

MINORITY VIEWS
H.R. 1180, the “Working Families Flexibility Act”
115th Congress, 1st Session
April 28, 2017

Committee Democrats oppose H.R. 1180. This legislation would amend the Fair Labor Standards Act (FLSA) to allow private sector employers to enter into voluntary arrangements with their employees to “compensate” them with compensatory time off (“comp time”) in lieu of overtime pay. Instead of paying workers overtime (time-and-a-half for every hour that they work beyond forty in a week), this legislation permits employers to pay employees in comp time (one and one-half hours of paid time off for every hour that they work over forty at the employee’s regular rate). The legislation provides no guarantee, however, that workers can take the time off when they actually need it.

H.R. 1180 undermines the vital protections in the Fair Labor Standards Act (FLSA) by making it cheaper for employers to require their employees to work excessive hours and legal for employers to deny workers their overtime pay. It also undermines enforcement of our wage and hour laws. Yet H.R. 1180 is being advanced by House Republicans as a “pro-family, pro-worker proposal.”¹ Unfortunately, rather than presenting this Committee with legislation that would actually benefit working families, the Majority has championed legislation that provides a way for employers to give their employees a pay cut. H.R. 1180 has been rejected in many previous Congresses, and it has never advanced beyond the House.

Instead of considering H.R. 1180, Congress should pass legislation that both protects workers’ overtime pay and promotes needed flexibility in the workplace. Democrats have proposed legislation that would raise the minimum wage, ensure equal pay for equal work, guarantee paid sick days and paid family and medical leave, and provide flexible and predictable schedules. These are the solutions that would make a real difference in the lives of working Americans, rather than a proposal that undermines bedrock worker protections and costs workers much-needed overtime compensation.

The Fair Labor Standards Act

In the 1930s, Congress recognized the need for legislation to address the widespread “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.”² This concern ultimately led to the passage of the FLSA in 1938, which still stands as one of the crowning achievements of the New Deal. This crucial law establishes a federal minimum wage, restricts the use of child labor, and sets standards for when employers must pay workers overtime.³

¹ Fact Sheet: Working Families Flexibility Act of 2017, United States House of Representatives, Committee on Education and the Workforce – Republicans (Apr. 24, 2017), *available at* <http://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=401576>

² 29 U.S.C. § 202(a).

³ 29 U.S.C. §§ 201-217.

Seventy-nine years after its enactment, the FLSA remains the nation's basic law governing wages and hours of work. There are three main protections afforded to workers under this critical law: 1) a basic minimum wage, 2) a limit on the number of hours an employer may require from an employee before being subject to an overtime premium, and 3) a prohibition on most forms of child labor.⁴

The maximum hours and overtime provisions are set out in Section 7 of the FLSA. Currently, the law requires employers to compensate all covered employees for any time that they work in excess of forty hours in a week at a rate of no less than one-and-a-half times their regular wage rate.⁵ Although the limit on hours compensable at the regular wage rate is firmly set at forty, there is nonetheless substantial flexibility in how these hours are allotted over the course of a week.

There are two primary purposes behind setting a maximum hour limit and subjecting further hours to an overtime premium: discouraging overwork and spreading employment. Congress sought to lessen the burden on workers that comes from working an "intolerable" number of hours in a given week.⁶ By charging a premium for extra work hours, employers are discouraged from overworking their employees. The other purpose behind the overtime wage premium is economic in nature—spreading employment, thereby spurring hiring and reducing the unemployment rate.

