

WORKING FAMILIES FLEXIBILITY ACT OF 1996

JULY 11, 1996.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. GOODLING, from the Committee on Economic and Educational
Opportunities, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2391]

[Including cost estimate of the Congressional Budget Office]

The Committee on Economic and Educational Opportunities, to whom was referred the bill (H.R. 2391) to amend the Fair Labor Standards Act of 1938 to provide compensatory time for all employees, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. COMPENSATORY TIME.

Subsection (o) of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended—

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

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

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

“(A) pursuant to—

“(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and representatives of such employees, or

“(ii) in the case of employees who are not represented by a collective bargaining agent or other representative designated by the employee, an agree-

ment or understanding arrived at between the employer and employee before the performance of the work if such agreement or understanding was entered into knowingly and voluntarily by such employee;

“(B) in the case of an employee who is not an employee of a public agency, if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time in lieu of overtime compensation; and

“(C) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (5).

In the case of employees described in subparagraph (A)(ii) who are employees of a public agency and who were hired before April 15, 1986, the regular practice in effect on such date with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding described in such subparagraph. Except as provided in the preceding sentence, the provision of compensatory time off to employees of a public agency for hours worked after April 14, 1986, shall be in accordance with this subsection. An employer may provide compensatory time under paragraph (1) to an employee who is not an employee of a public agency only if such agreement or understanding was not a condition of employment.

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

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

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

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

“(B)(i) Not later than January 31 of each calendar year, the employee’s employer shall provide monetary compensation for any compensatory time off accrued during the preceding calendar year which was not used prior to December 31 of the preceding year at the rate prescribed by paragraph (6). An employer may designate and communicate to the employer’s employees a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

“(ii) The employer may provide monetary compensation for an employee’s unused compensatory time at any time. Such compensation shall be provided at the rate prescribed by paragraph (6).

“(C) An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time accrued which has not yet been used. Within 30 days of receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

“(5)(A) If the work of an employee of a public agency for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

“(B) If compensation is paid to an employee described in subparagraph (A) for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

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

“(i) the average regular rate received by such employee during the period during which the compensatory time was accrued, or

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

“(B) An employee of an employer which is a public agency who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

“(i) the average regular rate received by such employee during the last 3 years of the employee’s employment, or
 “(ii) the final regular rate received by such employee,
 whichever is higher.

“(C) Any payment owed to an employee under this subsection for unused compensatory time shall, for purposes of section 16(b), be considered unpaid overtime compensation.

“(7) An employee—
 “(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and
 “(B) who has requested the use of such compensatory time,
 shall be permitted by the employee’s employer 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 employer.”; and
 (2) by redesignating paragraphs (6) and (7) as paragraphs (8) and (9), respectively.

SEC. 3. REMEDIES.

Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—
 (1) in subsection (b), by striking “(b) Any employer” and inserting “(b) Except as provided in subsection (f), any employer”; and
 (2) by adding at the end the following:
 “(f) An employer which is not a public agency and which willfully violates section 7(o)(3) shall be liable to the employee affected in the amount of the rate of compensation (determined in accordance with section 7(o)(6)(A)) for each hour of compensatory time accrued by the employee and in an additional equal amount as liquidated damages reduced by the amount of such rate of compensation for each hour of compensatory time used by such employee.”.

PURPOSE

The purpose of H.R. 2391 is to amend the Fair Labor Standards Act of 1938 to provide compensatory time for all employees.

COMMITTEE ACTION

The Subcommittee on Workforce Protections held an oversight hearing on June 8, 1995, on amending the Fair Labor Standards Act to provide private sector employers with the option of allowing employees to choose to take compensatory time off in lieu of overtime pay. The following individuals testified at the hearing: Ms. Arlyce Robinson, Administrative Support Coordinator, Computer Sciences Corporation, Falls Church, Virginia; Ms. Kathleen M. Fairall, Senior Human Resource Representative, Timken Company, Randolph County, North Carolina; Ms. Sandie Money Penny, Process Technician, Timken Company, Randolph County, North Carolina; Dr. M. Edith Rasell, Economist, Economic Policy Institute, Washington, D.C.; and Mr. Michael T. Leibig, Attorney-at-Law, Zwerdling, Paul, Leibig, Kahn, Thompson & Wolly, P.C., Fairfax, Virginia.

H.R. 2391 was introduced by Representative Cass Ballenger on September 21, 1995. The Subcommittee on Workforce Protections held a hearing on H.R. 2391 on November 1, 1995. The following witnesses testified on H.R. 2391: Mr. Pete Peterson, Senior Vice President of Personnel, Hewlett-Packard Company, Palo Alto, California; Ms. Debbie McKay, Administrative Specialist, PRC, Inc., McLean, Virginia; and Mr. Michael T. Leibig, Attorney-at-Law, Zwerdling, Paul, Leibig, Kahn, Thompson & Wolly, P.C., Fairfax, Virginia.

On December 13, 1995, the Subcommittee on Workforce Protections approved H.R. 2391, as amended, by voice vote, and ordered

the bill favorably reported to the Full Committee. On June 26, 1996, the Committee on Economic and Educational Opportunities approved H.R. 2391, as amended, by voice vote, and ordered the bill favorably reported by a roll call vote of 20 yeas and 16 nays.

COMMITTEE STATEMENT AND VIEWS

BACKGROUND

The Fair Labor Standards Act (FLSA)¹ was enacted in 1938. Among its provisions is the requirement that hours of work by “non-exempt employees” beyond 40 hours in a seven day period must generally be compensated at a rate of one and one-half times the employee’s regular rate of pay.² Exceptions to the “40 hour work week” are permitted, under section 7 of the FLSA,³ for employees in collective bargaining agreements and for a variety of specific types and places of employment whose circumstances have led Congress, over the years, to enact specific provisions regarding maximum hours of work for those types of employment. In addition, the “overtime pay” requirement does not apply to employees who are exempt as “executive, administrative, or professional” employees.⁴

Under the overtime pay requirement in the FLSA, overtime pay for employees in the private sector must be in the form of cash wages. This is contrary to the overtime pay provision for employees in the public sector. Section 207(o)⁵ provides that public agencies may provide compensatory time off in lieu of overtime compensation, so long as the employee or his or her collective bargaining representative has agreed to this arrangement and the compensatory time off is given at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required.

The difference in treatment between the private and public sectors under the FLSA is explained by the fact that the provisions applying the FLSA to the public sector were added in 1985 and, therefore included a recognition that the workplace and work force have changed greatly since the 1930’s when the private sector provision was written. By 1985, Congress recognized that changes in the work force and the workplace had led many employers in the public sector to make compensatory time available and for their employees to choose compensatory time. As the Senate Labor Committee explained the inclusion of the compensatory time provision for the public sector:

The Committee also is cognizant that many state and local government employers and their employees voluntarily have worked out arrangements providing for compensatory time off in lieu of pay for hours worked beyond the normally scheduled workweek. These arrangements—frequently the result of collective bargaining—reflect mutually satisfactory solutions that are both fiscally and so-

¹29 U.S.C. § 201–219.

²29 U.S.C. § 207.

³29 U.S.C. § 207.

⁴29 U.S.C. § 213.

⁵29 U.S.C. § 207(o).

cially responsible. To the extent practicable, we wish to accommodate such arrangements.⁶

The Committee is certain that compensatory time off in lieu of overtime pay for hours worked beyond 40 in a week can provide “mutually satisfactory solutions” in the private sector no less than is the case in the public sector.

Ms. Arlyce Robinson, an Administrative Support Coordinator for Computer Services Corporation and an hourly non-exempt employee, described to the Subcommittee on Workforce Protections how she would like to be able to use compensatory time:

I am here this morning to share with you my feelings about the impact of a law that was created over 50 years ago to protect many of us in the workplace, the Fair Labor Standards Act. I know that under this law, as a non-exempt employee I am eligible for overtime if I work more than 40 hours in a work week. And, while I never turned down an opportunity to earn more money, there have been times when I would have gladly given up the additional pay to enjoy flexibility in planning my work schedule, the same flexibility that my exempt colleagues have had for some time. Let me give you an example.

