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105TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 105–21

WORKING FAMILIES FLEXIBILITY ACT OF 1997

MARCH 12, 1997.—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 Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 1) to amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector, 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 1997".

SEC. 2. COMPENSATORY TIME.

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

"(r) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

"(1) GENERAL RULE.—

"(A) COMPENSATORY TIME OFF.—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.

"(B) DEFINITION.—For purposes of this subsection, the term 'employee' does not include an employee of a public agency.

"(2) CONDITIONS.—An employer may provide compensatory time to employees under paragraph (1)(A) only if such time is provided in accordance with—

"(A) applicable provisions of a collective bargaining agreement between the employer and the labor organization which has been certified or recognized as the representative of the employees under applicable law, or

"(B) in the case of employees who are not represented by a labor organization which has been certified or recognized as the representative of such employees under applicable law, an agreement arrived at between the employer and employee before the performance of the work and affirmed by a written or otherwise verifiable record maintained in accordance with section 11(c)—

"(i) in which the employer has offered and the employee has chosen to receive compensatory time in lieu of monetary overtime compensation; and

"(ii) entered into knowingly and voluntarily by such employees and not as a condition of employment.

"(3) HOUR LIMIT.—

"(A) MAXIMUM HOURS.—An employee may accrue not more than 240 hours of compensatory time.

"(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any unused 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.

"(C) EXCESS OF 80 HOURS.—The employer may provide monetary compensation for an employee's unused compensatory time in excess of 80 hours at any time after giving the employee at least 30 days notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

"(D) POLICY.—Except where a collective bargaining agreement provides otherwise, an employer which has adopted a policy offering compensatory time to employees may discontinue such policy upon giving employees 30 days notice.

"(E) WRITTEN REQUEST.—An employee may withdraw an agreement described in paragraph (2)(B) at any time. 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).

"(4) PRIVATE EMPLOYER ACTIONS.—An employer 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 monetary overtime compensation for overtime hours; or

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

"(5) TERMINATION OF EMPLOYMENT.—An employee 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 in accordance with paragraph (6).

"(6) RATE OF COMPENSATION.—

"(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off, such compensation shall be paid at a rate of compensation not less than—

"(i) the regular rate received by such employee when the compensatory time was earned, or

"(ii) the final regular rate received by such employee,

whichever is higher.

"(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time shall be considered unpaid overtime compensation.

"(7) USE OF TIME.—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.

"(8) DEFINITIONS.—The terms 'overtime compensation' and 'compensatory time' shall have the meanings given such terms by subsection (o)(7).".

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 violates section 7(r)(4) shall be liable to the employee affected in the amount of the rate of compensation (determined in accordance with section 7(r)(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.".

SEC. 4. NOTICE TO EMPLOYEES.

Not later than 30 days after the date of the enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published at 29 C.F.R. 516.4, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that such notice reflects the amendments made to such Act by this Act.

PURPOSE

The purpose of H.R. 1 is to amend the Fair Labor Standards Act of 1938 to allow compensatory time for all employees.

COMMITTEE ACTION

104TH CONGRESS

The Committee's consideration of allowing compensatory time began during the 104th Congress. As part of a series of oversight hearings on the Fair Labor Standards Act, the Subcommittee on Workforce Protections held a hearing on June 8, 1995, on amending the Fair Labor Standards Act to provide private sector employers with the option of allowing employees to voluntarily choose to take paid 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 Moneypenny, 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.

On November 1, 1995, the Subcommittee on Workforce Protections held a hearing on H.R. 2391, a bill introduced by Representative Cass Ballenger to amend the Fair Labor Standards Act to allow compensatory time for all employees. 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. H.R. 2391 was passed by the House, as amended, on July 30, 1996, but was not acted on by the Senate prior to the adjournment of the 104th Congress.

105TH CONGRESS

On January 7, 1997, Representative Cass Ballenger introduced H.R. 1, the Working Families Flexibility Act, with 40 original cosponsors. The Subcommittee on Workforce Protections held a hearing on H.R. 1 on February 5, 1997. The following individuals testified at the hearing: the Honorable Kay Granger, Member of Congress representing the 12th district of Texas; the Honorable Tillie Fowler, Member of Congress representing the 4th district of Florida; the Honorable Sue Myrick, Member of Congress representing the 9th district of North Carolina; Ms. Christine Korzendorfer, Manassas, Virginia; Mr. Peter Faust, Clear Lake, Iowa; Ms. Linda M. Smith, Miami, Florida; Dr. Roosevelt Thomas, Vice President of Human Resources and Affirmative Action at the University of Miami, testifying on behalf of the College and University Personnel Association, Washington, D.C.; Ms. Diana Furchtgott-Roth, Resident Fellow at the American Enterprise Institute for Public Policy Research, Washington, D.C.; Mr. Robert D. Weisman, Attorney-at-Law, Schottenstein, Zox, & Dunn, Columbus, Ohio; Mr. Russell Gunter, Attorney-at-Law, testifying on behalf of the Society for Human Resource Management, Alexandria, Virginia; Ms. Karen Nussbaum, Director of the AFL-CIO Working Women's Project, Washington, D.C.; and Ms. Helen Norton, Director of Equal Opportunity Programs at the Women's Legal Defense Fund, Washington, D.C.

