

April 25, 2017

Dear Member of Congress:

We, the undersigned organizations, urge you to oppose the so-called Working Families Flexibility Act (H.R. 1180/S. 801), a smoke-and-mirrors bill that would offer working people a pay cut without any guaranteed flexibility or time off. As members of Congress on both sides of the aisle acknowledge, people today are struggling to manage the demands of job and family, and to make ends meet and plan for the future. We urgently need lawmakers to update our nation's workplace policies to meet 21st century realities, but the Working Families Flexibility Act would be a grievous step in the wrong direction. It is, at best, an empty promise that would cause considerably more harm than good.

The Working Families Flexibility Act would offer a false choice between time and pay. Supporters claim the bill would give hourly workers more flexibility and time with their loved ones by allowing them to choose paid time off, rather than time-and-a-half wages, as compensation for working more than 40 hours in one week ("comp time"). But people would only get more time with their families after spending extra hours away from them at work, and the bill does not guarantee that workers could use the time they earn when they need it. Moreover, the bill would do nothing to address the need all working people – not just those who work overtime – have for guaranteed access to paid sick days and paid family and medical leave. Too few employers provide these protections now, especially to their hourly workers.

The Fair Labor Standards Act currently allows employers to provide flexibility and time off without compromising workers' right to be paid fairly for the hours they work. The types of flexibility allowed under the FLSA include alternative start and end times, compressed or variable work hours within a week, split shifts, work at multiple locations, and paid or unpaid time off. Proponents of the Working Families Flexibility Act set up a false dichotomy that would force workers to choose between flexibility and overtime pay when, in reality, the FLSA does nothing currently to prevent employers from offering both.

The "worker flexibility" offered by the Working Families Flexibility Act would magnify the power imbalance between employees and employers. The proposal would give the employer, not the employee, the "flexibility" to decide when, and even if, comp time could be used. The bill would allow employers to deny requests if an employee's use of comp time would "unduly disrupt" operations, or grant leave on a day other than the one requested. This means the Working Families Flexibility Act would provide no guarantee that workers could use their earned time to care for a sick child, attend a parent-teacher conference, or help an aging parent. Employers could veto an employee's request to use their time even in cases of urgent need. The bill would also allow employers to "cash out" an employee's comp time in excess of 80 hours, or discontinue the comp time program altogether, with just 30 days' notice. This means an employee's carefully crafted plan to bank time for a child's birth or surgery could be thwarted by an employer's decision to cash out the employee's time.

The Working Families Flexibility Act would put workers' economic security at risk and provide an interest-free loan to employers. An employee who does not participate in an

employer's comp time program could be penalized with fewer hours, bad shifts and lost overtime hours. The bill would permit employers to defer compensation for unused comp time for as long as 13 months, creating an interest-free loan for employers and hardship for workers. It also would not provide any protections for employees when firms collapse or go bankrupt, meaning workers could lose the value of their unused comp time altogether.

The Working Families Flexibility Act would provide few protections for workers and no additional resources to the U.S. Department of Labor for education, investigation and enforcement. The U.S. Department of Labor's (DOL's) Wage and Hour Division already struggles to enforce the Fair Labor Standards Act (FLSA) with too few investigators and a small budget – and DOL is facing a draconian reduction in funding that threatens its ability to maintain current operations, let alone engage in robust enforcement. This bill would add significant new provisions to the FLSA, but it would not provide additional funds for education and enforcement efforts the new provisions would require. Workers would have few remedies in cases of employer misconduct pursuant to the bill, and would not be able to rely on an under-resourced Wage and Hour Division for assistance. Wage theft (non-payment or underpayment of wages for hours worked) would be exacerbated because it would be easier for employers to avoid overtime compensation obligations without consequences.

Instead of wasting time on smoke and mirrors, Congress should focus on policies that would meaningfully improve people's economic security and provide the time they need. We urge Congress to adopt:

- The Healthy Families Act (H.R. 1516/S. 636), which would make earned paid sick days available to millions of workers and build on the success of paid sick days laws that have been, or will soon be, implemented in seven states and 32 localities;
- The Family And Medical Insurance Leave (FAMILY) Act (H.R. 947/S. 337), which would create a national paid leave insurance program – modeled on successful state programs in California, New Jersey, Rhode Island and, soon, New York and the District of Columbia – that would allow workers to take paid time to care for a new child; care for a seriously ill family member; address their own serious health condition; or manage certain military caregiving responsibilities;
- The Schedules That Work Act, which would give workers more control over their schedules and incentivize predictability and stability in shifts and work hours; and
- An increase in the minimum wage, including the elimination of the sub-minimum “tipped” wage, which would lift millions of families out of poverty.

People simply should not have to work more than 40 hours in a week and forgo pay to earn time to care for themselves or their loved ones. We urge Congress to reject the Working Families Flexibility Act and instead adopt family friendly workplace policies that provide true flexibility – not an empty promise that would make life appreciably more difficult for people who are already struggling.

Sincerely,

1,000 Days

9to5, National Association of Working Women

9to5 California

9to5 Colorado

9to5 Georgia

9to5 Wisconsin

A Better Balance

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

American Association of University Women (AAUW)

American Federation of Government Employees

American Federation of Teachers, AFL-CIO

California Work & Family Coalition

Center for Law and Social Policy (CLASP)

Center for Popular Democracy

Coalition for Social Justice

Coalition of Labor Union Women

Coalition on Human Needs

Communications Workers of America (CWA)

Connecticut Working Families Party

Connecticut Women's Education and Legal Fund (CWEALF)

Daily Kos

Demos

Economic Policy Institute Policy Center

Economic Progress Institute

Faith in Public Life

Family Forward Oregon

Family Values @ Work

Feminist Majority

Indiana Institute for Working Families

Innovation Ohio

Institute for Science and Human Values, Inc.

Interfaith Worker Justice

International Brotherhood of Teamsters

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)

Jewish Women International (JWI)

Jews United for Justice

Jobs With Justice

Labor Project for Working Families

The Leadership Conference on Civil and Human Rights

Los Angeles Alliance for a New Economy (LAANE)

Main Street Alliance

Maine Women's Lobby

Make it Work

McKenna Pihlaja

MomsRising.org

Mothering Justice

National Asian Pacific American Women's Forum (NAPAWF)

National Association Social Workers (NASW)
National Center for Lesbian Rights
National Council of Jewish Women (NCJW)
National Education Association (NEA)
National Employment Law Project
National Employment Lawyers Association
National Partnership for Women & Families
National Women's Law Center
NC Justice Center
NETWORK Lobby for Catholic Social Justice
New Jersey Citizen Action
New Jersey Time to Care Coalition
New York Paid Leave Coalition
Ohio Domestic Violence Network
Ohio Women's Public Policy Network
OUR Walmart
PathWays PA
People For the American Way
People's Action
PL+US Paid Leave for the U.S.
Progress For All
Project IRENE
Restaurant Opportunities Center of Pennsylvania (ROC-PA)
Restaurant Opportunities Centers United (ROC)
Sargent Shriver National Center on Poverty Law
Service Employees International Union (SEIU)
Southwest PA National Organization for Women
Texas Organizing Project
The Voter Participation Center
UltraViolet
Voices for Progress
Women Employed
Women's Foundation of Florida
Women's Law Project
Women's Voices Women Vote Action Fund
Working America
Working Partnerships USA
YWCA USA