

# Calendar No. 32

105TH CONGRESS  
1ST SESSION

## S. 4

[Report No. 105–11]

To amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

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### IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. ASHCROFT (for himself, Mrs. HUTCHISON, Mr. LOTT, Mr. NICKLES, Mr. CRAIG, Ms. COLLINS, Mr. DEWINE, Mr. ALLARD, Mr. BROWNBACK, Mr. CHAFEE, Mr. COATS, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. THURMOND, Mr. WARNER, Mr. COVERDELL, Mr. JEFFORDS, Mr. MACK, Mr. SMITH of New Hampshire, Mr. MCCAIN, Mr. COCHRAN, Mr. BURNS, Mr. MCCONNELL, and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

APRIL 2, 1997

Reported under the authority of the order of the Senate on March 27, 1997,  
by Mr. JEFFORDS, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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## A BILL

To amend the Fair Labor Standards Act of 1938 to provide

to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

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 “Family Friendly Work-  
 5 place Act”.

6 **SEC. 2. PURPOSES.**

7        The purposes of this Act are—

8            (1) to assist working people in the United  
 9 States;

10           (2) to balance the demands of workplaces with  
 11 the needs of families;

12           (3) to provide such assistance and balance such  
 13 demands by allowing employers to offer compen-  
 14 satory time off, which employees may voluntarily  
 15 elect to receive, and to establish biweekly work pro-  
 16 grams and flexible credit hour programs, in which  
 17 employees may voluntarily participate; and

18           (4) to give private sector employees the same  
 19 benefits of compensatory time off, biweekly work

1 schedules, and flexible credit hours as have been en-  
 2 joyed by Federal Government employees since 1978.

3 **SEC. 3. WORKPLACE FLEXIBILITY OPTIONS.**

4 (a) COMPENSATORY TIME OFF.—

5 (1) IN GENERAL.—Section 7 of the Fair Labor  
 6 Standards Act of 1938 (29 U.S.C. 207) is amended  
 7 by adding at the end the following:

8 “(1) COMPENSATORY TIME OFF FOR PRIVATE EM-  
 9 PLOYEES.—

10 “(1) GENERAL RULE.—

11 “(A) COMPENSATORY TIME OFF.—An em-  
 12 ployee may receive, in accordance with this sub-  
 13 section and in lieu of monetary overtime com-  
 14 pensation, compensatory time off at a rate not  
 15 less than one and one-half hours for each hour  
 16 of employment for which monetary overtime  
 17 compensation is required by this section.

18 “(B) DEFINITION.—For purposes of this  
 19 subsection, the term ‘employee’ does not include  
 20 an employee of a public agency.

21 “(2) CONDITIONS.—An employer may provide  
 22 compensatory time off to employees under para-  
 23 graph (1)(A) only pursuant to the following:

24 “(A) Such time may be provided only in  
 25 accordance with—

1           “(i) applicable provisions of a collec-  
2           tive bargaining agreement between the em-  
3           ployer and the representative of the em-  
4           ployees recognized as provided in section  
5           9(a) of the National Labor Relations Act  
6           (29 U.S.C. 159(a)); or

7           “(ii) in the case of employees who are  
8           not represented by a labor organization  
9           recognized as provided in section 9(a) of  
10          the National Labor Relations Act, an  
11          agreement or understanding arrived at be-  
12          tween the employer and employee before  
13          the performance of the work involved if  
14          such agreement or understanding was en-  
15          tered into knowingly and voluntarily by  
16          such employee and was not a condition of  
17          employment.

18          “(B) If such employee has affirmed, in a  
19          written or otherwise verifiable statement that is  
20          made, kept, and preserved in accordance with  
21          section 11(e), that the employee has chosen to  
22          receive compensatory time off in lieu of mone-  
23          tary overtime compensation.

24          “(C) If the employee has not accrued com-  
25          pensatory time off in excess of the limit applica-

1 ble to the employee prescribed by paragraph  
2 (3).

3 ~~“(3) HOUR LIMIT.—~~

4 ~~“(A) MAXIMUM HOURS.—An employee~~  
5 ~~may accrue not more than 240 hours of com-~~  
6 ~~pensatory time off.~~

7 ~~“(B) COMPENSATION DATE.—Not later~~  
8 ~~than January 31 of each calendar year, the em-~~  
9 ~~ployee’s employer shall provide monetary com-~~  
10 ~~pen- sation for any unused compensatory time off~~  
11 ~~accrued during the preceding calendar year that~~  
12 ~~was not used prior to December 31 of the pre-~~  
13 ~~ceding calendar year at the rate prescribed by~~  
14 ~~paragraph (6). An employer may designate and~~  
15 ~~communicate to the employees of the employer~~  
16 ~~a 12-month period other than the calendar~~  
17 ~~year, in which case such compensation shall be~~  
18 ~~provided not later than 31 days after the end~~  
19 ~~of such 12-month period.~~

20 ~~“(C) EXCESS OF 80 HOURS.—The em-~~  
21 ~~ployer may provide monetary compensation for~~  
22 ~~an employee’s unused compensatory time off in~~  
23 ~~excess of 80 hours at any time after giving the~~  
24 ~~employee at least 30 days’ notice. Such com-~~

1           pensation shall be provided at the rate pre-  
2           scribed by paragraph (6).

3           “(D) POLICY.—An employer that has  
4           adopted a policy offering compensatory time off  
5           to employees may discontinue such policy upon  
6           giving employees 30 days’ notice.

7           “(E) WRITTEN REQUEST.—An employee  
8           may withdraw an agreement or understanding  
9           described in paragraph (2)(A)(ii) at any time.  
10          An employee may also request in writing that  
11          monetary compensation be provided, at any  
12          time, for all compensatory time off accrued that  
13          has not yet been used. Within 30 days after re-  
14          ceiving the written request, the employer shall  
15          provide the employee the monetary compensa-  
16          tion due in accordance with paragraph (6).

17          “(4) PROHIBITION OF COERCION.—

18          “(A) IN GENERAL.—An employer that pro-  
19          vides compensatory time off under paragraph  
20          (1) to employees shall not directly or indirectly  
21          intimidate, threaten, or coerce, or attempt to  
22          intimidate, threaten, or coerce, any employee  
23          for the purpose of—

24                  “(i) interfering with the rights of the  
25                  employee under this subsection to request

1 or not request compensatory time off in  
 2 lieu of payment of monetary overtime com-  
 3 pensation for overtime hours; or

4 “(ii) requiring the employee to use  
 5 such compensatory time off.

6 “(B) DEFINITION.—As used in subpara-  
 7 graph (A), the term ‘intimidate, threaten, or co-  
 8 erce’ has the meaning given the term in section  
 9 13A(d)(3)(B).”.