In a few months, as all of you know, weather around Washington, DC will become much colder. We are likely to see some snow and ice. And if we have winter like the one we had two years ago, we will likely see a great deal of snow and ice. If it snows on a Monday or Tuesday—at the beginning of my workweek—and I can’t get to work on one of those days, I know that I can make up the hours that I missed by working extra hours later in that same week—say on Thursday or Friday. However, if it snows at the end of my workweek, we have a different issue. Although my company would like to allow me to make up the work during the following workweek, the fact is that they can’t allow it without incurring additional costs. You see, if I only worked 4 eight hour days—or 32 hours—the first week, I would have to work 48 hours the following week in order to have a full 80 hour paycheck for the two week period. But right now under the Fair Labor Standards Act, each one of the 8 hours worked over 40 in the second week would have to be paid on an overtime basis. That’s just too expensive for my company, given the number of non-exempt employees that we have. So since I can’t make up the time in the second week, I have to take vacation leave which keeps my paycheck whole but gives me less vacation to use later—when I would like to use it. My only other alternative is to take leave without pay, which keeps my vacation intact, but results in my losing money in my paycheck. And I do need my paycheck!!

* * * For the first 20 years of my career, I worked in the public sector as a secretary and as an administrative assistant in the DC public school system and for the DC Of-

⁶Report on S. 1570, Committee on Labor and Human Resources, U.S. Senate, 99th Congress, First Session, Senate Report No. 99-159, p. 8.

office of Personnel. When I worked for these agencies, I was able to earn and use compensatory time. I can't earn that now. * * * This lack of flexibility is especially difficult for parents of young children, both mothers and fathers, and, particularly, for single parents. Doctor appointments and school conferences can often only be scheduled during work hours. For non-exempt employees, this often means having to take sick leave or vacation leave to have a few hours off to take care of family responsibilities.⁷

Similarly, Ms. Sandie Moneypenny, a process technician for Timken Company and an hourly non-exempt employee, described how having the option of choosing compensatory time could help her as a working mother:

Compensatory time off for a working mother like myself would be very helpful. If I had to leave work because of a sick child, wanted to attend a teachers conference, needed to take my child to the dentist or just wanted time off to be with my family, I would have the option without it affecting my pay.

Today I can only use compensatory time in the week it occurs, but as most of you know, life doesn't seem to work that way. If I could bank my overtime, I wouldn't have to worry about missing work if my child gets sick on Monday or Tuesday. I also would only be postponing valuable time off with my family when I have a busy work week, because I could always take the time off at a later date.⁸

Similar support for the use of compensatory time came from Ms. Deborah McKay, Administrative Specialist, PRC, Inc.:

At PRC we have a cafeteria-style benefits plan. One option is that we may buy extra leave to be used as we wish. However, in the position that I am currently holding, I see many employees who have purchased leave and their leave is used up by midyear. Most of these employees, again, are single mothers, and from a manager's perspective, as well as an employee's, it has become a Catch-22. The employee needs time off but has used all their leave in their account.

Under this proposal [H.R. 2391], an employee would be given the option to use overtime compensatory time at a later date when these family emergency type situations occur. Personally, I would find this time useful in working on term papers and projects for school as well as waiting for the repairman. There is nothing more frustrating than having to take a whole day of leave to have a scheduled repairman show up—supposed to show up at 9 a.m. and then not show up until 3 or 4 in the afternoon. * * * [W]hat I am recommending is simple. * * * [H]ave the FLSA amended by giving non-exempt and exempt employ-

⁷Hearings on the Fair Labor Standards Act before the Subcommittee on Workforce Protections, Committee on Economic and Educational Opportunities, U.S. House of Representatives, 104th Congress, First Session, Serial No. 104-46, pp. 180-181.

⁸Ibid., p. 186.

ees the option of time and a half pay or time and a half of equal value off.⁹

There is ample support for concluding that Ms. Robinson, Ms. Money Penny and Ms. McKay are not alone in wanting the option of being able to earn compensatory time off, rather than cash wages, for hours worked in excess of 40 in a workweek. A survey conducted in September, 1995 by Penn + Schoen Associates, Inc. found that 75 percent of those surveyed favored a proposal to give workers the option of time off in lieu of overtime wages.¹⁰

Employees who are classified as “professional, administrative, or executive” and who are exempt under the FLSA are permitted much more flexibility in their schedules than non-exempt employees. Only non-exempt employees are denied such flexibility under current law. As Ms. Arlyce Robinson summarized it:

While the law was intended to protect us—and maybe 50 years ago it did—in today’s business world it has had the effect of creating the illusion of two classes of workers. The term non-exempt is often misinterpreted to mean “less than professional.”¹¹

LEGISLATION

H.R. 2391 amends the FLSA to permit employees in the private sector to have the option to receive overtime pay in the form of compensatory time in lieu of cash wages. The legislation does not change the employer’s obligation to pay overtime at the rate of one and one-half times the employee’s regular rate of pay for any hours worked over 40 in a seven day period. The bill simply allows overtime compensation to be given in the form of compensatory time off, at the rate of one and one-half hours of compensatory time for each hour of overtime worked, and only if the employee and employer agree on that form of overtime compensation.

The Committee does not intend for H.R. 2391 to alter current public sector use of compensatory time in any way. Rather, the legislation seeks to extend the option of compensatory time in lieu of overtime compensation to private sector employees, which is the same option that federal, state, and local government employees have had for many years under the FLSA, and which private sector employees overwhelmingly support. The legislation includes a number of provisions for employees in the private sector which are not provided in current law for public sector employees. The additional provisions for private sector employees have been added in response to concerns which have been raised about the possible misuse of allowing employers and employees in the private sector to decide on compensatory time in lieu of cash compensation.

AGREEMENT

Under H.R. 2391, an employer and employee must reach an express mutual agreement or understanding that overtime compensa-

⁹ *Ibid.*, pp. 416–417.

¹⁰ National poll conducted September 23-25, 1995, by Penn + Schoen, Associates, Inc.

¹¹ Hearings on the Fair Labor Standards Act before the Subcommittee on Workforce Protections, Committee on Economic and Educational Opportunities, U.S. House of Representatives, 104th Congress, First Session, Serial No. 104-46, p. 181.

tion will be in the form of compensatory time. If either the employee or the employer does not so agree, then the overtime pay must be in the form of cash compensation.

The agreement between the employer and employee must be reached prior to the performance of the work for which the compensatory time off would be given. The agreement may be specific as to each hour of overtime, or it may be a blanket agreement covering overtime worked within a set period of time.

Under the bill, the agreement may be pursuant to a collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and the collective bargaining representative, or in the case of employees who are not represented by a collective bargaining representative, an agreement between the employee and the employer, which has been entered into knowingly and voluntarily by the employee. In specifying that an employer and employee may only enter into an individual agreement on compensatory time where the employees are not represented by a collective bargaining representative, the Committee intends that the bill follow and be interpreted consistent with the Supreme Court's decision in *Moreau v. Klevenhagen*, 508 U.S. 22, 113 S.Ct. 1905 (1993).

The bill requires that, with regard to private sector employers and employees, the agreement on compensatory time between the employer and the employee must be affirmed in a written or otherwise verifiable statement. The latter is intended to allow computerized and other similar payroll systems to include this information, so long as the employee's agreement to take the overtime in the form of compensatory time is verifiable. The Committee does not intend that an agreement to take compensatory time could be purely oral with no contemporaneous record kept. The bill authorizes the Secretary of Labor, pursuant to section 11(c) of the FLSA,¹² to prescribe the form of records which must be maintained and for what period of time the records should be maintained by the employer.

