

Calendar No. 562

104TH CONGRESS
2^D SESSION

H. R. 2391

AN ACT

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for all employees.

August 1, 1996

Read the second time and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

JULY 31, 1996

Received and read the first time

AUGUST 1, 1996

Read the second time and placed on the calendar

AN ACT

To amend the Fair Labor Standards Act of 1938 to provide
compensatory time for all employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Working Families
3 Flexibility Act of 1996”.

4 **SEC. 2. COMPENSATORY TIME.**

5 Subsection (o) of section 7 of the Fair Labor Stand-
6 ards Act of 1938 (29 U.S.C. 207) is amended—

7 (1) by striking paragraphs (1) through (5) and
8 inserting the following:

9 “(1) An employee may receive, in accordance with
10 this subsection and in lieu of monetary overtime com-
11 pensation, compensatory time off at a rate not less than
12 one and one-half hours for each hour of employment for
13 which overtime compensation is required by this section.

14 “(2) An employer may provide compensatory time
15 under paragraph (1) only—

16 “(A) pursuant to—

17 “(i) applicable provisions of a collective
18 bargaining agreement, memorandum of under-
19 standing, or any other agreement between the
20 employer and representatives of such employees,
21 or

22 “(ii) in the case of employees who are not
23 represented by a collective bargaining agent or
24 other representative designated by the em-
25 ployee, an agreement or understanding arrived
26 at between the employer and employee before

1 the performance of the work if such agreement
2 or understanding was entered into knowingly
3 and voluntarily by such employee;

4 “(B) in the case of an employee who is not an
5 employee of a public agency, if such employee has
6 affirmed, in a written or otherwise verifiable state-
7 ment that is made, kept, and preserved in accord-
8 ance with section 11(c), that the employee has cho-
9 sen to receive compensatory time in lieu of overtime
10 compensation; and

11 “(C) if the employee has not accrued compen-
12 satory time in excess of the limit applicable to the
13 employee prescribed by paragraph (4) or (5).

14 In the case of employees described in subparagraph (A)(ii)
15 who are employees of a public agency and who were hired
16 before April 15, 1986, the regular practice in effect on
17 such date with respect to compensatory time off for such
18 employees in lieu of the receipt of overtime compensation,
19 shall constitute an agreement or understanding described
20 in such subparagraph. Except as provided in the preceding
21 sentence, the provision of compensatory time off to em-
22 ployees of a public agency for hours worked after April
23 14, 1986, shall be in accordance with this subsection. An
24 employer may provide compensatory time under para-
25 graph (1) to an employee who is not an employee of a

1 public agency only if such agreement or understanding
2 was not a condition of employment.

3 “(3) An employer which is not a public agency and
4 which provides compensatory time under paragraph (1) to
5 employees shall not directly or indirectly intimidate,
6 threaten, or coerce or attempt to intimidate, threaten, or
7 coerce any employee for the purpose of—

8 “(A) interfering with such employee’s rights
9 under this subsection to request or not request com-
10 pensatory time off in lieu of payment of overtime
11 compensation for overtime hours; or

12 “(B) requiring any employee to use such com-
13 pensatory time.

14 “(4)(A) An employee, who is not an employee of a
15 public agency, may accrue not more than 240 hours of
16 compensatory time.

17 “(B)(i) Not later than January 31 of each calendar
18 year, the employee’s employer shall provide monetary com-
19 pensation for any compensatory time off accrued during
20 the preceding calendar year which was not used prior to
21 December 31 of the preceding year at the rate prescribed
22 by paragraph (6). An employer may designate and com-
23 municate to the employer’s employees a 12-month period
24 other than the calendar year, in which case such com-

1 pension shall be provided not later than 31 days after
2 the end of such 12-month period.

3 “(ii) The employer may provide monetary compensa-
4 tion for an employee’s unused compensatory time in excess
5 of 80 hours at any time after giving the employee at least
6 30 days notice. Such compensation shall be provided at
7 the rate prescribed by paragraph (6).

8 “(iii) An employer which has adopted a policy offer-
9 ing compensatory time to employees may discontinue such
10 policy upon giving employees 30 days notice. An employee
11 who is not an employee of a public agency may withdraw
12 an agreement or understanding described in paragraph
13 (2)(A)(ii) at any time.