10 (2) REMEDIES AND SANCTIONS.—Section 16 of  
 11 the Fair Labor Standards Act of 1938 (29 U.S.C.  
 12 216) is amended—

13 (A) in subsection (b), by striking “(b) Any  
 14 employer” and inserting “(b) Except as pro-  
 15 vided in subsection (f), any employer”; and

16 (B) by adding at the end the following:

17 “(f)(1) An employer that violates section 7(r)(4) shall  
 18 be liable to the employee affected in an amount equal to—

19 “(A) the product of—

20 “(i) the rate of compensation (determined  
 21 in accordance with section 7(r)(6)(A)); and

22 “(ii)(I) the number of hours of compen-  
 23 satory time off involved in the violation that  
 24 was initially accrued by the employee; minus

1           “(H) the number of such hours used by  
2           the employee; and

3           “(B) as liquidated damages, the product of—

4           “(i) such rate of compensation; and

5           “(ii) the number of hours of compensatory  
6           time off involved in the violation that was ini-  
7           tially accrued by the employee.

8           “(2) The employer shall be subject to such liability  
9           in addition to any other remedy available for such violation  
10          under this section or section 17, including a criminal pen-  
11          alty under subsection (a) and a civil penalty under sub-  
12          section (e).”.

13           (3) CALCULATIONS AND SPECIAL RULES.—Sec-  
14          tion 7(r) of the Fair Labor Standards Act of 1938  
15          (29 U.S.C. 207(r)), as added by paragraph (1), is  
16          amended by adding at the end the following:

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

23           “(6) RATE OF COMPENSATION FOR COMPEN-  
24          SATORY TIME OFF.—

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 off  
7 was 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 off shall  
14 be considered unpaid monetary overtime com-  
15 pensation.

16           “(7) USE OF TIME.—An employee—

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

20           “(B) who has requested the use of such  
21 compensatory time off,

22 shall be permitted by the employer of the employee  
23 to use such time within a reasonable period after  
24 making the request if the use of the compensatory

1 time off does not unduly disrupt the operations of  
2 the employer.

3 “(8) DEFINITIONS.—The terms ‘monetary over-  
4 time compensation’ and ‘compensatory time off’  
5 shall have the meanings given the terms ‘overtime  
6 compensation’ and ‘compensatory time’, respectively,  
7 by subsection (o)(7).”.

8 (4) NOTICE TO EMPLOYEES.—Not later than  
9 30 days after the date of the enactment of this Act,  
10 the Secretary of Labor shall revise the materials the  
11 Secretary provides, under regulations published at  
12 29 C.F.R. 516.4, to employers for purposes of a no-  
13 tice explaining the Fair Labor Standards Act of  
14 1938 to employees so that such notice reflects the  
15 amendments made to such Act by this subsection.

16 (b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE  
17 CREDIT HOUR PROGRAMS.—

18 (1) IN GENERAL.—The Fair Labor Standards  
19 Act of 1938 is amended by inserting after section 13  
20 (29 U.S.C. 213) the following new section:

21 **“SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE**  
22 **CREDIT HOUR PROGRAMS.**

23 “(a) PURPOSES.—The purposes of this section are—

24 “(1) to assist working people in the United  
25 States;

1           “(2) to balance the demands of workplaces with  
2 the needs of families;

3           “(3) to provide such assistance and balance  
4 such demands by allowing employers to establish bi-  
5 weekly work programs and flexible credit hour pro-  
6 grams, in which employees may voluntarily partici-  
7 pate; and

8           “(4) to give private sector employees the same  
9 benefits of biweekly work schedules and flexible cred-  
10 it hours as have been enjoyed by Federal Govern-  
11 ment employees since 1978.

12       “(b) BIWEEKLY WORK PROGRAMS.—

13           “(1) IN GENERAL.—Notwithstanding any other  
14 provision of law, an employer may establish biweekly  
15 work programs that allow the use of a biweekly work  
16 schedule—

17           “(A) that consists of a basic work require-  
18 ment of not more than 80 hours, over a 2-week  
19 period; and

20           “(B) in which more than 40 hours of the  
21 work requirement may occur in a week of the  
22 period.

23           “(2) COMPUTATION OF OVERTIME.—In the case  
24 of an employee participating in such a biweekly work  
25 program, all hours worked in excess of such a bi-

1 weekly work schedule or in excess of 80 hours in the  
2 2-week period, that are requested in advance by an  
3 employer, shall be overtime hours.

4 “(3) OVERTIME COMPENSATION PROVISION.—

5 The employee shall be compensated for each such  
6 overtime hour at a rate not less than one and one-  
7 half times the regular rate at which the employee is  
8 employed, in accordance with section 7(a)(1), or re-  
9 ceive compensatory time off in accordance with sec-  
10 tion 7(r) for each such overtime hour.

11 “(4) COMPENSATION FOR HOURS IN SCHED-

12 ULE.—Notwithstanding section 7 or any other provi-  
13 sion of law that relates to premium pay for overtime  
14 work, the employee shall be compensated for each  
15 hour in such a biweekly work schedule at a rate not  
16 less than the regular rate at which the employee is  
17 employed.

18 “(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

19 “(1) IN GENERAL.—Notwithstanding any other  
20 provision of law, an employer may establish flexible  
21 credit hour programs, under which, at the election of  
22 an employee, the employer and the employee jointly  
23 designate hours for the employee to work that are  
24 in excess of the basic work requirement of the em-  
25 ployee so that the employee can accumulate flexible

1 credit hours to reduce the hours worked in a week  
2 or a day subsequent to the day on which the flexible  
3 credit hours are worked.

4 “(2) COMPUTATION OF OVERTIME.—In the case  
5 of an employee participating in such a flexible credit  
6 hour program, all hours worked in excess of 40  
7 hours in a week that are requested in advance by an  
8 employer, other than flexible credit hours, shall be  
9 overtime hours.

10 “(3) OVERTIME COMPENSATION PROVISION.—  
11 The employee shall be compensated for each such  
12 overtime hour at a rate not less than one and one-  
13 half times the regular rate at which the employee is  
14 employed, in accordance with section 7(a)(1), or re-  
15 ceive compensatory time off in accordance with sec-  
16 tion 7(r) for each such overtime hour.

17 “(4) COMPENSATION FOR FLEXIBLE CREDIT  
18 HOURS.—Notwithstanding section 7 or any other  
19 provision of law that relates to premium pay for  
20 overtime work, an employee shall be compensated for  
21 each flexible credit hour at a rate not less than the  
22 regular rate at which the employee is employed.

