comp time option would allow employees the opportunity to build a bank of time that they can use to take paid time off when they need it, provided the time off does not unduly disrupt the business operations of the employer. Importantly, this is the same standard for using comp time that is already included in federal statute that allows public-sector employees to access comp time. Also, if the employee chooses a comp time arrangement but later prefers to receive cash wages for overtime hours worked, the employee can discontinue the comp time program by giving the employer written notice. Comp time off as a workplace option gives non-exempt employees more control over their time and can improve employee morale and job satisfaction and increase productivity by giving employees the option of increased flexibility.

³ Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies (2017). Pew Research Center.

On a personal note, I can tell you that many of CRC's employees have inquired about the possibility of using comp time to pursue personal goals. As an employer that is invested in our workforce, it is incredibly difficult to explain to employees why they cannot choose for themselves whether to take overtime pay or paid time off for any hours worked over 40 in a week. Therefore, I am pleased to join SHRM and its 285,000 members in strong support of H.R. 1180 to make this choice available to private-sector employers and employees.

CRC Invests in Employees and Workplace Flexibility

As I mentioned above, CRC is committed to the success of our employees at work and at home, which has helped us achieve a retention rate of over 80 percent—considerably higher than the industry standard of 70 percent or less. Our average tenure is 7 years of employment. We were proud to be named to *The Baltimore Sun's* "Top Workplaces" list for the past three years, particularly as this is determined solely on the basis of employee survey responses.

A core value at CRC is to build the best team, and we recognize that healthy and fit employees who have an optimal work-life fit are mentally and physically prepared to perform at high levels each and every day. This is one reason we maintain our award-winning wellness program. Key elements of the program include flexible scheduling, adjusted summer hours and discounted gym memberships, as well elder care and child care referrals through our employee assistance program. In addition, voluntary quarterly wellness initiatives focus on health education, healthy eating, exercise, financial wellness and emotional wellness. We also support our employees in their career growth through tuition reimbursement programs and by offering best-in-class, industry-specific training programs.

In addition to the above-mentioned wellness initiatives, CRC provides a full range of health and paid-leave benefits to attract and retain the best talent, including 3 to 4 weeks of vacation based on tenure, 3 personal days and 6 paid sick days annually, paid bereavement and jury leave, and 9 paid holidays. Short- and long-term-disability insurance is fully paid by the company to provide some income replacement when an employee experiences a non-work-related injury or illness. Additionally, CRC maintains an unpaid leave of absence policy for employees who experience an emergency that does not qualify for leave under the Family and Medical Leave Act (FMLA). While employees may use their current paid leave in conjunction with this policy, the availability of comp time would further complement this policy.

CRC continually strives to ensure that our employees' work-life needs are met by implementing innovative solutions. As mentioned above, CRC maintains flexible work schedules, a very popular option for the Washington, D.C., area to recruit and attract employees. Employees may establish a schedule beginning at 7:30 a.m., 8:00 a.m., 8:30 a.m. or 9:00 a.m. provided that business unit goals are

being met. This option is an arrangement that allows employees to make choices about when and how long work is performed. Additionally, our summer work schedule includes closing the office at 4:30 p.m. every Friday between Memorial Day and Labor Day. CRC continues to pay the rate for a full eight-hour day on Fridays during this time. We also close our offices early the day prior to any company holiday (usually by 1:00 p.m.) and pay all employees (exempt and non-exempt) through the end of the day to provide them with an opportunity to get an early start with their families on the holidays.

In addition to these voluntary practices, we make other accommodations to meet employee needs. For example, I was recently approached by a non-exempt leasing consultant who was facing numerous life-changing events at one time, including the birth of her child, her upcoming marriage and the completion of her college degree. She requested an alternative schedule to accelerate the pace of her education to graduate prior to her due date. While the employee normally worked Monday through Friday from 9:30 a.m. until 6:00 p.m., we supported her request for schedule flexibility, allowing her to work 35 hours in order to leave early on certain days to attend class.

I am pleased to report that the employee finished the degree program in December and returned from FMLA leave just two weeks ago after having the opportunity to spend time with her newborn child. CRC was happy to support our employee's goal of finishing her degree prior to the birth of her child, and if comp time had been an option available to her, I believe it would have given her even more access to paid leave.