The bill requires an agreement between the employer and the individual employee to be entered into before the overtime work to which it pertains is performed. In addition, the employee must enter into the agreement "knowingly and voluntarily." Although this requirement is not in statute with regard to public sector use of compensatory time, it is in the Department of Labor's regulations,¹³ and is therefore maintained under the bill with regard to the public sector and is also applied to the private sector.

The requirement for a mutual agreement between the employer and the employee on the use of compensatory time in lieu of cash wages reflects the Committee's intent that the employee be able to withdraw from such an agreement at any time. Despite arguments made by the opponents of compensatory time that some employees should continue to be denied the option of compensatory time, the Committee believes that the requirement for mutual agreement by the employer and the employee and the employee protections in the bill ensure that compensatory time is voluntary and the Committee

¹² 29 U.S.C. § 211(c).

¹³ 29 C.F.R. § 553.23(c).

sees no reason to exclude certain groups of employees from the use of compensatory time, based solely upon their level of income or their occupation.

To ensure that H.R. 2391 does not change the application of the current compensatory time provisions of the FLSA to the public sector, but to extend the option of compensatory time to the private sector, the bill includes the so-called "grandfather" provisions with regard to a regular practice in effect in the public sector prior to April 15, 1986, which under current law and under this bill would continue to constitute an agreement or understanding for the purposes of this Act.

EMPLOYEE'S VOLUNTARY CHOICE

H.R. 2391 does not require employers to offer their employees the option of taking overtime pay in the form of compensatory time, but it allows employers to do so. Where employers choose to offer compensatory time, the bill provides that the decision is then left to the employee, whether or not to request compensatory time as compensation for overtime hours worked. As described above, the bill requires that the employee's request and agreement to take compensatory time in lieu of cash wages for overtime be affirmed in a written or otherwise verifiable statement.

The private sector employee's voluntary choice to elect compensatory time is further reinforced by other provisions of the bill. Under H.R. 2391, private sector employers may not make acceptance of compensatory time for overtime hours a condition of employment. Current law which allows the acceptance of compensatory time to be a condition of employment in the public sector is maintained with regard to the public sector.

H.R. 2391 also prohibits a private sector employer from directly or indirectly intimidating, threatening, coercing, or attempting to coerce, any employee into taking or not taking compensatory time in lieu of cash overtime, or requiring the employee to use accrued compensatory time during a certain period. This provision is not part of current law for public sector employees and applies only to the private sector. It further responds to arguments by the opponents of private sector use of compensatory time that employees would be forced to take compensatory time in lieu of cash wages against their will. That claim is contrary to the plain language of the bill.

The bill also creates a new remedy under the FLSA for employers who willfully violate the anti-coercion language just described. Section 3 of H.R. 2391 provides that such employer shall be liable to the employee for the employee's rate of compensation for each hour of compensatory time and an equal amount as liquidated damages. If the employee has already used some or all of the compensatory time, the amount to be paid as penalty is reduced by that amount. Thus, in either case, the employer is liable for two times the employee's overtime rate of pay. Under section 17 of the FLSA,¹⁴ the Secretary of Labor may seek injunctive relief against employers who have violated the minimum wage and overtime re-

¹⁴ 29 U.S.C. § 217.

quirements of the FLSA, which would include the coercion provisions provided in H.R. 2391.

The new remedy for coercion, intimidation or threats against an employee for the purpose of forcing the employee to take or not take compensatory time in lieu of cash overtime wages or to use accrued compensatory time is in addition to the existing remedies under the FLSA. Thus, if the employer fails to pay overtime (either in cash wage or compensatory time), he or she would be liable under section 16(b) of the FLSA.¹⁵ Similarly, any repeated or willful violations of the “anti-coercion” provision would subject the employer to liability for civil penalties under section 16(e).¹⁶ In addition, if a cause of action is brought by an employee, the employer may be required to pay the employee’s attorney’s fees and costs.¹⁷

EMPLOYEE USE OF ACCRUED COMPENSATORY TIME

Under H.R. 2391, an employee who has accrued compensatory time may generally use the time whenever he or she so desires. The only limitation which the bill puts on the use of compensatory time is that the employee should make the request to use compensatory time a reasonable time in advance of using it. The employer may deny the employee’s request only if the employee’s use of the compensatory time would “unduly disrupt” the operations of the employer.

These conditions on the use of accrued compensatory time are the same as those in current law for the public sector under the FLSA. Regulations issued by the Department of Labor define “unduly disrupt” as follows:

For an agency to turn down a request from an employee for compensatory time off requires that it should reasonably and in good faith anticipate that it would impose an unreasonable burden on the agency’s ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee’s services.¹⁸

The “unduly disrupt” standard, court decisions regarding public sector compensatory time have also shown that the “unduly disrupt” standard is narrow and does not allow the employer to control the employee’s use of compensatory time. In *Heaton v. Missouri Department of Corrections*, 43 F.3d 1176, 1180 (8th Cir., 1994), the court of Appeals held that banked compensatory time “essentially is the property of the employee.” The Court held that the “unduly disrupt” limitation on the employee’s right to use compensatory time whenever he or she desires does not allow the employer to control or force the employee to use compensatory time.

The Committee notes that this same standard, that employee leave not unduly disrupt the employer’s operations, is used to limit an employee’s right to take leave for medical treatments for the employee or member of his or her family under the Family and

¹⁴ 29 U.S.C. § 217.

¹⁵ 29 U.S.C. § 216(b).

¹⁶ 29 U.S.C. § 216(e).

¹⁷ 29 U.S.C. § 216(b).

¹⁸ 29 C.F.R. § 553.25.

Medical Leave Act (“disrupt unduly”).¹⁹ Given the long history of this language in the FLSA with regard to compensatory time in the public sector and the adoption of the same standard in the Family and Medical Leave Act, it is disingenuous, if not downright “goofy,” for the opponents of private sector use of compensatory time to claim that this is a deficiency in H.R. 2391 which would lead to the abuse of employees by employers.

The narrow exception (“unduly disrupts”) under the public sector compensatory time and the FMLA is adopted in this legislation for private sector compensatory time. The Committee believes that the law must be written to allow the employer some ability to maintain the operations of the business. If that is not recognized in the law, then no employer will ever offer compensatory time as an option for employees and the Committee’s efforts to respond to employees’ desires to have this flexibility will be of no effect. Furthermore, providing a right to an employee to use compensatory time without any regard to workload or business demands, is simply unfair to co-workers, who in many cases would have to handle the workload of the absent employee. The Committee seeks “to balance the employee’s right to make use of comp time that has been earned and the employer’s need for flexibility in operations.”²⁰

ACCRUAL AND CASH OUT OF COMPENSATORY TIME

The legislation provides that an employee may accrue no more than 240 hours of compensatory time. Any accrued compensatory time must be “cashed out” not less than once per year. Unless an alternative date is established, the annual cash out date is January 31 for compensatory time accrued prior to the previous December 31. An employer may choose to cash out an employee’s accrued compensatory time more frequently than annually.

An employee may at any time, through a written request to the employer, cash out his or her accrued compensatory time. The employer must comply with the employee’s request within 30 days of receipt.

The Committee takes note of concerns expressed regarding the number of hours of compensatory time which may be accrued by an employee. However, the Committee believes that by providing the employee with the ability to cash out accrued compensatory time at any time, the employee is ultimately the one who decides whether to accrue time at all, and if so, how much time to accrue within the 240 hour limit provided for under H.R. 2391. Employees and employers may, of course, agree to limit accrual of compensatory time to less than 240 hours per year.

The bill provides that upon the voluntary or involuntary termination of employment, an employee’s unused compensatory time must be cashed out. The Committee intends that the payment for unused compensatory time in these circumstances should be made as soon as is reasonable. The Committee notes that there are many state laws which may further address the issue of timeliness of the payment of wages owed to an employee by an employer.