23 “(5) ACCUMULATION AND COMPENSATION.—

24 “(A) ACCUMULATION OF FLEXIBLE CRED-  
25 IT HOURS.—An employee who is participating

1 in such a flexible credit hour program can accu-  
2 mulate not more than 50 flexible credit hours.

3 “(B) COMPENSATION FOR FLEXIBLE  
4 CREDIT HOURS OF EMPLOYEES NO LONGER  
5 SUBJECT TO PROGRAM.—Any employee who  
6 was participating in such a flexible credit hour  
7 program and who is no longer subject to such  
8 a program shall be paid at a rate not less than  
9 the regular rate at which the employee is em-  
10 ployed on the date the employee receives such  
11 payment, for not more than 50 flexible credit  
12 hours accumulated by such employee.

13 “(C) COMPENSATION FOR ANNUALLY AC-  
14 CUMULATED FLEXIBLE CREDIT HOURS.—

15 “(i) IN GENERAL.—Not later than  
16 January 31 of each calendar year, the em-  
17 ployer of an employee who is participating  
18 in such a flexible credit hour program shall  
19 provide monetary compensation for any  
20 flexible credit hours accumulated as de-  
21 scribed in subparagraph (A) during the  
22 preceding calendar year that were not used  
23 prior to December 31 of the preceding cal-  
24 endar year at a rate not less than the reg-  
25 ular rate at which the employee is em-

1           employed on the date the employee receives  
2           such payment.

3           “(ii) ~~DIFFERENT 12-MONTH PE-~~  
4           ~~RIOD.~~—An employer may designate and  
5           communicate to the employees of the em-  
6           ployer a ~~12-month~~ period other than the  
7           calendar year, in which case such com-  
8           pensation shall be provided not later than  
9           ~~31~~ days after the end of such ~~12-month~~  
10          period.

11          “(d) ~~PARTICIPATION.~~—

12           “(1) ~~IN GENERAL.~~—Except as provided in para-  
13          graph (2), no employee may be required to partici-  
14          pate in a program described in this section. Partici-  
15          pation in a program described in this section may  
16          not be a condition of employment.

17           “(2) ~~COLLECTIVE BARGAINING AGREEMENT.~~—  
18          In a case in which a valid collective bargaining  
19          agreement exists, an employee may only be required  
20          to participate in such a program in accordance with  
21          the agreement.

22          “(3) ~~PROHIBITION OF COERCION.~~—

23           “(A) ~~IN GENERAL.~~—An employer may not  
24          directly or indirectly intimidate, threaten, or co-  
25          erce, or attempt to intimidate, threaten, or co-

1           coerce, any employee for the purpose of interfer-  
 2           ing with the rights of such employee under this  
 3           section to elect or not to elect to work a bi-  
 4           weekly work schedule; to elect or not to elect to  
 5           participate in a flexible credit hour program; or  
 6           to elect or not to elect to work flexible credit  
 7           hours (including working flexible credit hours in  
 8           lieu of overtime hours).

9           “(B) DEFINITION.—As used in subpara-  
 10          graph (A), the term ‘intimidate, threaten, or co-  
 11          erce’ includes promising to confer or conferring  
 12          any benefit (such as appointment, promotion, or  
 13          compensation) or effecting or threatening to ef-  
 14          fect any reprisal (such as deprivation of ap-  
 15          pointment, promotion, or compensation).

16          “(c) APPLICATION OF PROGRAMS IN THE CASE OF  
 17          COLLECTIVE BARGAINING AGREEMENTS.—

18          “(1) APPLICABLE REQUIREMENTS.—In the case  
 19          of employees in a unit represented by an exclusive  
 20          representative, any biweekly work program or flexi-  
 21          ble credit hour program described in subsection (b)  
 22          or (c), respectively, and the establishment and termi-  
 23          nation of any such program, shall be subject to the  
 24          provisions of this section and the terms of a collec-

1       tive bargaining agreement between the employer and  
2       the exclusive representative.

3           “(2) INCLUSION OF EMPLOYEES.—Employees  
4       within a unit represented by an exclusive representa-  
5       tive shall not be included within any program under  
6       this section except to the extent expressly provided  
7       under a collective bargaining agreement between the  
8       employer and the exclusive representative.

9           “(3) COLLECTIVE BARGAINING AGREEMENTS.—  
10       Nothing in this section shall be construed to dimin-  
11       ish the obligation of an employer to comply with any  
12       collective bargaining agreement or any employment  
13       benefits program or plan that provides lesser or  
14       greater rights to employees than the benefits estab-  
15       lished under this section.

16       “(f) DEFINITIONS.—As used in this section:

17           “(1) BASIC WORK REQUIREMENT.—The term  
18       ‘basic work requirement’ means the number of  
19       hours, excluding overtime hours, that an employee is  
20       required to work or is required to account for by  
21       leave or otherwise.

22           “(2) COLLECTIVE BARGAINING.—The term ‘col-  
23       lective bargaining’ means the performance of the  
24       mutual obligation of the representative of an em-  
25       ployer and the exclusive representative of employees

1 in an appropriate unit to meet at reasonable times  
2 and to consult and bargain in a good-faith effort to  
3 reach agreement with respect to the conditions of  
4 employment affecting such employees and to exe-  
5 cute, if requested by either party, a written docu-  
6 ment incorporating any collective bargaining agree-  
7 ment reached, but the obligation referred to in this  
8 paragraph does not compel either party to agree to  
9 a proposal or to make a concession.

10 “(3) COLLECTIVE BARGAINING AGREEMENT.—

11 The term ‘collective bargaining agreement’ means an  
12 agreement entered into as a result of collective bar-  
13 gaining.

14 “(4) ELECTION.—The term ‘at the election of’,

15 used with respect to an employee, means at the ini-  
16 tiative of, and at the request of, the employee.

17 “(5) EMPLOYEE.—The term ‘employee’ means

18 an employee, as defined in section 3, except that the  
19 term shall not include an employee, as defined in  
20 section 6121(2) of title 5, United States Code.

21 “(6) EMPLOYER.—The term ‘employer’ means

22 an employer, as defined in section 3, except that the  
23 term shall not include any person acting in relation  
24 to an employee, as defined in section 6121(2) of title  
25 5, United States Code.

1           “(7) **EXCLUSIVE REPRESENTATIVE.**—The term  
2 ‘exclusive representative’ means any labor organiza-  
3 tion that—

4           “(A) is certified as the exclusive represent-  
5 ative of employees in an appropriate unit pursu-  
6 ant to Federal law; or

7           “(B) was recognized by an employer imme-  
8 diately before the date of enactment of this sec-  
9 tion as the exclusive representative of employees  
10 in an appropriate unit—

11           “(i) on the basis of an election; or

12           “(ii) on any basis other than an elec-  
13 tion;

14           and continues to be so recognized.