As originally enacted, the FLSA contained no provisions allowing employers to offer comp time in lieu of overtime wages. However, Congress changed this when it passed the Fair Labor Standards Amendments of 1985, which introduced a limited system of comp time for public-sector employees.⁷ Section 7(o) of the FLSA now provides that state and federal public sector workers are eligible for comp time in lieu of overtime wages, with the comp time to accumulate at a rate of one and half times the number of hours worked.⁸ As applied to federal employees, the regulations require that accrued comp time be used by the end of the 26th pay period (one year) after the pay period during which the overtime hours were worked.⁹ Congress's intention in adding this provision was to provide cost savings in government budgets, as the overtime wage premium was more expensive than providing workers with compensatory time off.¹⁰

Past Efforts to Replace Overtime with Comp Time

The ideas presented by the Majority in H.R. 1180 are not new. Committee Republicans have sponsored numerous virtually identical bills, each of which would have weakened overtime

⁴ 29 U.S.C. §§ 201-219.

⁵ 29 U.S.C. § 207(a).

⁶ President Franklin D. Roosevelt, Annual Message to Congress (Jan. 3, 1938), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=15517>.

⁷ Pub. L. No. 99-150.

⁸ 29 U.S.C. § 207.

⁹ Fact Sheet: Compensatory Time Off, Office of Personnel Management, *available at* <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off>; *see also* 5 C.F.R. § 550.114.

¹⁰ Ross Eisenbrey, *The Naked Truth About Comp Time*, Economic Policy Institute, at 5-6 (Mar. 31, 2003), *available at* <http://www.epi.org/page/-/old/issuebriefs/ib190/ib190.pdf>.

protections through the use of comp time. None of these bills have come close to being enacted into law.

- In 1995, Republicans introduced H.R. 2391, the *Working Families Flexibility Act of 1996*. This bill was reported out of Committee and passed the House on a nearly party-line vote. It was not considered by the Senate.
- In 1997, Republicans introduced H.R. 1, the *Working Families Flexibility Act of 1997*, which sought to amend the FLSA to extend comp time to the private sector. This bill passed the House and was not considered by the Senate.¹¹
- In 1999, Republicans introduced, H.R. 1380, the *Working Families Flexibility Act* and no further action was taken.
- In 2001, Republicans introduced H.R. 1982, the *Working Families Flexibility Act*, and the Subcommittee on Workforce Protections held two hearings on the issue.
- In 2003, Republicans introduced H.R. 1119, the so-called *Family Time Flexibility Act*, which again proposed extending comp time to the private sector. This bill was reported out of Committee and no further action was taken.¹²
- In 2008, Republicans introduced H.R. 6025, the *Family Friendly Workplace Act*, a nearly identical comp time bill. No further action was taken.¹³
- In 2009, Republicans introduced H.R. 933, which was a reintroduction of the 2008 *Family Friendly Workplace Act*. No further action was taken.¹⁴
- In 2013, Republicans introduced H.R. 1406, the *Working Families Flexibility Act of 2013*, the first version of the bill introduced by Rep. Martha Roby.¹⁵ This bill passed the House on a nearly party-line vote, and it was not considered by the Senate.
- In 2015, Republicans introduced H.R. 465, the *Working Families Flexibility Act of 2015*. No further action was taken.¹⁶
- In 2017, Republicans introduced H.R. 1180, the *Working Families Flexibility Act of 2017*. This bill was reported out of Committee on a party-line vote, with all Democrats opposing the legislation.¹⁷

Each comp time bill has met firm opposition from worker advocates and women's organizations that recognized the harm these proposals would inflict upon working families. The following organizations sent letters to the Committee in opposition to H.R. 1180: 9-5, the American Federation of State, County and Municipal Employees (AFSCME), the Center for Law and Social Policy (CLASP), the Economic Policy Institute (EPI), Family Values @ Work, the Leadership Conference on Civil and Human Rights (LCCR), the National Employment Law Project (NELP), the National Women's Law Center (NWLC), the Service Employees International Union (SEIU), the International Brotherhood of Teamsters, the United Food and

¹¹ H.R. 1, available at <https://www.gpo.gov/fdsys/pkg/BILLS-105hr1eh/pdf/BILLS-105hr1eh.pdf>.

