

**Union Calendar No. 14**

105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 1**

[Report No. 105-21]

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**A BILL**

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

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MARCH 12, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. BALLENGER (for himself, Mr. GOODLING, Mrs. MYRICK, Ms. DUNN, Ms. MOLINARI, Mr. GREENWOOD, Mr. SHAYS, Mr. STENHOLM, Ms. PRYCE of Ohio, Mr. DOOLEY of California, Mr. UPTON, Mrs. FOWLER, Mr. FOX of Pennsylvania, Ms. GRANGER, Mr. CAMPBELL, Mr. PETRI, Mr. FAWELL, Mr. RIGGS, Mr. KNOLLENBERG, Mr. NORWOOD, Mr. BURR of North Carolina, Mr. HERGER, Mr. BARRETT of Nebraska, Mr. MCKEON, Mr. CUNNINGHAM, Mr. GRAHAM, Mr. INGLIS of South Carolina, Mr. HAYWORTH, Mr. MILLER of Florida, Mr. COBURN, Mr. MCCOLLUM, Mr. EHLERS, Mr. BARTLETT of Maryland, Mr. GOSS, Mr. GOODLATTE, Mr. MCINTOSH, Mr. LATOURETTE, Mr. NEY, Mr. BUNNING, Mr. BOEHNER, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on Education and the Workforce

MARCH 12, 1997

Additional sponsors: Mr. KLUG, Mr. KOLBE, Mr. FOLEY, Mr. EHRLICH, Mr. DOOLITTLE, Mr. DUNCAN, Mr. COBLE, Mr. HANSEN, Mrs. CHENOWETH, Mr. TAYLOR of North Carolina, Mr. NETHERCUTT, Mr. DICKEY, Mr. DELAY, Mr. WELDON of Florida, Mr. CHRISTENSEN, Mr. BOB SCHAFER of Colorado, Mr. ROHRABACHER, Mr. HILLEARY, Mr. SAM JOHNSON of Texas, Mr. LATHAM, Mr. BARR of Georgia, Mr. SMITH of Michigan, Mr. DREIER, Mr. DEAL of Georgia, Mr. SCARBOROUGH, Mr. SNOWBARGER, Mr. CANADY of Florida, Mr. SKEEN, Mr. PEASE, Mr. HASTERT, Mr. DAN SCHAEFER of Colorado, Mr. RADANOVICH, Mr. BAKER, Mr. TALENT, Mr. GIBBONS, Mrs. ROUKEMA, Mr. ROGAN, Mr. PETERSON of Pennsylvania, Mr. WATTS of Oklahoma, Mr. SHADEGG, Mr. COX of California, Mrs. NORTHUP, Mr. HUTCHINSON, Mr. WATKINS, Mr. BLUNT, Mr. RILEY, Mr. PAUL, Mr. SPENCE, Mr. BLILEY, Mrs. EMERSON, Mr. COOK, Mr. JONES, Mr. SALMON, Mr. HASTINGS of Washington,

Mr. PAXON, Mr. CALVERT, Mr. GANSKE, Mr. MANZULLO, and Mrs. CUBIN

Deleted sponsors: Ms. NORTON (added February 11, 1997; deleted February 25, 1997) and Ms. JACKSON-LEE of Texas (added February 13, 1997; deleted February 26, 1997)

MARCH 12, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 7, 1997]

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Working Families Flexi-*  
 5       *bility Act of 1997”.*

6       **SEC. 2. COMPENSATORY TIME.**

7       *Section 7 of the Fair Labor Standards Act of 1938*  
 8       *(29 U.S.C. 207) is amended by adding at the end the follow-*  
 9       *ing:*

10       “(r) *COMPENSATORY TIME OFF FOR PRIVATE EM-*  
 11       *PLOYEES.—*

12               “(1) *GENERAL RULE.—*

1           “(A) *COMPENSATORY TIME OFF.*—An em-  
2           ployee may receive, in accordance with this sub-  
3           section and in lieu of monetary overtime com-  
4           pensation, compensatory time off at a rate not  
5           less than one and one-half hours for each hour of  
6           employment for which overtime compensation is  
7           required by this section.

8           “(B) *DEFINITION.*—For purposes of this  
9           subsection, the term ‘employee’ does not include  
10          an employee of a public agency.

11          “(2) *CONDITIONS.*—An employer may provide  
12          compensatory time to employees under paragraph  
13          (1)(A) only if such time is provided in accordance  
14          with—

15               “(A) *applicable provisions of a collective*  
16               *bargaining agreement between the employer and*  
17               *the labor organization which has been certified*  
18               *or recognized as the representative of the employ-*  
19               *ees under applicable law, or*

20               “(B) *in the case of employees who are not*  
21               *represented by a labor organization which has*  
22               *been certified or recognized as the representative*  
23               *of such employees under applicable law, an*  
24               *agreement arrived at between the employer and*  
25               *employee before the performance of the work and*

1 affirmed by a written or otherwise verifiable  
2 record maintained in accordance with section  
3 11(c)—

4 “(i) in which the employer has offered  
5 and the employee has chosen to receive com-  
6 pensatory time in lieu of monetary overtime  
7 compensation; and

8 “(ii) entered into knowingly and vol-  
9 untarily by such employees and not as a  
10 condition of employment.