15           “(8) **FLEXIBLE CREDIT HOURS.**—The term  
16 ‘flexible credit hours’ means any hours, within a  
17 flexible credit hour program established under sub-  
18 section (c), that are in excess of the basic work re-  
19 quirement of an employee and that, at the election  
20 of the employee, the employer and the employee  
21 jointly designate for the employee to work so as to  
22 reduce the hours worked in a week or a day subse-  
23 quent to the day on which the flexible credit hours  
24 are worked.

1           “(9) OVERTIME HOURS.—The term ‘overtime  
2 hours’—

3           “(A) when used with respect to biweekly  
4 work programs under subsection (b); means all  
5 hours worked in excess of the biweekly work  
6 schedule involved or in excess of 80 hours in  
7 the 2-week period involved; that are requested  
8 in advance by an employer.

9           “(B) when used with respect to flexible  
10 credit hour programs under subsection (c);  
11 means all hours worked in excess of 40 hours  
12 in a week that are requested in advance by an  
13 employer; but does not include flexible credit  
14 hours.

15           “(10) REGULAR RATE.—The term ‘regular rate’  
16 has the meaning given the term in section 7(e).”.

17           (2) PROHIBITIONS.—

18           (A) PURPOSES.—The purposes of this  
19 paragraph are to make violations of the bi-  
20 weekly work program and flexible credit hour  
21 program provisions by employers unlawful  
22 under the Fair Labor Standards Act of 1938;  
23 and to provide for appropriate remedies for  
24 such violations, including, as appropriate, fines,  
25 imprisonment, injunctive relief, and appropriate

1 legal or equitable relief, including liquidated  
2 damages.

3 ~~(B) REMEDIES AND SANCTIONS.—Section~~  
4 ~~15(a)(3) of the Fair Labor Standards Act of~~  
5 ~~1938 (29 U.S.C. 215(a)(3)) is amended by in-~~  
6 ~~serting before the semicolon the following: “, or~~  
7 ~~to violate any of the provisions of section 13A”.~~

8 ~~(c) LIMITATIONS ON SALARY PRACTICES RELATING~~  
9 ~~TO EXEMPT EMPLOYEES.—Section 13 of the Fair Labor~~  
10 ~~Standards Act of 1938 (29 U.S.C. 213) is amended by~~  
11 ~~adding at the end the following:~~

12 ~~“(m)(1)(A) In the case of a determination of whether~~  
13 ~~an employee is an exempt employee described in sub-~~  
14 ~~section (a)(1), the fact that the employee is subject to de-~~  
15 ~~ductions in compensation for—~~

16 ~~“(i) absences of the employee from employment~~  
17 ~~of less than a full workday; or~~

18 ~~“(ii) absences of the employee from employment~~  
19 ~~of less than a full pay period;~~  
20 ~~shall not be considered in making such determination.~~

21 ~~“(B) In the case of a determination described in sub-~~  
22 ~~paragraph (A), an actual reduction in compensation of the~~  
23 ~~employee may be considered in making the determination.~~

24 ~~“(C) For the purposes of this paragraph, the term~~  
25 ~~‘actual reduction in compensation’ does not include any~~

1 reduction in accrued paid leave, or any other practice, that  
 2 does not reduce the amount of compensation an employee  
 3 receives for a pay period.

4 “(2) The payment of overtime compensation or other  
 5 additions to the compensation of an employee employed  
 6 on a salary based on hours worked shall not be considered  
 7 in determining if the employee is an exempt employee de-  
 8 scribed in subsection (a)(1).”.

9 (a) *COMPENSATORY TIME OFF.*—

10 (1) *IN GENERAL.*—Section 7 of the Fair Labor  
 11 Standards Act of 1938 (29 U.S.C. 207) is amended  
 12 by adding at the end the following:

13 “(r) *COMPENSATORY TIME OFF FOR PRIVATE EM-*  
 14 *PLOYEES.*—

15 “(1) *VOLUNTARY PARTICIPATION.*—

16 “(A) *IN GENERAL.*—Except as provided in  
 17 subparagraph (B), no employee may be required  
 18 under this subsection to receive compensatory  
 19 time off in lieu of monetary overtime compensa-  
 20 tion. The acceptance of compensatory time off in  
 21 lieu of monetary overtime compensation may not  
 22 be a condition of employment.

23 “(B) *COLLECTIVE BARGAINING AGREE-*  
 24 *MENT.*—In a case in which a valid collective  
 25 bargaining agreement exists between an em-

1            *ployer and the representative of the employees*  
2            *that is recognized as provided for in section 9(a)*  
3            *of the National Labor Relations Act (29 U.S.C.*  
4            *159(a)), an employee may only be required*  
5            *under this subsection to receive compensatory*  
6            *time off in lieu of monetary overtime compensa-*  
7            *tion in accordance with the agreement.*

8            *“(2) GENERAL RULE.—*

9                    *“(A) COMPENSATORY TIME OFF.—An em-*  
10                   *ployee may receive, in accordance with this sub-*  
11                   *section and in lieu of monetary overtime com-*  
12                   *penetration, compensatory time off at a rate not*  
13                   *less than one and one-half hours for each hour of*  
14                   *employment for which monetary overtime com-*  
15                   *penetration is required by this section.*

16                   *“(B) DEFINITIONS.—In this subsection:*

17                            *“(i) EMPLOYEE.—The term ‘employee’*  
18                            *does not include an employee of a public*  
19                            *agency.*

20                            *“(ii) EMPLOYER.—The term ‘employer’*  
21                            *does not include a public agency.*

22                   *“(3) CONDITIONS.—An employer may provide*  
23                   *compensatory time off to employees under paragraph*  
24                   *(2)(A) only pursuant to the following:*

1           “(A) *The compensatory time off may be*  
2           *provided only in accordance with—*

3                   “(i) *applicable provisions of a collec-*  
4                   *tive bargaining agreement between the em-*  
5                   *ployer and the representative of the em-*  
6                   *ployee that is recognized as provided for in*  
7                   *section 9(a) of the National Labor Relations*  
8                   *Act (29 U.S.C. 159(a)); or*

9                   “(ii) *in the case of an employee who is*  
10                  *not represented by a labor organization that*  
11                  *is recognized as provided for in section 9(a)*  
12                  *of the National Labor Relations Act, an*  
13                  *agreement or understanding arrived at be-*  
14                  *tween the employer and employee before the*  
15                  *performance of the work involved if the*  
16                  *agreement or understanding was entered*  
17                  *into knowingly and voluntarily by such em-*  
18                  *ployee and was not a condition of employ-*  
19                  *ment.*