¹² H.R. 1119, available at <http://www.gpo.gov/fdsys/pkg/BILLS-108hr1119rh/pdf/BILLS-108hr1119rh.pdf>.

¹³ H.R. 6025, available at <http://www.gpo.gov/fdsys/pkg/BILLS-110hr6025ih/pdf/BILLS-110hr6025ih.pdf>.

¹⁴ H.R. 933, available at <http://www.gpo.gov/fdsys/pkg/BILLS-111hr933ih/pdf/BILLS-111hr933ih.pdf>.

¹⁵ H.R. 1406, available at <https://www.congress.gov/bill/113th-congress/house-bill/1406/related-bills>.

¹⁶ H.R. 465, available at <https://www.congress.gov/bill/114th-congress/house-bill/465?q=%7B%22search%22%3A%5B%22Working+Families+Flexibility+Act+of+2015%22%5D%7D&r=1>.

¹⁷ H.R. 1180, available at <https://www.congress.gov/bill/115th-congress/house-bill/1180?q=%7B%22search%22%3A%5B%22Working+Families+Flexibility+Act+of+2017%22%5D%7D&r=3>.

Commercial Workers (UFCW), and the United Steelworkers (USW). The National Partnership for Women & Families led a letter with signatures from 85 organizations.

The Real Impact of H.R. 1180 on Working Families

H.R. 1180 forces working people to choose between their hard-earned pay and time with their families, when they need both. Democrats have real solutions to the challenges facing working families that would not force them to make this impossible choice. Hardworking Americans should have access to basic benefits such as paid sick days, family leave and fair schedules. But H.R. 1180 does nothing to increase workers' access to these important benefits. Meanwhile, it creates significant uncertainty for workers.

H.R. 1180 undermines workers' ability to earn overtime pay.

H.R. 1180 makes it less likely that workers who need overtime pay will be able to get it. Some workers count on overtime pay to meet their expenses—including putting children through college, buying a home or saving for retirement. Among workers paid less than \$22,500 a year, for example, roughly 40 percent report working some overtime in the previous month voluntarily.¹⁸ Nothing in the legislation prohibits employers from preferentially assigning overtime hours to employees who agree to accept comp time. Since providing comp time is cheaper than providing overtime pay, employers are extremely likely to allocate overtime hours first to those employees who agree to accept comp time.

While the legislation states that employees are free to choose whether to accept comp time, in practice, the power differential between employers and employees, particularly in non-union workplaces, would make it far more likely that some employees would feel obligated to accept comp time even when they would much rather get paid for their overtime in their next scheduled paycheck. While the legislation provides anti-retaliation protections for employees who do not accept comp time, proving retaliation is extremely difficult and enforcing these provisions takes time and money that most overtime-eligible employees do not have.

H.R. 1180 will lead to longer work hours and less flexibility for overworked Americans.

For many working families, time is a precious commodity. In families where both parents work, being forced to spend more time at work in order to earn time with one's family imposes a significant hardship. But under H.R. 1180, an employee who needs to take a day off because she has caregiving responsibilities, school obligations, a health condition, or for any other reason, must first log overtime hours.¹⁹

¹⁸ Lonnie Golden, *Flexibility and Overtime Among Hourly and Salaried Workers* (Sept. 30, 2014), available at <http://www.epi.org/publication/flexibility-overtime-hourly-salaried-workers/>.

¹⁹ At the same time, for some workers, working overtime is not even a possibility. A significant share of the workforce does not have access to overtime work. Four percent of the workforce – amounting to six million workers -- worked part-time involuntarily in 2015. Lonnie Golden, *Still Falling Short on Hours and Pay: Part-time Work Becoming New Normal* (Dec. 5, 2016), available at <http://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/>.