¹⁹ 29 U.S.C. § 2612(e).

²⁰ Report on S. 1570, Committee on Labor and Human Resources, U.S. Senate, 99th Congress, First Session, Senate Report No. 99-159, p. 11.

H.R. 2391 also provides that any payment owed to an employee because of an employee's request to cash out accrued compensatory time, or because of the termination of the employee's employment, or for any other reason, shall be considered unpaid overtime compensation under section 16(b) of the FLSA.²¹ In addition to making explicit that the remedies of section 16(b) apply, this provision also assures that unpaid accrued compensatory time is treated as unpaid employee wages in the event of the employer's bankruptcy. Thus, as with other wages which are owed to employees, any unpaid or unused compensatory time would be a priority claim on the employer's assets in the event of the employer's bankruptcy. For the purposes of the payment of cash wages owed to an employee for accrued compensatory time by an employer in bankruptcy, the Committee intends that such wages shall be deemed to be earned at the time at which the claim for unpaid wages is made, rather than when the compensatory time is accrued.

In all cases, accrued compensatory time must be cashed out at a rate equal to the employee's current regular rate of pay or the average regular rate of pay during the time period in which the compensatory time was accrued, whichever is higher. Thus, if compensatory time is accrued during the course of a year and the employee has received an increase in his or her hourly rate during the year, the cash out rate at the end of the year would reflect the employee's increase in pay, even if the compensatory time was accrued prior to the pay increase.

The Committee believes that these provisions thoroughly address the concerns which have been raised by the opponents of private sector use of compensatory time as to the possible misuse of a compensatory time option in the private sector.

SUMMARY

H.R. 2391 would give private sector employers and employees an option under the Fair Labor Standards Act which federal, state, and local governments have had for many years. The bill would permit private sector employers to offer their employees the option of selecting compensatory time off in lieu of receiving cash overtime wages. Employees would be able to choose, based upon an agreement with the employer, to have their overtime compensated with paid time off.

The bill would not change the 40 hour work week to affect the manner in which overtime is calculated. "Non-exempt" employees who work more than 40 hours within a seven day period would continue to receive overtime compensation at a rate not less than one and one-half times the employee's regular rate of pay. If the employer and the employee agree on compensatory time, then the paid time off would be granted at the rate of not less than one and one-half hours for each hour of overtime worked.

H.R. 2391 would provide additional protections for the employee in order to protect against the coercive use of compensatory time. The bill requires any arrangement for the use of compensatory time to be an express mutual agreement between the employer and

²¹ 29 U.S.C. § 216(b).

²² 20 U.S.C. § 211(c).

the employee, entered into knowingly and voluntarily by the employee.

The agreement for the use of compensatory time must be a written or otherwise verifiable statement that the employee has chosen to receive compensatory time in lieu of overtime compensation. The agreement must be made, kept, and preserved in accordance with the recordkeeping requirements under section 11(c) of the Fair Labor Standards Act.²² A private sector employer may provide compensatory time to an employee so long as any agreement or understanding was not a condition of employment.

Any accrued compensatory time which has not been used by the employee by the end of each year (or the alternative 12 month period as designated by the employer) must be paid for by the employer to the employee in the form of monetary compensation. Likewise, any unused, accrued compensatory time would be cashed out at the end of an employee's employment with the employer at the average regular rate received by the employee during the time period in which the compensatory time was accrued; or the final regular rate received by the employee; whichever is higher. An employee shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time at a rate of compensation not less than the average regular rate received by the employee during the time period in which the compensatory time was accrued, or the final regular rate received by the employee, whichever is higher.

An employee may also request in writing that monetary compensation be provided, at any time, for accrued compensatory time which has not yet been used. Within 30 days of receiving such a written request, the employer shall provide the employee with the monetary compensation due.

For the purposes of enforcement, any unused compensatory time would be considered to be the same as wages owed to the employee. As with any other violation of the Fair Labor Standards Act, the provisions in section 16(b)²³ would apply. Any employer who willfully intimidates, threatens, or coerces any employee into selecting compensatory time in lieu of cash compensation, or who forces an employee to use accrued compensatory time would be liable to the employee for the cash value of the accrued compensatory time, plus an additional equal amount as liquidated damages, reduced by the amount of such rate of compensation for each hour of compensatory time used by the employee.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

“Working Families Flexibility Act of 1996”

SECTION 2. COMPENSATORY TIME

Any employee may receive in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of overtime worked.

²² 20 U.S.C. § 211(c).

²³ 29 U.S.C. § 216(b).

Any employer may provide compensatory time only pursuant to the applicable provisions of a collective bargaining agreement, memorandum or understanding, or any other agreement between the employer and the representative of the employees.

In the case of employees who are not represented by a collective bargaining agent or representative, there would have to be an agreement or understanding arrived at between the employer and the employee prior to the performance of the work, provided that the agreement or understanding was entered into knowingly and voluntarily by the employee.

In the case of private sector employees, compensatory time may be provided if the employee has affirmatively chosen to receive compensatory time in lieu of overtime compensation, in a written or otherwise verifiable statement, which is made, kept, and preserved in accordance with section 11(c) of the Fair Labor Standards Act.

Compensatory time may be provided to an employee of a public agency provided that the employee has not accrued compensatory time in excess of the limits set forth under section 7(o)(4) of the bill. In the case of public sector employees hired before April 15, 1986, the regular practice in effect on that day with respect to compensatory time off in lieu of overtime compensation shall constitute an agreement or understanding for the purposes of section 7(o)(A)(ii) of the bill. A private sector employer may provide compensatory time to an employee only if the agreement or understanding was not a condition of employment.

A private sector employer may not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce employees to request or not request compensatory time in lieu of overtime compensation or to require employees to use compensatory time.

A private sector employee may accrue up to 240 hours of compensatory time. Not later than January 31 of each calendar year, the employer shall provide monetary compensation for any compensatory time off accrued during the preceding calendar year, which was not used prior to December 31 of that year. The monetary compensation for the accrued time shall be at a rate not less than (1) the average regular rate earned by the employee during the period in which the compensatory time was accrued, or (2) the final regular rate received by the employee, whichever is higher. A private sector employer may designate a 12-month period other than the calendar year, in which case compensation shall be provided not later than 31 days after the end of the 12-month period.

A private sector employer may provide monetary compensation for an employee's unused compensatory time at any time. The monetary compensation for the accrued time shall be at a rate not less than (1) the average regular rate earned by the employee during the period in which the compensatory time was accrued, or (2) the final regular rate received by the employee, whichever is higher.

An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time accrued which has not yet been used. Within 30 days of receiving such a written request, the employer shall provide the employee with the monetary compensation due.

If the work of an employee of a public agency included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee may not accrue more than 480 hours of compensatory time for hours worked after April 15, 1986. If the work was some other type of work, the employee may not accrue more than 240 hours of compensatory time for hours worked after April 15, 1986. Any employee who, after April 15, 1986, has accrued 480 or 240 hours of compensatory time as the case may be, shall be paid overtime compensation for any additional overtime worked.

If compensation is paid to an employee of a public agency for accrued compensatory time, the compensation shall be paid at the regular rate earned by the employee at the time the employee receives the payment.

An employee of a private sector employer who has accrued compensatory time off shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time at a rate of compensation not less than (1) the average regular rate received by the employee during the period in which the compensatory time was accrued, or (2) the final regular rate received by the employee, whichever is higher.

An employee of a public sector employer who has accrued compensatory time shall, upon voluntary or involuntary termination of employment, be paid for the unused compensatory time at a rate not less than (1) the average regular rate received by the employee during the last three years of the employee's employment or (2) the final regular rate received by the employee, whichever is higher.

Any payment owed to an employee for unused compensatory time shall, for the purposes of section 16(b) of the Fair Labor Standards Act, be considered unpaid overtime compensation.