11 “(3) HOUR LIMIT.—

12 “(A) MAXIMUM HOURS.—An employee may  
13 accrue not more than 240 hours of compensatory  
14 time.

15 “(B) COMPENSATION DATE.—Not later than  
16 January 31 of each calendar year, the employee’s  
17 employer shall provide monetary compensation  
18 for any unused compensatory time off accrued  
19 during the preceding calendar year which was  
20 not used prior to December 31 of the preceding  
21 year at the rate prescribed by paragraph (6). An  
22 employer may designate and communicate to the  
23 employer’s employees a 12-month period other

1           *than the calendar year, in which case such com-*  
2           *ensation shall be provided not later than 31*  
3           *days after the end of such 12-month period.*

4           “(C) *EXCESS OF 80 HOURS.*—*The employer*  
5           *may provide monetary compensation for an em-*  
6           *ployee’s unused compensatory time in excess of*  
7           *80 hours at any time after giving the employee*  
8           *at least 30 days notice. Such compensation shall*  
9           *be provided at the rate prescribed by paragraph*  
10          *(6).*

11          “(D) *POLICY.*—*Except where a collective*  
12          *bargaining agreement provides otherwise, an em-*  
13          *ployer which has adopted a policy offering com-*  
14          *pensatory time to employees may discontinue*  
15          *such policy upon giving employees 30 days no-*  
16          *tice.*

17          “(E) *WRITTEN REQUEST.*—*An employee*  
18          *may withdraw an agreement described in para-*  
19          *graph (2)(B) at any time. An employee may also*  
20          *request in writing that monetary compensation*  
21          *be provided, at any time, for all compensatory*  
22          *time accrued which has not yet been used. With-*  
23          *in 30 days of receiving the written request, the*

1           *employer shall provide the employee the mone-*  
2           *tary compensation due in accordance with para-*  
3           *graph (6).*

4           “(4) *PRIVATE EMPLOYER ACTIONS.*—*An em-*  
5           *ployer which provides compensatory time under para-*  
6           *graph (1) to employees shall not directly or indirectly*  
7           *intimidate, threaten, or coerce or attempt to intimi-*  
8           *date, threaten, or coerce any employee for the purpose*  
9           *of—*

10                   “(A) *interfering with such employee’s rights*  
11                   *under this subsection to request or not request*  
12                   *compensatory time off in lieu of payment of*  
13                   *monetary overtime compensation for overtime*  
14                   *hours; or*

15                   “(B) *requiring any employee to use such*  
16                   *compensatory time.*

17           “(5) *TERMINATION OF EMPLOYMENT.*—*An em-*  
18           *ployee who has accrued compensatory time off author-*  
19           *ized to be provided under paragraph (1) shall, upon*  
20           *the voluntary or involuntary termination of employ-*  
21           *ment, be paid for the unused compensatory time in*  
22           *accordance with paragraph (6).*

23           “(6) *RATE OF COMPENSATION.*—

1           “(A) *GENERAL RULE.—If compensation is*  
2           *to be paid to an employee for accrued compen-*  
3           *satory time off, such compensation shall be paid*  
4           *at a rate of compensation not less than—*

5                     “(i) *the regular rate received by such*  
6                     *employee when the compensatory time was*  
7                     *earned, or*

8                     “(ii) *the final regular rate received by*  
9                     *such employee,*  
10           *whichever is higher.*

11           “(B) *CONSIDERATION OF PAYMENT.—Any*  
12           *payment owed to an employee under this sub-*  
13           *section for unused compensatory time shall be*  
14           *considered unpaid overtime compensation.*

15           “(7) *USE OF TIME.—An employee—*

16                     “(A) *who has accrued compensatory time off*  
17                     *authorized to be provided under paragraph (1),*  
18                     *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*  
22           *such time within a reasonable period after making*  
23           *the request if the use of the compensatory time does*  
24           *not unduly disrupt the operations of the employer.*

1           “(8) *DEFINITIONS.*—The terms ‘overtime com-  
2           pensation’ and ‘compensatory time’ shall have the  
3           meanings given such terms by subsection (o)(7).”.

4 **SEC. 3. REMEDIES.**

5           Section 16 of the Fair Labor Standards Act of 1938  
6 (29 U.S.C. 216) is amended—

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

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

11           “(f) An employer which violates section 7(r)(4) shall  
12 be liable to the employee affected in the amount of the rate  
13 of compensation (determined in accordance with section  
14 7(r)(6)(A)) for each hour of compensatory time accrued by  
15 the employee and in an additional equal amount as liq-  
16 uidated damages reduced by the amount of such rate of com-  
17 pensation for each hour of compensatory time used by such  
18 employee.”.

19 **SEC. 4. NOTICE TO EMPLOYEES.**

20           Not later than 30 days after the date of the enactment  
21 of this Act, the Secretary of Labor shall revise the materials  
22 the Secretary provides, under regulations published at 29  
23 C.F.R. 516.4, to employers for purposes of a notice explain-  
24 ing the Fair Labor Standards Act of 1938 to employees so

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