More than 20 percent of the workforce currently reports working overtime on a mandatory basis.²⁰ When workers are required to stay late at work, this can mean not being able to pick up a child from a child care center or administer a parent's dose of evening medications. Because this legislation makes it cheaper for employers to require employees to work overtime, it is likely to leave many workers with less control over their schedules and more mandatory overtime hours at work.²¹

As discussed in further detail below, H.R. 1180 provides no guarantee that an employee can take comp time when she needs it – such as when she is sick, on a snow day when schools are closed, or to take a child to a doctor's appointment. To the contrary, H.R. 1180 provides significant discretion to employers to determine when comp time may be used. This uncertainty about whether and when an employee may take comp time would significantly constrain employees' ability to plan their lives outside of work.

Contrary to the Majority's assertions, nothing in the FLSA prevents employers from providing flexibility to workers. Under current law, employers may provide workers with paid or unpaid leave, as well as flexible and predictable schedules. Yet, four in ten workers do not have a single paid sick day. And among early career-workers, more than 40 percent report getting their schedules less than one week in advance. The only constraint on employers' ability to offer paid time off or fair work schedules is their willingness to do so.

H.R. 1180 undermines enforcement of existing wage and hour laws.

Workers are cheated out of their overtime pay all too frequently. In a survey of low-wage workers, 76 percent of those who reported working overtime said that they were not paid time-and-a-half for their work.²² This legislation would greatly increase the complexity of enforcing overtime protections. It will be more difficult to determine if an overtime violation has occurred where an employer asserts that comp time was granted in lieu of overtime pay. Yet, the bill provides no new resources to ensure compliance even though DOL's resources to remedy wage theft are already woefully inadequate. Furthermore, while the legislation provides a private right of action, most employees who are denied overtime pay do not have the financial resources to hire a lawyer to bring suit.

H.R. 1180 puts workers' paychecks at risk unnecessarily.

H.R. 1180 creates additional, unnecessary risk for employees, because if an employer goes bankrupt before it has paid its employees the comp time they are owed, the employee may never recover her unpaid wages. Workers also risk losing up to 160 hours of overtime pay (the limit on overtime hours a worker can bank as comp time under this legislation) because their overtime is not put into escrow or a trust fund and could be lost if the employer goes out of business or declares bankruptcy. In 2013 alone, 400,000 small businesses closed.²³ If an employer chooses,

²⁰ Lonnie Golden, *Flexibility and Overtime Among Hourly and Salaried Workers* (Sept. 30, 2014), available at <http://www.epi.org/publication/flexibility-overtime-hourly-salaried-workers/>.

²¹ Lonnie Golden, *Flexibility and Overtime Among Hourly and Salaried Workers* (Sept. 30, 2014), available at <http://www.epi.org/publication/flexibility-overtime-hourly-salaried-workers/>.

²² Annette Bernhardt, et al., *Broken Laws, Unprotected Workers, Fair Warning* (Apr. 2014), available at <https://www.fairwarning.org/wp-content/uploads/2014/04/Link3Shorter.pdf>.

²³ U.S. Small Business Administration, "Frequently Asked Questions," (Jun. 2016), available at https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

the employer may also cash out comp time earned in excess of 80 hours, scuttling an employee's planned surgery or parental leave. Finally, an employer can also make the unilateral decision to discontinue a comp time program, derailing an employee's planned time off.

H.R. 1180 provides an unsecured interest-free loan for employers.

Agreeing to be paid in comp time is tantamount to providing an employer with a zero-interest loan. While banking comp time with her employer, the employee is loaning her employer her wages, repayable only when the employer decides it's convenient, not when the employee actually needs the money or the time off from work. Meanwhile, the employer is free to invest the employee's withheld wages to the employer's advantage.

In contrast, if workers were paid for their overtime hours in their next scheduled paycheck, they could put that money in an interest-earning bank account where it would grow. Workers would be better off getting paid for their overtime hours, setting that money safely aside in an interest-earning account, and self-funding leave at some point in the future, rather than using comp time.