Many of our employees would benefit from having the option of comp time, particularly those who work at our commercial properties. Often, these employees work overtime to respond to emergency situations created by inclement weather or maintenance-related issues. The ability to bank paid time off would give these hardworking employees a tremendous sense of reassurance, knowing they could take time off when they need it most and receive pay.

Consider the case of one of our groundskeepers who is originally from Vietnam. He needed to take a leave of absence of about a month to attend extensive marital rites focused on the temple and area near his birthplace. Similarly, one of our maintenance technicians required a leave of absence to attend extensive funeral rites for his father in his village located in an African nation. Many of these life events and associated customs do not fall precisely within the leave procedures established by most private sector employers in the United States.

Both of the employees mentioned above could use CRC's unpaid leave of absence policy that I mentioned earlier. Under this policy, an employee who does not otherwise qualify for leave under the FMLA may request an unpaid leave of

absence for other serious or urgent reasons. We developed this policy because of the diversity of urgent situations that may arise for good employees who need time off. Again, if comp time were an option, a portion of or all of these unpaid leaves could have been paid as employees could use the comp time banked in conjunction with these leaves.

Having the ability to design our workplace practices in ways that support our mission and values, and that develop and fulfill our employees, is critical to us. CRC and employers like us want to be able to continue to manage our workplaces in ways that work for us and that provide us these mutually beneficial outcomes. In the examples mentioned above and countless others, we were happy to accommodate these requests for valued employees who needed flexibility to meet all their obligations and achieve their goals. The choice of offering comp time arrangements to our employees would provide us with yet another workplace flexibility tool to support our employees and their diverse needs.

Mr. Chairman, these workplace flexibility practices that CRC has implemented are voluntary. We don't have to offer these benefits, but we do because they work well for our employees and help us attract and retain the best people. However, if forced onto another employer in Baltimore, or across the state or the country, these benefits might not work as well for them given that every workforce is unique.

That's why this bill's (H.R. 1180) voluntary approach to compensatory time for employers and employees is so important. If enacted, this bill would give employers the **option** of offering a comp time program and employees the **choice** of whether to participate in the comp time arrangement. Under current law, private-sector employers and employees are without this option and this choice—an option and choice that their government counterparts have enjoyed for nearly 40 years. SHRM strongly supports comp time as outlined in H.R. 1180 because it meets our core workplace flexibility principle—that for flexibility to be effective, it must work for both employers and employees.

SHRM's Recommendations for a Workplace Flexibility Policy

HR professionals like me are on the front lines of devising workplace strategies to create effective and flexible organizations. As such, SHRM and its members have given careful consideration to the role public policy can play in advancing the adoption of workplace flexibility.

It is our strong belief that public policy must meet the needs of employees and employers alike. Rather than government mandates prescribing a specific solution, policy proposals should accommodate varying work environments, employee needs, industries and organizational sizes, while fostering innovation and a competitive economy.

A 21st century policy should incentivize employers to voluntarily offer a minimum threshold of paid leave and flexible work options to all employees. In exchange, employers would receive predictability and certainty in offering a uniform workplace flexibility program, rather than the current patchwork of state and local requirements employers currently encounter. While SHRM is pleased to support H.R. 1180 because it is a voluntary, workable policy for both employers and employees, a more comprehensive solution that encompasses the above elements is warranted. SHRM looks forward to continuing to work with members of the House and this Committee on this proposal.

Conclusion

In a 21st century workplace, flexibility policies help both multinational corporations and small businesses meet the needs of their employees. At its core, workplace flexibility is about improving business results by providing employees with more *control* over how, when and where work gets done. H.R. 1180 would give private-sector non-exempt employees more *control* by giving them the option of paid time off for overtime hours worked.

As I outlined in this testimony, my company and employers across the country would appreciate the option of allowing for comp time as a way to help employees better meet their work-life needs. Comp time has been a success for federal and public-sector employees for nearly 40 years. It's now time to extend this benefit choice to employees in the private sector.

Thank you. I am happy to answer any questions you may have.