14 “(C) An employee may also request in writing that
15 monetary compensation be provided, at any time, for all
16 compensatory time accrued which has not yet been used.
17 Within 30 days of receiving the written request, the em-
18 ployer shall provide the employee the monetary compensa-
19 tion due in accordance with paragraph (6).

20 “(5)(A) If the work of an employee of a public agency
21 for which compensatory time may be provided included
22 work in a public safety activity, an emergency response
23 activity, or a seasonal activity, the employee engaged in
24 such work may accrue not more than 480 hours of com-
25 pensatory time for hours worked after April 15, 1986. If

1 such work was any other work, the employee engaged in
2 such work may accrue not more than 240 hours of com-
3 pensatory time for hours worked after April 15, 1986. Any
4 such employee who, after April 15, 1986, has accrued 480
5 or 240 hours, as the case may be, of compensatory time
6 off shall, for additional overtime hours of work, be paid
7 overtime compensation.

8 “(B) If compensation is paid to an employee de-
9 scribed in subparagraph (A) for accrued compensatory
10 time off, such compensation shall be paid at the regular
11 rate earned by the employee at the time the employee re-
12 ceives such payment.

13 “(6)(A) An employee of an employer which is not a
14 public agency who has accrued compensatory time off au-
15 thorized to be provided under paragraph (1) shall, upon
16 the voluntary or involuntary termination of employment,
17 be paid for the unused compensatory time at a rate of
18 compensation not less than—

19 “(i) the average regular rate received by such
20 employee during the period during which the com-
21 pensatory time was accrued, or

22 “(ii) the final regular rate received by such em-
23 ployee,

24 whichever is higher.

1 “(B) An employee of an employer which is a public
2 agency who has accrued compensatory time off authorized
3 to be provided under paragraph (1) shall, upon the vol-
4 untary or involuntary termination of employment, be paid
5 for the unused compensatory time at a rate of compensa-
6 tion not less than—

7 “(i) the average regular rate received by such
8 employee during the last 3 years of the employee’s
9 employment, or

10 “(ii) the final regular rate received by such em-
11 ployee,
12 whichever is higher.

13 “(C) Any payment owed to an employee under this
14 subsection for unused compensatory time shall be consid-
15 ered unpaid overtime compensation.

16 “(7) An employee—

17 “(A) who has accrued compensatory time off
18 authorized to be provided under paragraph (1), and

19 “(B) who has requested the use of such com-
20 pensatory time,

21 shall be permitted by the employee’s employer to use such
22 time within a reasonable period after making the request
23 if the use of the compensatory time does not unduly dis-
24 rupt the operations of the employer.”; and

1 (2) by redesignating paragraphs (6) and (7) as
2 paragraphs (8) and (9), respectively.

3 **SEC. 3. REMEDIES.**

4 Section 16 of the Fair Labor Standards Act of 1938
5 (29 U.S.C. 216) is amended—

6 (1) in subsection (b), by striking “(b) Any em-
7 ployer” and inserting “(b) Except as provided in
8 subsection (f), any employer”; and

9 (2) by adding at the end the following:

10 “(f) An employer which is not a public agency and
11 which violates section 7(o)(3) shall be liable to the em-
12 ployee affected in the amount of the rate of compensation
13 (determined in accordance with section 7(o)(6)(A)) for
14 each hour of compensatory time accrued by the employee
15 and in an additional equal amount as liquidated damages
16 reduced by the amount of such rate of compensation for
17 each hour of compensatory time used by such employee.”.

18 **SEC. 4. NOTICE TO EMPLOYEES.**

19 Not later than 30 days after the date of the enact-
20 ment of this Act, the Secretary of Labor shall revise the
21 materials the Secretary provides, under regulations pub-
22 lished at 29 C.F.R. 516.4, to employers for purposes of
23 a notice explaining the Fair Labor Standards Act of 1938

- 1 to employees so that such notice reflects the amendments
- 2 made to such Act by this Act.

Passed the House of Representatives July 30, 1996.

Attest:

ROBIN H. CARLE,

Clerk.