The Majority's Flawed Public-Sector Argument

Proponents of H.R. 1180 argue that the legislation simply provides flexibility already available in the public sector to private sector workers. However, this argument ignores profound differences between public and private sector employers. Moreover, state and municipal employees only became eligible for comp time as a cost-saving policy that afforded employers the value of their employees' labor without being required to pay for it.

H.R. 1180 extends all the benefits of employer-controlled comp time arrangements to private sector employers, yet makes no effort to achieve parity for private sector workers in terms of job protection or other benefits. At the same time, public sector workers generally enjoy many more employment protections than their private sector counterparts, and they are far more likely to have benefits like paid sick leave and vacation. In contrast to the job security that is often afforded to public sector workers, private sector workers are employed at-will and can be terminated for any reason other than race, gender or retaliation for exercising rights protected by employment laws such as the National Labor Relations Act.

Union density in the public sector is also five to six times greater than in the private sector.²⁴ This means that while public sector workers are likely to have some bargaining power, workers in the private sector are far more likely to feel coerced to accept comp time in lieu of overtime pay, and that the failure to do so would put their jobs at risk. Furthermore, workers represented by a union can get help if they feel that their employers are not implementing comp time fairly. Private sector workers without union representation will have no recourse other than going to court, a costly and time-consuming process with a very uncertain outcome.

Finally, the litigation over the use of comp time in the public sector provides significant cause for concern about the potential for employer abuse of comp time in the private sector. The language in the FLSA permitting employers to provide comp time to public sector employees

²⁴ Economic News Release: Union Members Summary, Bureau of Labor Statistics (Jan. 26, 2017), *available at* <https://www.bls.gov/news.release/union2.nr0.htm>.

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. This language is mirrored in H.R. 1180.

Litigation over the interpretation of this provision has yielded unfavorable results for employees. For example, the United States Court of Appeals for the Ninth Circuit interpreted the law to give an employer absolute power to deny compensatory time requests on particular dates and to delay the use of compensatory time for up to one full year.²⁵ Courts’ deference to the employer’s definition of “reasonable period” and when time off would “unduly disrupt” business operations suggests that under H.R. 1180 employers may prohibit employees from taking comp time when they need it—such as when they are sick, or a parent in need of help has a scheduled surgery.

April 5, 2017 Legislative Hearing on H.R. 1180 in the Subcommittee on Workforce Protections

Employer representatives testified that they provided a wide range of workplace flexibility options to their employees, which are all permissible under the FLSA. Despite the extensive workplace flexibility options that are already consistent with the FLSA, they contended that the FLSA was outdated, and that it should be amended to permit comp time.

The Democratic witness, Ms. Vicki Shabo, explained that H.R. 1180 does nothing to increase or guarantee flexibility for working people and it diminishes their ability to earn much-needed overtime pay. As Ms. Shabo noted, while there are many businesses that voluntarily provide workplace flexibility options for their employees, there are still far too many workers who lack access to basic benefits like paid sick days, paid family leave, and flexible and predictable schedules. Ms. Shabo provided examples of how a typical worker would not benefit from comp time. She also explained that despite substantial gains in productivity over the past four decades, the typical worker’s wages have barely grown. To guarantee workplace flexibility and fair pay for all working people, Ms. Shabo urged the committee to consider legislation such as the *Healthy Families Act*, the *FAMILY Act*, the *Paycheck Fairness Act*, the *Schedules that Work Act*, and legislation to raise the minimum wage.

April 26, 2017 Full Committee Markup on H.R. 1180

Full committee markup of H.R. 1180.

On April 26, 2017 the full committee marked up H.R. 1180, the *Working Families Flexibility Act of 2017*. Committee Democrats offered amendments that would provide real solutions to the challenges facing working families.