Any employee who has accrued compensatory time off and who has requested the use of the accrued time, shall be permitted by the employer to use the time within a reasonable period after making the request, if the use of the compensatory time does not unduly disrupt the operations of the employer.

SECTION 3. REMEDIES

A private sector employer who willfully violates provisions of the bill which prohibit an employer from directly or indirectly intimidating, threatening or coercing any employee for the purpose of (1) interfering with an employee's rights to request or not request compensatory time in lieu of overtime compensation; or (2) requiring an employee to use accrued compensatory time, shall be liable to the employee affected in the amount of the rate of compensation for each hour of compensatory time accrued by the employee and an additional equal amount as liquidated damages reduced by the amount of such rate of compensation for each hour of compensatory time used by the employee.

EXPLANATION OF AMENDMENT

The Amendment in the Nature of a Substitute is explained in this report.

OVERSIGHT FINDINGS OF THE COMMITTEE

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment into law of H.R. 2391 will have no significant inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the federal budget is negligible.

GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2391.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2391. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

APPLICATION OF LAW TO LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1, the Congressional Accountability Act (CAA), requires a description of the application of this bill to the legislative branch. H.R. 2391 amends the Fair Labor Standards Act of 1938 to provide compensatory time for all employees. Section 203(a) of the CAA applies the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act²⁴ to covered employees and employing offices of the legislative branch. Therefore, the changes made by H.R. 2391 to section 7 of the Fair Labor Standards Act²⁵ apply to the legislative branch.

The Committee intends to make compensatory time available to legislative branch employees in the same way as it is made available to private sector employees under this legislation. The Committee notes that section 203(a)(3) of the CAA generally prohibits congressional employees from receiving compensatory time in lieu of overtime compensation; this provision was included in the CAA

²⁴ 29 U.S.C. § 206(a)(1) and (d); 207; 212(c).

²⁵ 29 U.S.C. § 207.

in order to make clear that employees in the legislative branch should follow the rules for private sector employees rather than for state and local government employees.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. The Committee received a letter regarding unfunded mandates from the Director of the Congressional Budget Office and has such the Committee agrees that the bill does not contain any unfunded mandates. See *infra*.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 2(1)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 2(1)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2391 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 1996.

Hon. WILLIAM F. GOODLING,
*Chairman, Committee on Economic and Educational Opportunities,
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2391, the Working Families Flexibility Act of 1996, as ordered reported by the Committee on Economic and Educational Opportunities on June 26, 1996. CBO estimates that enactment of H.R. 2391 would reduce discretionary spending in the federal budget by about \$2 million annually, assuming that appropriations are reduced correspondingly. Because the bill would not affect direct spending or revenues, pay-as-you-go procedures would not apply.

H.R. 2391 would amend the Fair Labor Standards Act (FLSA) to allow compensatory time off for all employees, so long as both the employer and employee agree to such form of compensation for overtime hours worked. Under current law, private-sector employers may not offer compensatory time off as a substitute for time-and-a-half pay for hours worked in excess of a 40-hour work week. However, employees of public entities (excluding most employees of the legislative branch of the federal government) currently may receive time-and-a-half compensatory time in lieu of time-and-a-half overtime pay under conditions similar to those specified in H.R. 2391.

Within the legislative branch of the federal government, employees who are not exempt from the FLSA may receive compensatory time in lieu of overtime pay under limited conditions governed by regulations that implement the Congressional Accountability Act. If H.R. 2391 were enacted, it is likely that these regulations would be rewritten to reflect more closely the options available to the pri-

vate sector, thus giving the legislative branch greater flexibility in compensating employees for overtime hours worked. As a consequence, some legislative branch employees would opt for and receive compensatory time instead of overtime pay. Based on the information available at this time, CBO estimates that the resulting savings would amount to about \$2 million annually, beginning in fiscal year 1997.

H.R. 2391 contains no intergovernmental or private-sector mandates as defined by Public Law 104-4, and would have no impact on the budgets of state or local governments because federal law already allows them to provide compensatory time in lieu of overtime pay to their employees.

The bill would have an impact on the budgets of tribal governments. The wage provisions of the FLSA clearly apply to tribal governments in certain situations. In the cases where the FLSA does apply (for example, when employees of tribal governments are not members of the tribe), tribal governments are not allowed to provide compensatory time in lieu of overtime pay. In these instances, the bill would grant tribal governments additional flexibility in compensating their employees.

If you require additional information, we will be pleased to provide it. The staff contact for federal budgetary effects is Christina Hawley. For state and local costs, the staff contact is John Patterson, and for private section impacts, the staff contact is Ralph Smith.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

ROLL CALL 1 BILL H.R. 2391 DATE June 26, 1996PASSED 20 - 16

SPONSOR/AMENDMENT Mr. Gunderson / Motion to report the bill with an amendment in the nature of a substitute to the House of Representatives and with the recommendation that the bill as amended do pass.

MEMBER	AYE	NO	PRESENT	NOT VOTING
CHAIRMAN GOODLING	X			
Mr. PETRI	X			
Mrs. ROUKEMA				X
Mr. GUNDERSON	X			
Mr. FAWELL	X			
Mr. BALLENGER	X			
Mr. BARRETT	X			
Mr. CUNNINGHAM	X			
Mr. HOEKSTRA	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mrs. MEYERS	X			
Mr. JOHNSON	X			
Mr. TALENT	X			
Mr. GREENWOOD	X			
Mr. HUTCHINSON	X			
Mr. KNOLLENBERG	X			
Mr. RIGGS	X			
Mr. GRAHAM	X			
Mr. WELDON				X
Mr. FUNDERBURK	X			
Mr. SOUDER	X			
Mr. McINTOSH				X
Mr. NORWOOD				X
Mr. CLAY		X		
Mr. MILLER				X
Mr. KILDEE		X		
Mr. WILLIAMS		X		
Mr. MARTINEZ		X		
Mr. OWENS		X		
Mr. SAWYER		X		
Mr. PAYNE				X
Mrs. MINK		X		
Mr. ANDREWS		X		
Mr. REED		X		
Mr. ROEMER		X		
Mr. BECERRA				X
Mr. SCOTT		X		
Mr. GREEN		X		
Ms. WOOLSEY		X		
Mr. ROMERO-BARCELO		X		
Mr. FATTAH		X		
Mr. BLUMENAUER		X		
TOTALS	20	16		7

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FAIR LABOR STANDARDS ACT OF 1938

* * * * *

MAXIMUM HOURS

SEC. 7. (a) * * *

* * * * *

(o) **[(1)** Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

[(2) A public agency may provide compensatory time under paragraph (1) only—

[(A) pursuant to—

[(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

[(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

[(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

[(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

[(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

[(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

[(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

[(B) the final regular rate received by such employee, whichever is higher.

[(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

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

[(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer 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.] *(1) An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.*

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

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and representatives of such employees, or

(ii) in the case of employees who are not represented by a collective bargaining agent or other representative designated by the employee, an agreement or understanding arrived at between the employer and employee before the performance of the work if such agreement or understanding was entered into knowingly and voluntarily by such employee;

(B) in the case of an employee who is not an employee of a public agency, if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time in lieu of overtime compensation; and

(C) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (5).

In the case of employees described in subparagraph (A)(ii) who are employees of a public agency and who were hired before April 15, 1986, the regular practice in effect on such date with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding described in such subparagraph. Except as provided in the preced-

ing sentence, the provision of compensatory time off to employees of a public agency for hours worked after April 14, 1986, shall be in accordance with this subsection. An employer may provide compensatory time under paragraph (1) to an employee who is not an employee of a public agency only if such agreement or understanding was not a condition of employment.

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

(A) interfering with such employee's rights under this subsection to request or not request compensatory time off in lieu of payment of overtime compensation for overtime hours; or

(B) requiring any employee to use such compensatory time.