20                  “(B) *The compensatory time off may only*  
21                  *be provided to an employee described in subpara-*  
22                  *graph (A)(ii) if such employee has affirmed, in*  
23                  *a written or otherwise verifiable statement that*  
24                  *is made, kept, and preserved in accordance with*  
25                  *section 11(c), that the employee has chosen to re-*

1           *ceive compensatory time off in lieu of monetary*  
2           *overtime compensation.*

3           “(C) *An employee shall be eligible to accrue*  
4           *compensatory time off if such employee has not*  
5           *accrued compensatory time off in excess of the*  
6           *limit applicable to the employee prescribed by*  
7           *paragraph (4).*

8           “(4) *HOUR LIMIT.—*

9           “(A) *MAXIMUM HOURS.—An employee may*  
10          *accrue not more than 240 hours of compensatory*  
11          *time off.*

12          “(B) *COMPENSATION DATE.—Not later than*  
13          *January 31 of each calendar year, the employer*  
14          *of the employee shall provide monetary com-*  
15          *penetration for any unused compensatory time off*  
16          *accrued during the preceding calendar year that*  
17          *was not used prior to December 31 of the preced-*  
18          *ing calendar year at the rate prescribed by para-*  
19          *graph (8). An employer may designate and com-*  
20          *municate to the employees of the employer a 12-*  
21          *month period other than the calendar year, in*  
22          *which case the compensation shall be provided*  
23          *not later than 31 days after the end of the 12-*  
24          *month period.*

1           “(C) *EXCESS OF 80 HOURS.*—*The employer*  
2           *may provide monetary compensation for an em-*  
3           *ployee’s unused compensatory time off in excess*  
4           *of 80 hours at any time after providing the em-*  
5           *ployee with at least 30 days’ written notice. The*  
6           *compensation shall be provided at the rate pre-*  
7           *scribed by paragraph (8).*

8           “(5) *DISCONTINUANCE OF POLICY OR WITH-*  
9           *DRAWAL.*—

10           “(A) *DISCONTINUANCE OF POLICY.*—*An em-*  
11           *ployer that has adopted a policy offering com-*  
12           *pensatory time off to employees may discontinue*  
13           *the policy for employees described in paragraph*  
14           *(3)(A)(i) after providing 30 days’ written notice*  
15           *to the employees who are subject to an agreement*  
16           *or understanding described in paragraph*  
17           *(3)(A)(i).*

18           “(B) *WITHDRAWAL.*—*An employee may*  
19           *withdraw an agreement or understanding de-*  
20           *scribed in paragraph (3)(A)(i) at any time, by*  
21           *submitting a written notice of withdrawal to the*  
22           *employer of the employee. An employee may also*  
23           *request in writing that monetary compensation*  
24           *be provided, at any time, for all compensatory*  
25           *time off accrued that has not been used. Within*

1           30 days after receiving the written request, the  
2           employer shall provide the employee the mone-  
3           tary compensation due in accordance with para-  
4           graph (8).

5           “(6) *ADDITIONAL REQUIREMENTS.*—

6                 “(A) *PROHIBITION OF COERCION.*—

7                     “(i) *IN GENERAL.*—An employer that  
8                     provides compensatory time off under para-  
9                     graph (2) to an employee shall not directly  
10                    or indirectly intimidate, threaten, or coerce,  
11                    or attempt to intimidate, threaten, or co-  
12                    erce, any employee for the purpose of—

13                         “(I) *interfering with the rights of*  
14                         *the employee under this subsection to*  
15                         *request or not request compensatory*  
16                         *time off in lieu of payment of mone-*  
17                         *tary overtime compensation for over-*  
18                         *time hours;*

19                         “(II) *interfering with the rights of*  
20                         *the employee to use accrued compen-*  
21                         *satory time off in accordance with*  
22                         *paragraph (9); or*

23                         “(III) *requiring the employee to*  
24                         *use the compensatory time off.*

1                   “(i) *DEFINITION.*—*In clause (i), the*  
 2                   *term ‘intimidate, threaten, or coerce’ has the*  
 3                   *meaning given the term in section*  
 4                   *13A(d)(2).*

5                   “(B) *ELECTION OF OVERTIME COMPENSA-*  
 6                   *TION OR COMPENSATORY TIME.*—*An agreement*  
 7                   *or understanding that is entered into by an em-*  
 8                   *ployee and employer under paragraph (3)(A)(ii)*  
 9                   *shall permit the employee to elect, for an appli-*  
 10                   *cable workweek—*

11                    “(i) *the payment of monetary overtime*  
 12                    *compensation for the workweek; or*

13                    “(ii) *the accrual of compensatory time*  
 14                    *off in lieu of the payment of monetary over-*  
 15                    *time compensation for the workweek.”.*

16                   (2) *REMEDIES AND SANCTIONS.*—*Section 16 of*  
 17                    *the Fair Labor Standards Act of 1938 (29 U.S.C.*  
 18                    *216) is amended by adding at the end the following:*

19                    “(f)(1) *In addition to any amount that an employer*  
 20                    *is liable under subsection (b) for a violation of a provision*  
 21                    *of section 7, an employer that violates section 7(r)(6)(A)*  
 22                    *shall be liable to the employee affected in an amount equal*  
 23                    *to—*

24                    “(A) *the product of—*

1           “(i) the rate of compensation (determined  
2           in accordance with section 7(r)(8)(A)); and

3           “(ii)(I) the number of hours of compen-  
4           satory time off involved in the violation that was  
5           initially accrued by the employee; minus

6           “(II) the number of such hours used by the  
7           employee; and

8           “(B) as liquidated damages, the product of—

9           “(i) such rate of compensation; and

10          “(ii) the number of hours of compensatory  
11          time off involved in the violation that was ini-  
12          tially accrued by the employee.

13          “(2) The employer shall be subject to such liability in  
14          addition to any other remedy available for such violation  
15          under this section or section 17, including a criminal pen-  
16          alty under subsection (a) and a civil penalty under sub-  
17          section (e).”.