Rep. Blunt Rochester offered an amendment limiting the workers who are eligible for comp time under H.R. 1180 to those who have at least 7 days of paid sick leave. Permitting workers to take guaranteed paid time off when they are sick or to care for a sick family member is a critical solution to meet the needs of struggling families. Committee Democrats support the *Healthy Families Act* which, unlike H.R. 1180, would allow workers to earn and accrue sick days without compromising their overtime pay. However, this amendment was rejected by the Majority on a

²⁵ See *Mortensen v. County of Sacramento*, 368 F.3d 1082 (9th Cir. 2004) (citing *Houston Police Officers' Union v. City of Houston*, 330 F.3d 298 (5th Cir.2003) (cert. denied, 540 U.S. 879 (2003))).

party-line vote. Two substitute amendments were also offered. Rep. DeSaulnier offered the *Schedules that Work Act*, which provides workers with flexible and predictable schedules, and Rep. Takano offered an amendment that would expand access to overtime pay for over 13 million working people. Unfortunately, Committee Republicans voted unanimously to block consideration of these amendments.

Democrats also offered amendments designed to strengthen the protections for workers in H.R. 1180. These included an amendment offered by Rep. Adams to exempt compensatory time arrangements from mandatory arbitration clauses, an amendment offered by Rep. Wilson to exempt low-wage workers from comp time agreements, an amendment offered by Rep. Espallat to exempt unscrupulous employers who have violated the FLSA willfully and repeatedly from comp time agreements, an amendment offered by Rep. Bonamici requiring that employers keep employees' comp time pay in an interest-bearing account, and an amendment offered by Rep. Shea-Porter to deter employers from coercing employees to accept comp time in lieu of overtime pay and prevent employers from cashing out employees' comp time in excess of 80 hours. Republicans rejected all of Democrats' efforts to strengthen the protections for working people in H.R. 1180.

At the markup, Republican members contended that former President William Jefferson Clinton was supportive of comp time legislation. In fact, as Democrats noted, President William Jefferson Clinton issued a Statement of Administration Policy on March 15, 1997 opposing the legislation, which stated, in part:

“H.R. 1 purports to give working families greater flexibility. In reality, it grants employers more rights at the expense of working people:

- H.R. 1 fails to offer workers real choice. In particular, H.R. 1 would allow an employer to decide when a worker could use his or her compensatory time-off by disapproving such time-off if the employer claims it would “unduly disrupt” its operations. In addition, H.R. 1 would permit an employer to “cash out” a worker's earned compensatory time over 80 hours.
- H.R. 1 fails to protect workers against employer abuse. For example, H.R. 1 offers inadequate protections for vulnerable workers and part-time, seasonal, and temporary employees, including garment and construction workers and those who are employed in industries with histories of Fair Labor Standards Act violations. H.R. 1 also fails to prohibit employers from substituting compensatory time-off for paid vacation or sick leave benefits. Furthermore, H.R. 1 lacks meaningful remedies for workers when employers penalize them for electing to receive overtime pay in lieu of compensatory time-off. In addition, H.R. 1 contains inadequate worker safeguards in cases where an employer goes bankrupt or out-of-business.
- H.R. 1 fails to preserve workers' rights. Workers who take compensatory time-off can be forced to work additional overtime in the same week -- even on the weekend -- without being paid overtime premium pay.”²⁶

²⁶ Statement of Administration Policy on H.R. 1, Working Families Flexibility Act (March 15, 1997), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=74919>.

These arguments apply with equal force to H.R. 1180, which is substantially similar to H.R. 1, the comp time bill proposed in 1997.

Policy Solutions That Working Families Need

Workers depend on the wage and overtime protections in the FLSA, and they should not have to sacrifice their paychecks to take time off from work. Committee Democrats support an agenda for working families that would raise pay for hardworking Americans and help them juggle work and family life.

Working families need a raise.

Workers in 21 states still earn the federal minimum wage of \$7.25 an hour which leaves a person who works full-time year-round and has only one child living below the poverty threshold.²⁷ In the coming weeks, Democrats will introduce legislation to raise the minimum wage to \$15 by 2024. It's been nearly ten years since the last legislated increase to the minimum wage. Raising the minimum wage to \$15 by 2024 would directly lift wages for 22.5 million workers.