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

(B)(i) Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any compensatory time off accrued during the preceding calendar year which was not used prior to December 31 of the preceding year at the rate prescribed by paragraph (6). An employer may designate and communicate to the employer's employees a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

(ii) The employer may provide monetary compensation for an employee's unused compensatory time at any time. Such compensation shall be provided at the rate prescribed by paragraph (6).

(C) An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time accrued which has not yet been used. Within 30 days of receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

(5)(A) If the work of an employee of a public agency for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee described in subparagraph (A) for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

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

(i) the average regular rate received by such employee during the period during which the compensatory time was accrued, or
(ii) the final regular rate received by such employee, whichever is higher.

(B) An employee of an employer which is a public agency who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(i) the average regular rate received by such employee during the last 3 years of the employee's employment, or
(ii) the final regular rate received by such employee, whichever is higher.

(C) Any payment owed to an employee under this subsection for unused compensatory time shall, for purposes of section 16(b), be considered unpaid overtime compensation.

(7) An employee—

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

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer 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 employer.

[(6)] (8) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) if—

(A) * * *

* * * * *

[(7)] (9) For purposes of this subsection—

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employer's regular rate.

* * * * *

PENALTIES

SEC. 16. (a) * * *

[(b) Any employer] (b) Except as provided in subsection (f), any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or the unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 15(a)(3) of this Act shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 15(a)(3), including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover

the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employees shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 6 or section 7 of this act by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 15(a)(3).

* * * * *

(f) An employer which is not a public agency and which willfully violates section 7(o)(3) shall be liable to the employee affected in the amount of the rate of compensation (determined in accordance with section 7(o)(6)(A)) for each hour of compensatory time accrued by the employee and in an additional equal amount as liquidated damages reduced by the amount of such rate of compensation for each hour of compensatory time used by such employee.

* * * * *

MINORITY VIEWS

H.R. 2391 MUST BE VIEWED IN THE CONTEXT OF THE REAL WORLD

Congress enacted the Fair Labor Standards Act (“FLSA”) in 1938 to prevent employers from competing on the basis of undermining living standards, a destructive race to the bottom that impoverishes workers and harms the overall economy. The FLSA established two basic standards. First, it established a minimum wage. Second, it established the right to premium pay (an additional 50% of one’s regular salary) for work in excess of forty hours a week. Even though there have been occasional increases in the minimum wage, the overtime provisions of the Act essentially have remained unchanged since their enactment.¹

The intent of these provisions was simple: to raise the incomes of workers and their families by creating more good jobs. The minimum wage seeks to ensure that jobs are worth having—that work, in fact, enables one to escape poverty. Overtime premiums create a market incentive for employers to spread work among more employees. Spreading available work distributes income more evenly, protects against dangerously long hours of work, and assures workers that they have time for their families and themselves.

The rights granted by the FLSA cannot be waived, that is, a worker cannot agree to give up his or her right to the minimum wage or overtime pay. This fundamental principle of the Act is grounded in the reality that individuals will virtually always feel compelled to accede to their employer’s demands because of the inherently greater and more pressing need for the worker for an income with which to support himself or herself (and family) than the employer’s need for the services of an individual worker. But, there are other reasons for the rule as well. The waiver of statutory rights by even a few workers places all workers at risk. It will usually be in the “economic self-interest” of some employees to compromise their statutory rights, whether in the hope of greater rewards tomorrow or merely to hold onto as much as possible today. But even if only a few workers in a workplace “voluntarily” waive their rights, the rest of the employees will come under severe pressure to follow suit in order to keep their jobs. Moreover, allowing individuals to waive their right to a living wage or overtime pay

¹While the overtime premium, an additional 50% of an employee’s regular rate of pay for hours in excess of 40 hours a week, has remained unchanged since enactment of the FLSA, changes in the manner in which employees are compensated have eroded considerably the “penalty” that employers pay for scheduling overtime. Fringe benefits are not calculated in determining an employee’s regular rate of pay and, therefore, are not factored in when an employee’s overtime pay is calculated. In 1938, pension plans, health insurance, and paid vacation leave were generally unheard of in the private sector. Today, fringe benefits may equal up to one-third of an employee’s total compensation. However, because fringe benefits are not counted in determining overtime pay, the “penalty” must pay today for scheduling overtime rather than hiring additional workers has been significantly diminished from that initially established in 1938.

erodes the broad social purpose of spreading available work among all workers.

The original principles which underlie the FLSA are as relevant today as they were in 1938. Can anyone deny that America needs more good jobs? In the manufacturing sector, for example, average overtime for workers in 1995 is near its historic high. In that same year, production employment declined by 162,000 jobs between March and October. Revisions of the FLSA which allow employers to avoid or reduce overtime premiums inevitably will worsen these trends.

In analyzing H.R. 2391, it is vital to consider the overall context in which this proposal is being made. Most Americans are working harder and longer than they have before, only to see their incomes stagnate. Between 1973 and 1994, the number of families with two working parents increased by 56%. Yet, despite this increase, median family income increased by less than \$1,000 over the same period. Since 1989, average family income has fallen from \$33,500 to \$31,200 per year.

This decline in family income is occurring despite the fact that hours worked are increasing for full-time workers.² The United States is the only major industrial country in the world in which working hours increased between 1960 and 1992. In the manufacturing sector, the average workweek in 1994 was 42 hours—higher than at any time since World War II. In August, 1995, the average work week in the auto industry was 44.7 hours.

Clearly, more and more Americans depend on overtime pay just to make ends meet. This particularly true of families who are having the greatest difficulty holding on to middle class status. Two-thirds of workers who earned overtime pay in 1994 had family incomes of less than \$40,000. Eighty-one percent made less than \$30,000 themselves, and 60% earned an average wage of ten dollars an hour or less.

A recent article in *The Wall Street Journal* reported on current, widespread violation of our nation's overtime laws.³ The Employment Policy Foundation, an employer-funded think tank, estimates that workers lose \$19 billion a year in unpaid, earned overtime. The Foundation estimates that fully 10% of the workers entitled to overtime are cheated out of it; many other observers consider that a conservative estimate. Only a handful of these violations are being prosecuted. The number of wage and hour investigators at the Department of Labor has declined by 15% since 1990. No one realistically forecasts a change in that trend.

Against these present-day realities, the Republican-led Congress is pushing legislation that fundamentally changes the overtime law. The Republican Majority proposes to do so in a manner that significantly weakens workers' understanding of their rights, encourages further violations of the overtime law, and weakens the ability of workers to enforce their rights when the law is violated.

²The increase in hours worked is not uniform across the workforce. While full-time workers have seen their hours worked increase, many workers are still having difficulty finding full-time employment. In August 1995, 22.6 million workers are employed on a part-time basis, of whom 4.5 million—one in five—were working on a part-time basis involuntary.

³"Shortchanged, Many Firms Refuse to Pay for Overtime, Employees Complain," *The Wall Street Journal*, Monday, June 24, 1996.

The Ranking Democrat on the Committee, Representative Clay (D-MO), from the outset has expressed his desire to work toward a bipartisan bill that would truly afford workers the option of compensatory time off in lieu of overtime pay. Every concern raised in these Minority views was raised months ago by the Democratic staff of the Committee with both Republican staff and representatives of the business interest group that is the principal proponent of this legislation. The only substantive change made to the bill during the Committee mark-up was to require that an employee waive his or her right to be paid for overtime in writing or in some other verifiable form.⁴ Given the remaining deficiencies in the bill, this “protection” is meaningless. Furthermore, though the Republican rhetoric their desire to create a “voluntary” bill has not changed, the failure of the Republican majority to address any of other myriad deficiencies in the legislation stands in glaring contradiction to their claims.