18          (3) CALCULATIONS AND SPECIAL RULES.—Sec-  
19          tion 7(r) of the Fair Labor Standards Act of 1938 (29  
20          U.S.C. 207(r)), as added by paragraph (1), is amend-  
21          ed by adding at the end the following:

22          “(7) TERMINATION OF EMPLOYMENT.—An em-  
23          ployee who has accrued compensatory time off author-  
24          ized to be provided under paragraph (2) shall, upon  
25          the voluntary or involuntary termination of employ-

1       *ment, be paid for the unused compensatory time off*  
2       *in accordance with paragraph (8).*

3               “(8) *RATE OF COMPENSATION FOR COMPEN-*  
4       *SATORY TIME OFF.—*

5               “(A) *GENERAL RULE.—If compensation is*  
6       *to be paid to an employee for accrued compen-*  
7       *satory time off, the compensation shall be paid*  
8       *at a rate of compensation not less than—*

9               “(i) *the regular rate received by such*  
10       *employee when the compensatory time off*  
11       *was earned; or*

12               “(ii) *the final regular rate received by*  
13       *such employee,*  
14       *whichever is higher.*

15               “(B) *CONSIDERATION OF PAYMENT.—Any*  
16       *payment owed to an employee under this sub-*  
17       *section for unused compensatory time off shall be*  
18       *considered unpaid monetary overtime compensa-*  
19       *tion.*

20               “(9) *USE OF TIME.—An employee—*

21               “(A) *who has accrued compensatory time off*  
22       *authorized to be provided under paragraph (2);*  
23       *and*

24               “(B) *who has requested the use of the ac-*  
25       *crued compensatory time off,*

1       *shall be permitted by the employer of the employee to*  
2       *use the accrued compensatory time off within a rea-*  
3       *sonable period after making the request if the use of*  
4       *the accrued compensatory time off does not unduly*  
5       *disrupt the operations of the employer.*

6               “(10) *DEFINITIONS.*—*The terms ‘monetary over-*  
7       *time compensation’ and ‘compensatory time off’ shall*  
8       *have the meanings given the terms ‘overtime com-*  
9       *ensation’ and ‘compensatory time’, respectively, by*  
10       *subsection (o)(7).”.*

11               (4) *NOTICE TO EMPLOYEES.*—*Not later than 30*  
12       *days after the date of enactment of this Act, the Sec-*  
13       *retary of Labor shall revise the materials the Sec-*  
14       *retary provides, under regulations contained in sec-*  
15       *tion 516.4 of title 29, Code of Federal Regulations, to*  
16       *employers for purposes of a notice explaining the Fair*  
17       *Labor Standards Act of 1938 to employees so that the*  
18       *notice reflects the amendments made to the Act by*  
19       *this subsection.*

20               (b) *BIWEEKLY WORK PROGRAMS AND FLEXIBLE*  
21       *CREDIT HOUR PROGRAMS.*—

22               (1) *IN GENERAL.*—*The Fair Labor Standards*  
23       *Act of 1938 is amended by inserting after section 13*  
24       *(29 U.S.C. 213) the following:*

1 **“SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE**  
2 **CREDIT HOUR PROGRAMS.**

3 *“(a) VOLUNTARY PARTICIPATION.—*

4 *“(1) IN GENERAL.—Except as provided in para-*  
5 *graph (2), no employee may be required to partici-*  
6 *partate in a program described in this section. Partici-*  
7 *pation in a program described in this section may*  
8 *not be a condition of employment.*

9 *“(2) COLLECTIVE BARGAINING AGREEMENT.—In*  
10 *a case in which a valid collective bargaining agree-*  
11 *ment exists, an employee may only be required to*  
12 *participate in such a program in accordance with the*  
13 *agreement.*

14 *“(b) BIWEEKLY WORK PROGRAMS.—*

15 *“(1) IN GENERAL.—Notwithstanding section 7,*  
16 *an employer may establish biweekly work programs*  
17 *that allow the use of a biweekly work schedule—*

18 *“(A) that consists of a basic work require-*  
19 *ment of not more than 80 hours, over a 2-week*  
20 *period; and*

21 *“(B) in which more than 40 hours of the*  
22 *work requirement may occur in a week of the pe-*  
23 *riod.*

24 *“(2) CONDITIONS.—An employer may carry out*  
25 *a biweekly work program described in paragraph (1)*  
26 *for employees only pursuant to the following:*

1           “(A) *AGREEMENT OR UNDERSTANDING.*—  
2           *The program may be carried out only in accord-*  
3           *ance with—*

4                   “(i) *applicable provisions of a collec-*  
5                   *tive bargaining agreement between the em-*  
6                   *ployer and the representative of the employ-*  
7                   *ees that is recognized as provided for in sec-*  
8                   *tion 9(a) of the National Labor Relations*  
9                   *Act (29 U.S.C. 159(a)); or*

10                   “(ii) *in the case of an employee who is*  
11                   *not represented by a labor organization that*  
12                   *is recognized as provided for in section 9(a)*  
13                   *of the National Labor Relations Act, an*  
14                   *agreement or understanding arrived at be-*  
15                   *tween the employer and employee before the*  
16                   *performance of the work involved if the*  
17                   *agreement or understanding was entered*  
18                   *into knowingly and voluntarily by such em-*  
19                   *ployee and was not a condition of employ-*  
20                   *ment.*

21                   “(B) *STATEMENT.*—*The program shall*  
22                   *apply to an employee described in subparagraph*  
23                   *(A)(ii) if such employee has affirmed, in a writ-*  
24                   *ten or otherwise verifiable statement that is*  
25                   *made, kept, and preserved in accordance with*

1           *section 11(c), that the employee has chosen to*  
2           *participate in the program.*

3           “(3) *COMPENSATION FOR HOURS IN SCHED-*  
4           *ULE.—Notwithstanding section 7, in the case of an*  
5           *employee participating in such a biweekly work pro-*  
6           *gram, the employee shall be compensated for each*  
7           *hour in such a biweekly work schedule at a rate not*  
8           *less than the regular rate at which the employee is*  
9           *employed.*

10           “(4) *COMPUTATION OF OVERTIME.—All hours*  
11           *worked by the employee in excess of such a biweekly*  
12           *work schedule or in excess of 80 hours in the 2-week*  
13           *period, that are requested in advance by the employer,*  
14           *shall be overtime hours.*

15           “(5) *OVERTIME COMPENSATION PROVISION.—The*  
16           *employee shall be compensated for each such overtime*  
17           *hour at a rate not less than one and one-half times*  
18           *the regular rate at which the employee is employed,*  
19           *in accordance with section 7(a)(1), or receive compen-*  
20           *satory time off in accordance with section 7(r) for*  
21           *each such overtime hour.*

22           “(6) *DISCONTINUANCE OF PROGRAM OR WITH-*  
23           *DRAWAL.—*

24           “(A) *DISCONTINUANCE OF PROGRAM.—An*  
25           *employer that has established a biweekly work*

1           *program under paragraph (1) may discontinue*  
2           *the program for employees described in para-*  
3           *graph (2)(A)(ii) after providing 30 days' written*  
4           *notice to the employees who are subject to an*  
5           *agreement or understanding described in para-*  
6           *graph (2)(A)(ii).*