Working families need strengthened overtime protections.

One of the reasons workers' wages have been stagnant for far too long is the failure to update the overtime threshold below which salaried workers are automatically eligible for overtime pay. In 1975, the overtime threshold covered 62 percent of salaried workers, but today only 8 percent of workers are covered. The Department of Labor's overtime rule would have increased the salary threshold under which most workers are automatically eligible from for overtime pay from \$23,660 to \$47,476. This would make 4.2 million more workers eligible for overtime pay and strengthen overtime protections for 8.9 million more. This rule would ensure that low-paid assistant managers could no longer be forced to work 50, 60, or 70 hours per week—the extra 10, 20, or 30 hours for free. Yet, Republicans introduced legislation in the last Congress to roll back this rule, and held a Committee hearing that was critical of the rule. The rule was blocked by a federal court before it took effect, and President Trump's Department of Labor sought repeated extensions of time to file its reply brief in the litigation, further delaying the rule.

Working families need paid sick leave.

The Healthy Families Act (H.R. 1286) would allow workers to earn paid sick leave to use when they are sick, to care for a sick family member, to obtain preventive care, or for reasons related to domestic violence. This is critical for the four in ten private sector workers who do not have access to a single paid sick day.²⁸ Workers would earn one hour of paid sick time for every 30 hours worked. State and local laws that provide employees with paid sick days are also vitally important to working families. But no matter where they live, every worker should have the right to take a paid sick day for his own illness or to care for a family member. That is why Committee Democrats strongly support the *Healthy Families Act*.

²⁷ Center for Poverty Research, University of California, Davis, "What are the annual earnings for a full-time minimum wage worker?" (Updated Aug. 30, 2016), *available at* <http://poverty.ucdavis.edu/faq/what-are-annual-earnings-full-time-minimum-wage-worker>.

²⁸ Fact Sheet: The Healthy Families Act, National Partnership for Women and Families (Apr. 2013), *available at* http://go.nationalpartnership.org/site/DocServer/HFA_Expanded_Overview.pdf?docID=10741.

Working families need paid family and medical leave.

Only 14 percent of the workforce has paid family leave through their employers, and less than 40 percent have personal medical leave through an employer-provided short-term disability program. H.R. 1439, the *Family and Medical Insurance Leave Act (the FAMILY Act)* would provide employees with up to 12 weeks of partial income replacement when they take time off for their own serious health conditions, including pregnancy and childbirth recovery; the serious health condition of a child, parent, spouse or domestic partner; the birth or adoption of a child; and/or for particular military caregiving and leave purposes. The *FAMILY Act* permits workers to earn up to 66 percent of their wages, and it is paid for through a joint payroll tax on employers and employees with payroll contributions in the amount of two-tenths of one percent (or two cents per \$10 in wages).²⁹

Working families need flexible and predictable schedules.

Inflexible and unpredictable schedules can make it extremely difficult for workers to both do their jobs and care for their families. Lack of control over schedules is a particular problem for low-wage workers. About half of low-wage workers report having little say in their schedules.³⁰ And more than 40 percent of early career workers say they get their schedules only a week or less in advance.³¹ The *Schedules that Work Act* gives employees a say in when they work by creating a right to request a particular schedule, and protecting workers from retaliation for making scheduling requests.³² For workers in restaurant, retail, and building cleaning jobs—where schedules are most unpredictable—the legislation provides additional protections. The *Schedules That Work Act* would require employers to provide these employees with at least four hours of pay if they report to work but are sent home early without working their scheduled shift. The legislation also requires an additional hour of pay for employees assigned to work a split shift (a shift with an unpaid break of more than one hour). Finally, the legislation requires employers to provide two weeks' advance notice of work schedules to employees, and disclose the number of hours an employee can expect to be assigned to work when she is hired. If an employer makes changes to this work schedule with notice of only 24 hours or less in advance of the employee's shift, the bill requires the employer to provide one extra hour of pay.