Republicans and business proponents of H.R. 2391 have repeatedly claimed that they are only interested in legislation that affords workers a true choice. To quote Sandra Boyd of the FLECS Coalition, “This is meant only to be used in circumstances where it’s voluntary and where people, in fact, really get to use the time.”⁵ That description, however, bares no resemblance to the text of the bill the Committee has reported. The bill, as reported, grants rights to employers, not to employees. This legislation encourages employers to hire fewer employees and to work them longer hours by freeing them from having to pay cash for overtime, potentially reducing both workers’ incomes and employer labor costs by billions of dollars. There is no protection for employees from being required to work excessive overtime. That the Republican Majority would claim that this is family-friendly legislation shows how divergent the interests of the Republican Majority remain from the concerns of most Americans.

H.R. 2391 FAILS TO MEET THE MAJORITY’S RHETORIC

The Republican Majority claims that they are merely seeking to provide private sector workers with the option to take paid time off instead of being paid cash for overtime work. H.R. 2391 rests on naïve and erroneous assumptions about the relative circumstances of private sector versus public sector employees. The Majority’s views claim “[t]he difference in treatment between the private and public sectors under the FLSA is explained by the fact that the provisions applying the FLSA to the public sector were added in 1985, and, therefore included a recognition that the workplace and workforce have changed greatly since the 1930’s when the private sector provision was written.” The Republicans go on to state “The Committee is certain that compensatory time off in lieu of overtime pay hours worked beyond 40 in a week can provide ‘mutually satisfactory solutions’ in the private sector no less than is the case in the public sector.”

There are real and substantial differences between the public sector and the private sector that not only account for the different

⁴Read literally, H.R. 2391 does not require that a written waiver be verifiable.

⁵“Overtime Laws Become an Election Year Issue” National Public Radio, June 28, 1996.

treatment of overtime, but render the Republican confidence in “mutually satisfactory solutions” in the private sector little more than wishful thinking. Employers in the private sector have a direct self-interest in reducing labor costs at the expense of workers that does not typically exist in the public sector. Employees in the public sector generally enjoy much greater protection than their private sector counterparts. Whereas more than 40% of the public sector work force is organized, more than 85% of the private sector work force is not. Further, even where public sector workers are not organized, they are typically protected by civil service laws that require employers to meet a “just cause” standard before discharging or otherwise disciplining employees. The 85% of the private sector workers who are not covered by collective bargaining agreements are “at will” employees who, except where a legislature has expressly provided otherwise, may be fired or disciplined for any reason or for no reason whatsoever. Finally, public employers rarely go out of business, and if they do, are unlikely to be judgment-proof. Private employers regularly go out of business and are often judgment-proof when they do so.

In many particular aspects, H.R. 2391 is by no means benign in its purpose or effect. The bill does not guarantee that employees will have the right to choose whether to accept compensatory time in lieu of paid overtime. H.R. 2391 provides that an employer, “which is not a public agency * * * shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce any employee for the purpose of interfering with such employee’s rights * * * to request or not request compensatory time off in lieu of overtime compensation. * * *” In the first instance, the bill appears, by negative inference, to rewrite the law as it applies to public employees in a manner that would permit public employers to directly or indirectly intimidate, threaten, or coerce employees into accepting compensatory time in lieu of overtime pay. It is difficult to imagine that the Majority really intended to create this kind of disparity. But the plain language of the bill renders this conclusion.

H.R. 2391 remedies are available to an employee who is coerced into accepting or using compensatory time only when an employer willfully intimidates, threatens, or coerces an employee. In effect, to be entitled to any remedy an employee must produce a smoking gun that proves that the employer engaged in coercive activity for the express purpose of interfering with the employee’s rights. It is a burden most employees are unlikely to be able to meet, as noted by our colleague Representative Rob Andrews (D-NJ) during the full Committee markup:

[This standard] is an almost impossible burden of proof to meet against anyone but a very stupid employer. * * * Now I would suggest * * * what would seem to be a subtle legal difference in this bill has totally eviscerated the concept of the bill being voluntary. If you have to prove that the employer willfully decided to deny you the voluntary nature of this decision, I don’t think there are very few cases where the employee could ever win.

The bill does not prohibit employers from assigning overtime on the basis of whether the employee has chosen compensatory time in lieu of overtime pay. No employee has a legal right to work overtime. While H.R. 2391 provides that an employer may not interfere with an employee's right to accept or refuse compensatory time, because the employee has no legal right to work overtime in the first instance, nothing in H.R. 2391 precludes an employer from only allowing employees who "choose" to receive compensatory time to work overtime hours. By permitting employers to qualify the availability of overtime work on the decision of a worker to take compensatory time in lieu of overtime pay, H.R. 2391 can hardly be said to provide employees a "voluntary" option to take compensatory time.

No worker has an actual right to paid time off under this bill. No employee even has a right to ask for compensatory time off unless the employer first agrees to offer it. Where an employer offers compensatory time, the employer may arbitrarily decide to only offer compensatory time to some employees while denying it to others; or the employer may arbitrarily deny compensatory time to an employee on some occasions, while offering it to the employee on others. Rather than increasing an employee's control over his or her own life, H.R. 2391 actually increases the employer's control over the worker's life.

Even where an employee earns compensatory time, H.R. 2391 does not guarantee the employee the right to use it. For example, assume an employee has earned 2 weeks of compensatory time and notifies the employer that he wants to use 3 days of that time to spend with his wife who is undergoing life-threatening surgery. Under this legislation, there are 3 alternatives by which the employer can effectively deny that employee the use of the compensatory time that the employee has already earned. First, the employer can simply deny the leave on the basis that it will unduly disrupt the employer's business. Second, that employer can unilaterally buy back the compensatory time from the employee, thereby wiping out the employee's compensatory time bank. And, third, the employer may effectively deny leave by requiring the employee to work a full 40 hours over the 2 days the employee intends to work with no overtime pay. If the employer requires that the employee work 20 hours a day (without overtime pay) and the employee refuses, the employee may be fired.

Under the Family and Medical Leave Act, that same employee has a right to take unpaid leave to care for his wife. Yet, even though the employee has a legal right to time off, and even though the employee gave up overtime pay in order to earn compensatory time, under H.R. 2391 an employer may deny the employee the right to use that compensatory time, even where the employee otherwise has statutory right to take leave.

H.R. 2391 effectively permits an employer to refuse an employee's request to use specific compensatory time days. Under the bill's plain language, an employer is only required to permit the employee to use the time within a reasonable time of making the request. H.R. 2391 provides that "[a]n employee * * * shall be permitted by the employee's employer to use [compensatory] time within a reasonable period of making the request if the use of the

compensatory time does not unduly disrupt the operations of the employer.” An employee may put in a request on Monday to use compensatory time to take off the following Friday. H.R. 2391 allows the employer to offer the employee the option of taking Thursday off (a day within a reasonable period of the employee’s request), but deny the employee the ability to take Friday off, the day the employee requested, without even invoking the “unduly disrupt” exception.⁶ So, who’s time is it after all?

The assertion of the Majority, that the “unduly disrupt” standard adopted by H.R. 2391 is the same standard that “is used to limit an employee’s right to take leave for medical treatments for the employee or member of his or her family under the Family and Medical Leave Act” distorts fact and law. That Act provides that, subject to the approval of the health care provider, when planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer’s operations. Whether the leave would disrupt unduly the employer’s operations is apparently a matter to be determined jointly by the employer and the employee through mutual consultation. More importantly, even if it is agreed that the leave would disrupt unduly the employer’s operations, the employer may not deny the leave if the employee’s health care provider determines that the treatments must be scheduled at a specific time. This is a far cry from the provisions of H.R. 2391, where the employer may unilaterally determine whether the employee will be granted leave based upon the employer’s unilateral determination of what constitutes an undue disruption of the employer’s operations. We note for the record that had the Committee adopted a standard more similar to the standard under FMLA, it would have addressed one of our primary concerns with this legislation.