7           “(B) *WITHDRAWAL.*—*An employee may*  
8           *withdraw an agreement or understanding de-*  
9           *scribed in paragraph (2)(A)(ii) at the end of any*  
10          *2-week period described in paragraph (1)(A), by*  
11          *submitting a written notice of withdrawal to the*  
12          *employer of the employee.*

13          “(c) *FLEXIBLE CREDIT HOUR PROGRAMS.*—

14          “(1) *IN GENERAL.*—*Notwithstanding section 7,*  
15          *an employer may establish flexible credit hour pro-*  
16          *grams, under which, at the election of an employee,*  
17          *the employer and the employee jointly designate hours*  
18          *for the employee to work that are in excess of the*  
19          *basic work requirement of the employee so that the*  
20          *employee can accrue flexible credit hours to reduce the*  
21          *hours worked in a week or a day subsequent to the*  
22          *day on which the flexible credit hours are worked.*

23          “(2) *CONDITIONS.*—*An employer may carry out*  
24          *a flexible credit hour program described in paragraph*  
25          *(1) for employees only pursuant to the following:*

1           “(A) *AGREEMENT OR UNDERSTANDING.*—  
2           *The program may be carried out only in accord-*  
3           *ance with—*

4                   “(i) *applicable provisions of a collec-*  
5                   *tive bargaining agreement between the em-*  
6                   *ployer and the representative of the employ-*  
7                   *ees that is recognized as provided for in sec-*  
8                   *tion 9(a) of the National Labor Relations*  
9                   *Act (29 U.S.C. 159(a)); or*

10                   “(ii) *in the case of an employee who is*  
11                   *not represented by a labor organization that*  
12                   *is recognized as provided for in section 9(a)*  
13                   *of the National Labor Relations Act, an*  
14                   *agreement or understanding arrived at be-*  
15                   *tween the employer and employee before the*  
16                   *performance of the work involved if the*  
17                   *agreement or understanding was entered*  
18                   *into knowingly and voluntarily by such em-*  
19                   *ployee and was not a condition of employ-*  
20                   *ment.*

21                   “(B) *STATEMENT.*—*The program shall*  
22                   *apply to an employee described in subparagraph*  
23                   *(A)(ii) if such employee has affirmed, in a writ-*  
24                   *ten or otherwise verifiable statement that is*  
25                   *made, kept, and preserved in accordance with*

1           *section 11(c), that the employee has chosen to*  
2           *participate in the program.*

3           “(C) *HOURS.—An agreement or under-*  
4           *standing that is entered into under subpara-*  
5           *graph (A) shall provide that, at the election of*  
6           *an employee, the employer and the employee will*  
7           *jointly designate, for an applicable workweek,*  
8           *flexible credit hours for the employee to work.*

9           “(D) *LIMIT.—An employee shall be eligible*  
10          *to accrue flexible credit hours if the employee has*  
11          *not accrued flexible credit hours in excess of the*  
12          *limit applicable to the employee prescribed by*  
13          *paragraph (3).*

14          “(3) *HOUR LIMIT.—*

15                 “(A) *MAXIMUM HOURS.—An employee who*  
16                 *is participating in such a flexible credit hour*  
17                 *program may accrue not more than 50 flexible*  
18                 *credit hours.*

19                 “(B) *COMPENSATION DATE.—Not later than*  
20                 *January 31 of each calendar year, the employer*  
21                 *of an employee who is participating in such a*  
22                 *flexible credit hour program shall provide mone-*  
23                 *tary compensation for any flexible credit hours*  
24                 *accrued during the preceding calendar year that*  
25                 *were not used prior to December 31 of the pre-*

1           *ceding calendar year at a rate not less than the*  
2           *regular rate at which the employee is employed*  
3           *on the date the employee receives the compensa-*  
4           *tion. An employer may designate and commu-*  
5           *nicate to the employees of the employer a 12-*  
6           *month period other than the calendar year, in*  
7           *which case the compensation shall be provided*  
8           *not later than 31 days after the end of the 12-*  
9           *month period.*

10           “(4) *COMPENSATION FOR FLEXIBLE CREDIT*  
11           *HOURS.—Notwithstanding section 7, in the case of an*  
12           *employee participating in such a flexible credit hour*  
13           *program, the employee shall be compensated for each*  
14           *flexible credit hour at a rate not less than the regular*  
15           *rate at which the employee is employed.*

16           “(5) *COMPUTATION OF OVERTIME.—All hours*  
17           *worked by the employee in excess of 40 hours in a*  
18           *week that are requested in advance by the employer,*  
19           *other than flexible credit hours, shall be overtime*  
20           *hours.*

21           “(6) *OVERTIME COMPENSATION PROVISION.—The*  
22           *employee shall be compensated for each such overtime*  
23           *hour at a rate not less than one and one-half times*  
24           *the regular rate at which the employee is employed,*  
25           *in accordance with section 7(a)(1), or receive compen-*

1 *satory time off in accordance with section 7(r) for*  
2 *each such overtime hour.*

3 *“(7) USE OF TIME.—An employee—*

4 *“(A) who has accrued flexible credit hours;*

5 *and*

6 *“(B) who has requested the use of the ac-*

7 *crued flexible credit hours,*

8 *shall be permitted by the employer of the employee to*

9 *use the accrued flexible credit hours within a reason-*

10 *able period after making the request if the use of the*

11 *accrued flexible credit hours does not unduly disrupt*

12 *the operations of the employer.*

13 *“(8) DISCONTINUANCE OF PROGRAM OR WITH-*

14 *DRAWAL.—*

15 *“(A) DISCONTINUANCE OF PROGRAM.—An*

16 *employer that has established a flexible credit*

17 *hour program under paragraph (1) may dis-*

18 *continue the program for employees described in*

19 *paragraph (2)(A)(ii) after providing 30 days’*

20 *written notice to the employees who are subject*

21 *to an agreement or understanding described in*

22 *paragraph (2)(A)(ii).*

23 *“(B) WITHDRAWAL.—An employee may*

24 *withdraw an agreement or understanding de-*

25 *scribed in paragraph (2)(A)(ii) at any time, by*

1           *submitting a written notice of withdrawal to the*  
2           *employer of the employee. An employee may also*  
3           *request in writing that monetary compensation*  
4           *be provided, at any time, for all flexible credit*  
5           *hours accrued that have not been used. Within*  
6           *30 days after receiving the written request, the*  
7           *employer shall provide the employee the mone-*  
8           *tary compensation due at a rate not less than*  
9           *the regular rate at which the employee is em-*  
10          *ployed on the date the employee receives the com-*  
11          *penetration.*

12          “(d) *PROHIBITION OF COERCION.—*

13                 “(1) *IN GENERAL.—An employer shall not di-*  
14                 *rectly or indirectly intimidate, threaten, or coerce, or*  
15                 *attempt to intimidate, threaten, or coerce, any em-*  
16                 *ployee for the purpose of—*