Working families need equal pay.

The Paycheck Fairness Act, H.R. 1869, would strengthen the tools available to both identify and remedy pay discrimination which is still an all too persistent problem. Today, women working full-time year round are typically paid 80 cents for every dollar paid to their male counterparts.³³ Black women are typically paid 63 cents and Latinas are paid just 54 cents for every dollar paid

²⁹ Fact Sheet: The Family and Medical Insurance Leave Act, National Partnership for Women and Families (Feb. 2017), available at <http://www.nationalpartnership.org/research-library/work-family/paid-leave/family-act-fact-sheet.pdf>.

³⁰ "Collateral Damage: Scheduling Challenges for Workers in Low-Wage Jobs and Their Consequences," National Women's Law Center (Apr. 2017), available at <https://nwlc.org/wp-content/uploads/2015/06/Collateral-Damage.pdf>.

³¹ *Id.*

³² *Id.*

³³ Resource: Women and the Lifetime Wage Gap: How Many Woman Years Does it Take to Equal 40 Man Years?, National Women's Law Center (Mar. 28, 2017), available at <https://nwlc.org/resources/women-and-the-lifetime-wage-gap-how-many-woman-years-does-it-take-to-equal-40-man-years/>.

to white, non-Hispanic men.³⁴ The *Paycheck Fairness Act* builds on the landmark *Equal Pay Act* signed into law in 1963 by closing loopholes that have kept it from achieving its goal of equal pay. The bill would require employers to show pay disparity is truly related to job-performance – not gender. It also prohibits employer retaliation for sharing salary information with coworkers. Under current law employers can sue and punish employees for sharing such information. The legislation also prohibits employers from asking job applicants questions about their salary history for the purpose of making a salary offer, which is important to prevent pay discrimination from accompanying women from job to job. In addition, it strengthens remedies for pay discrimination by increasing the compensation women can seek, allowing them to not only seek back pay, but also punitive damages for pay discrimination.

Conclusion

H.R. 1180 does not create any meaningful new rights for employees. Employees can already take time off without pay, if they get permission from their employer. The bill does, however, create a new right for employers to withhold employees' overtime pay. Democrats have offered real solutions to the challenges facing working families that would not force them to make an impossible choice between money and time—when they need both. This Committee should bring up for consideration the legislation being offered by Democrats that would both raise workers' pay and help them better juggle work and family life.

³⁴ Fact Sheet: America's Women and the Wage Gap, National Partnership of Women and Families (Apr. 2017), available at <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/americas-women-and-the-wage-gap.pdf>.



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Ranking Member



SUSAN A. DAVIS



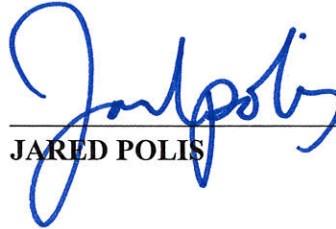
RAÚL M. GRIJALVA



JOE COURTNEY



MARCIA L. FUDGE



JARED POLIS



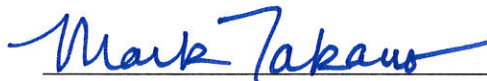
GREGORIO KILILI CAMACHO SABLÁN



FREDERICA S. WILSON



SUZANNE BONAMICI



MARK TAKANO



ALMA S. ADAMS



MARK DeSAULNIER



DONALD NORCROSS



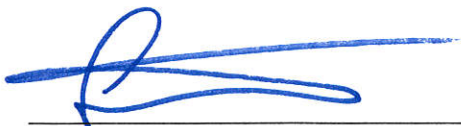
LISA BLUNT-ROCHESTER



RAJA KRISHNAMOORTHY



CAROL SHEA PORTER



ADRIANO ESPAILLAT