H.R. 2391 will engender even greater violations of the overtime law. Under current law, employers must pay workers in a timely manner for the work they perform. If the employee works for more than 40 hours, a week, the employer must pay the employee time and a half for that work. While the timing of wage payments is not specified in the FLSA, all wages which are required by the Act, including overtime premiums, are considered to be due on the payday for the pay period in which the wages were earned. If wages are not paid on the designated payday, the employee is entitled to interest and, possibly, liquidated damages.

H.R. 2391 permit an employer to defer paying anything at all for overtime work for up to 1 year. In industries that are characterized by thinly capitalized enterprises that come in and out of business (such as the construction industry, the garment industry, and many seasonal industries) the promise of compensatory time is likely to be illusory. A random check of 69 garment contractors in Southern California in 1994 found that 73% maintained improper payroll records (without which the fair administration of a compensatory time system would be impossible), 68% were not paying

⁶In *Heaton v. Missouri Department of Corrections*, the 8th Circuit held that an employer may not require an employee to use compensatory time. Nothing in *Heaton*, however, nor in the plain language of H.R. 2391, precludes an employer from offering an employee the use of compensatory time for a period other than the period the employee has requested, so long as the period offered by the employer is within a reasonable period of the employee’s request. The Majority’s citation to *Heaton* is off the mark.

overtime in accordance with current law, and 51% were not even paying minimum wages. As employers seek to keep pace with their competitors, the temptation to defer payments for overtime work through compensatory time in such industries is likely to be overwhelming. And when the cumulative value of the compensatory time gets too high, these firms are likely to simply close and disappear, leaving their workers without any compensation for the overtime they worked.

The remedies provided under H.R. 2391 for violations of compensatory time are markedly inferior to those already provided in current law for overtime violations. Under current law, an employer who has failed to pay overtime is liable for the unpaid overtime, an equal amount as liquidated damages, attorney's fees, and costs, regardless of whether the violation was committed willfully or not. Where the violation was willful, the employer may be liable additionally for a fine of not more than \$10,000 and to imprisonment of up to six months. Further, the Secretary of Labor is authorized to sue on behalf of employees to recover unpaid overtime compensation.

In stark contrast, under H.R. 2391, an employer who has failed to pay for earned compensatory time, by either denying the employee paid time off or by not purchasing the unused compensatory time, cannot be used by the Secretary of Labor and is not additionally liable for a fine or imprisonment for willful violations. By limiting remedies by reference to subsection (b) of section 16, rather than coverage of all of that section, the Republicans have apparently intentionally limited the remedies available to workers for employer violations. Under subsection 16(a), an employer who willfully violates the overtime law may be liable to a fine of not more than \$10,000 and to imprisonment for not more than six months. Under H.R. 2391, an employer who willfully violates the overtime law by failing to pay compensatory time or by requiring an employee to receive compensatory time in lieu of overtime pay is not subject to subsection 16(a). Under subsection 16(c), the Secretary of Labor is authorized to sue employers on behalf of employees for unpaid minimum wages or unpaid overtime compensation. Yet, because H.R. 2391 provides that unpaid compensatory time shall only be considered unpaid overtime compensation for purposes of subsection 16(b), the Secretary of Labor is precluded from using on behalf of employees for unpaid compensatory time.

In addition, an employee who has been forced to accept compensatory time off in lieu of paid overtime or has been forced by the employer to use accrued compensatory time at the employer's discretion (rather than at the employee's) is entitled to no remedy unless the employee can prove that the employer willfully violated the law. Finally, because the bill provides that liquidated damages shall be offset by "the rate of compensation for each hour of compensatory time used by such employee," the bill effectively provides a lesser penalty for employers who force an employee to accept and use compensatory time than that available under current law for overtime violations.

Despite the Majority's assertions that the "agreement" provisions of H.R. 2391 will "ensure that compensatory time is voluntary," the bill fails to require that employers fully inform employees of their

rights.⁷ Under H.R. 2391, an employer is not required to inform employees that they may earn compensatory time. An employer is not required to inform employees that they have a right to cash out their compensatory time. An employer is not required to inform employees under what circumstances they may use compensatory time. An employer is not required to inform employees that they may revoke a compensatory time request. An employer is not even required to inform employees that they have a right to refuse compensatory time.

Under this legislation, at the time an employee is hired, he or she may be handed a piece of paper that say the employee “elects” to receive compensatory time for all overtime hours that employee may work over the course of the employee’s career. Because the employee wants the job, the employee is going to be inclined to sign that piece of paper. Under H.R. 2391, if the employee signs that paper, the employee never again has the right to receive overtime pay for overtime work.

There are numerous other defects in H.R. 2391. In large part because of the excessive overtime bank permitted by the bill, H.R. 2391 invites employers to eliminate their paid vacation and sick leave policies. H.R. 2391 permits an employee to accumulate up to 240 hours of compensatory time in a single year. The bill also requires employers to purchase unused compensatory time on an annual basis. Realistically, few employees would be able to both work 4 weeks of overtime and take 6 weeks off within the same year. Yet, an employer may nevertheless offer an employee up to 6 weeks paid time off based on accrued compensatory time. The question then becomes, why should an employer give away paid leave when that employer can require employees to work overtime to order to earn paid leave instead? Our Republican colleagues say they are interested in a voluntary compensatory time bill, but how voluntary is compensatory time if the only way employees can earn paid leave is to take their overtime compensation in the form of compensatory time instead of being paid for overtime?⁸

Finally, H.R. 2391 provides no protection for employees where an employer goes bankrupt.⁹ The bill does not prevent an employer seeking to use the payment for a terminated employee’s unused compensatory time to diminish that employee’s unemployment compensation. And, the bill does not ensure that compensatory time will be treated similarly to overtime pay for pension and health benefit purposes.

CONCLUSION

It remains critical that the FLSA maintain basic, inviolate, minimum labor standards. Instead, corporate special interest and their

⁷We find this fact especially ironic given the Republican concern that employees be informed of their “Beck” rights. The Republicans think that it is absolutely essential that workers be informed of their right to not pay full union dues. And yet, despite the fact that overtime income typically vastly exceeds what workers pay in union dues, the Majority thinks it unimportant that employees be fully informed of their compensatory time and overtime pay rights.

⁸To both earn and use the maximum amount of compensatory time available, an employee would have to work the equivalent of 4 weeks of overtime work and take 6 weeks off, all within the same year. Realistically, few employees would be able to both work 4 weeks of overtime and take 6 weeks off within the same year.

⁹Section 16(b) of the FLSA in no way extends to employees the full measure of protections afforded under the Bankruptcy Code.

Republican allies have proposed legislation that appears to be aimed at gutting the protections of the FLSA and undermining living standards to the detriment of workers, the economy, and the country. Today's employees may be better educated than their grandparents, but the imperatives of the market are the same—and may even be worse in the new global economy. Employees are anxious and worried. At a time when family income is already stagnating or declining, despite the larger presence of women in the workforce, most workers are in a poor position to resist their employers' request that they adapt their schedules, despite the hardship that may result for families, to meet their employers' needs.

We will work with the Clinton Administration to develop legislation that protects and enhances the rights of workers who wish to choose compensatory time instead of overtime pay. If our Republican colleagues are interested in doing something more than undermining the overtime law, we reiterate our willingness to work with them, as well. To date, however, there has been a fundamental distinction between what the Republicans have proposed and what we have said we would support and the President has said he would sign. We start from the premise that the protection of the basic labor standards of workers is paramount. The Republicans would jeopardize those rights in order to enhance the rights of employers.

At its best, H.R. 2391 provides no more than a right to employers to defer paying employees for the work they perform. If enacted into law, it would inevitably diminish the income of working families. At its worst, H.R. 2391 will not only diminish the incomes of those who are working, but it will diminish the amount of time that full-time workers may spend with their families while increasing the number of involuntary part-time workers and unemployed workers. We cannot support H.R. 2391, as reported, and urge its rejection by the House.

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