17                         “(A) *interfering with the rights of the em-*  
18                         *ployee under this section to elect or not to elect*  
19                         *to work a biweekly work schedule;*

20                         “(B) *interfering with the rights of the em-*  
21                         *ployee under this section to elect or not to elect*  
22                         *to participate in a flexible credit hour program,*  
23                         *or to elect or not to elect to work flexible credit*  
24                         *hours (including working flexible credit hours in*  
25                         *lieu of overtime hours);*

1           “(C) *interfering with the rights of the em-*  
2           *ployee under this section to use accrued flexible*  
3           *credit hours in accordance with subsection (c)(7);*  
4           *or*

5           “(D) *requiring the employee to use the flexi-*  
6           *ble credit hours.*

7           “(2) *DEFINITION.—In paragraph (1), the term*  
8           *‘intimidate, threaten, or coerce’ includes promising to*  
9           *confer or conferring any benefit (such as appoint-*  
10           *ment, promotion, or compensation) or effecting or*  
11           *threatening to effect any reprisal (such as deprivation*  
12           *of appointment, promotion, or compensation).*

13           “(e) *DEFINITIONS.—In this section:*

14           “(1) *BASIC WORK REQUIREMENT.—The term*  
15           *‘basic work requirement’ means the number of hours,*  
16           *excluding overtime hours, that an employee is re-*  
17           *quired to work or is required to account for by leave*  
18           *or otherwise.*

19           “(2) *COLLECTIVE BARGAINING.—The term ‘col-*  
20           *lective bargaining’ means the performance of the mu-*  
21           *tual obligation of the representative of an employer*  
22           *and the representative of employees of the employer*  
23           *that is recognized as provided for in section 9(a) of*  
24           *the National Labor Relations Act (29 U.S.C. 159(a))*  
25           *to meet at reasonable times and to consult and bar-*

1        *gain in a good-faith effort to reach agreement with re-*  
2        *spect to the conditions of employment affecting such*  
3        *employees and to execute, if requested by either party,*  
4        *a written document incorporating any collective bar-*  
5        *gaining agreement reached, but the obligation referred*  
6        *to in this paragraph shall not compel either party to*  
7        *agree to a proposal or to make a concession.*

8            *“(3) COLLECTIVE BARGAINING AGREEMENT.—*  
9        *The term ‘collective bargaining agreement’ means an*  
10       *agreement entered into as a result of collective bar-*  
11       *gaining.*

12           *“(4) ELECTION.—The term ‘at the election of,’*  
13       *used with respect to an employee, means at the initia-*  
14       *tive of, and at the request of, the employee.*

15           *“(5) EMPLOYEE.—The term ‘employee’ does not*  
16       *include an employee of a public agency.*

17           *“(6) EMPLOYER.—The term ‘employer’ does not*  
18       *include a public agency.*

19           *“(7) FLEXIBLE CREDIT HOURS.—The term ‘flexi-*  
20       *ble credit hours’ means any hours, within a flexible*  
21       *credit hour program established under subsection (c),*  
22       *that are in excess of the basic work requirement of an*  
23       *employee and that, at the election of the employee, the*  
24       *employer and the employee jointly designate for the*  
25       *employee to work so as to reduce the hours worked in*

1       *a week or a day subsequent to the day on which the*  
 2       *flexible credit hours are worked.*

3               “(8) *OVERTIME HOURS.*—*The term ‘overtime*  
 4       *hours’—*

5                       “(A) *when used with respect to biweekly*  
 6                       *work programs under subsection (b), means all*  
 7                       *hours worked in excess of the biweekly work*  
 8                       *schedule involved or in excess of 80 hours in the*  
 9                       *2-week period involved, that are requested in ad-*  
 10                      *vance by an employer; or*

11                      “(B) *when used with respect to flexible cred-*  
 12                      *it hour programs under subsection (c), means all*  
 13                      *hours worked in excess of 40 hours in a week*  
 14                      *that are requested in advance by an employer,*  
 15                      *but does not include flexible credit hours.*

16               “(9) *REGULAR RATE.*—*The term ‘regular rate’*  
 17       *has the meaning given the term in section 7(e).”.*

18               (2) *PROHIBITIONS.*—*Section 15(a)(3) of the Fair*  
 19       *Labor Standards Act of 1938 (29 U.S.C. 215(a)(3))*  
 20       *is amended—*

21                      (A) *by inserting “(A)” after “(3)”;*

22                      (B) *by adding “or” after the semicolon; and*

23                      (C) *by adding at the end the following:*

24                      “(B) *to violate any of the provisions of section*  
 25       *13A;”.*

1           (c) *LIMITATIONS ON SALARY PRACTICES RELATING*  
2 *TO EXEMPT EMPLOYEES.—*

3           (1) *IN GENERAL.—Section 13 of the Fair Labor*  
4 *Standards Act of 1938 (29 U.S.C. 213) is amended*  
5 *by adding at the end the following:*

6           “(m)(1)(A) *In the case of a determination of whether*  
7 *an employee is an exempt employee described in subsection*  
8 *(a)(1), the fact that the employee is subject to deductions*  
9 *in pay for—*

10           “(i) *absences of the employee from employment of*  
11 *less than a full workday; or*

12           “(ii) *absences of the employee from employment*  
13 *of less than a full pay period,*  
14 *shall not be considered in making such determination.*

15           “(B) *In the case of a determination described in sub-*  
16 *paragraph (A), an actual reduction in pay of the employee*  
17 *may be considered in making the determination for that*  
18 *employee.*

19           “(C) *For the purposes of this paragraph, the term ‘ac-*  
20 *tual reduction in pay’ does not include any reduction in*  
21 *accrued paid leave, or any other practice, that does not re-*  
22 *duce the amount of pay an employee receives for a pay pe-*  
23 *riod.*

24           “(2) *The payment of overtime compensation or other*  
25 *additions to the compensation of an employee employed on*

1 *a salary based on hours worked shall not be considered in*  
2 *determining if the employee is an exempt employee de-*  
3 *scribed in subsection (a)(1).”.*

4           (2) *EFFECTIVE DATE.—The amendment made by*  
5 *paragraph (1) shall take effect on the date of enact-*  
6 *ment of this Act and shall apply to any civil ac-*  
7 *tion—*

8                   (A) *that involves an issue with respect to*  
9 *section 13(a)(1) of the Fair Labor Standards Act*  
10 *of 1938 (29 U.S.C. 213(a)(1)); and*

11                   (B) *in which a final judgment has not been*  
12 *made prior to such date.*