On March 5, 1997, the Committee on Education and the Workforce discharged the Subcommittee on Workforce Protections from further consideration of the bill and approved H.R. 1, as amended, and ordered the bill favorably reported by a roll call vote of 23 yeas and 17 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 be compensated at a rate of one-and-one-half times the employee's regular rate of pay.[2] Certain exceptions to the "40 hour work week" are permitted, under sections 7 and 13 of the FLSA,[3] 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

[1] 29 U.S.C. § 201–219.
[2] 29 U.S.C. § 207.
[3] 29 U.S.C. §§ 207, 213.

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 paid to the employee in the employee's next paycheck. This is contrary to the overtime pay provision for employees in the public sector. Section 7(o)[5] provides that public agencies may provide paid 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 had changed greatly since the 1930's when the private sector provision was written.[6] In 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 in including compensatory time for the public sector in the 1985 amendments:

> 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 socially responsible. To the extent practicable, we wish to accommodate such arrangements.[7]

The Committee is certain that paid 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.

Over the past two years, the Committee has heard compelling testimony from individuals who are covered by the overtime protections of the FLSA and who believe that a change in the law to allow paid compensatory time would be of great benefit to them.

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

[4] 29 U.S.C. § 213.

[5] 29 U.S.C. § 207(o).

[6] The changes to the FLSA authorizing compensatory time for public employees generally was preceded by legislation authorizing greater flexibility for federal employees. The Federal Employees Flexible and Compressed Work Schedules Act was passed in 1978, reauthorized in 1985 and made permanent in 1985.

[7] Report on S. 1570, Committee on Labor and Human Resources, U.S. Senate, 99th Congress, First Session, Senate Report No. 99–159, p. 8.

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, the weather around Washington, DC, will become much colder. We are likely to see some snow and ice. And if we have a 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 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.[8]

Ms. Sandie Moneypenny, a process technician for Timken Company and an hourly non-exempt employee, described how having

[8] 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, pp. 180–181.

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.
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> 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.[9]

Ms. Deborah McKay, an Administrative Specialist, with PRC, Inc. testified about why she would like to have the option of selecting compensatory time in lieu of cash overtime:

> Under this proposal, 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. * * *
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> * * * [W]hat I am recommending is simple. * * * [H]ave the FLSA amended by giving non-exempt and exempt employees the option of time and a half pay or time and a half of equal value off.[10]

Mr. Peter Faust of Clear Lake, Iowa, an hourly employee at a nonprofit facility for individuals who are mentally and/or physically disabled, related the difficulty that he and his wife have when struggling to balance family responsibilities with work schedules and the importance that additional time off would have for him and his coworkers:

> This amendment [H.R. 1] is a win-win for working families and employers * * * Everyone I've talked to, without exception, would like the choice of getting overtime or comp time, and almost everyone I've asked preferred comp time rather than overtime. * * *
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> There are a lot of ways to make money in this country and lots of ways to spend it, but there's only one way to spend time with yourself, family or friends, and that's to have the time to spend.
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> In this country of choice, can the working families have a choice? Some already do. Federal employees have had the choice to save comp time since 1978. State and local

[9] Ibid., p. 186.
[10] Ibid., pp. 416–417.

> employees can save it too. Does our government value the private working families in this country enough to give us the same choice?[11]

Ms. Linda M. Smith, a medical staff credentialing coordinator and secretary at the Bascom Palmer Eye Institute in Miami, Florida, expressed her "wholehearted support" for the development of a program which would enable her to have the option of comp time:

> With the implementation of the banked comp time program, I could use my overtime hours to create time for pregnancy leave for a second child, furthering my education, taking care of a debilitated parent, or, closest to my heart, creating special days with my daughter. A goal of mine is to obtain my degree. My employer allows me to take one class during working hours, without pay. With accrued comp time, I could take the class during working hours, with pay. Accrued comp time would also allow me to take time off for doctors' appointments, teachers conferences, or to care for a sick child without having to use accrued sick time. In this way, sick time could be saved for catastrophic or long-term illnesses.[12]

Ms. Christine Korzendorfer, an hourly employee with TRW in Manassas, Virginia, told the Subcommittee how important it would be for her to be able to have the choice between compensatory time and overtime wages:

> This schedule as a hourly employee provides me with a lot of overtime pay. This pay is important to me. However, the time with my family is more important. If I had a choice there are times when I would prefer to take comp time in lieu of overtime. What makes this idea appealing is that I would have a choice with the legislation you are considering.
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> Just recently, my son was ill and I had to stay at home with him. I took a day of vacation which I would have preferred to use for vacation! But I did not want to take unpaid leave. * * * If I had the choice, I would have used comp time in lieu of overtime for that day off from work. Besides, I would have only had to use about five and one-half hours of comp time to cover that eight hour day.[13]

There is ample support for concluding that Ms. Robinson, Ms. Moneypenny, Ms. McKay, Mr. Faust, Ms. Smith, and Ms. Korzendorfer 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.[14]

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[11] Hearing on H.R. 1, the Working Families Flexibility Act, before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 105th Congress, First Session, February 5, 1997 (to be published).

[12] Ibid.

[13] Ibid.

[14] National poll conducted September 23–25, 1995, by Penn & Schoen Associates, Inc.

Ironically, employees who are classified as exempt under the FLSA are not so restricted by law and often are permitted by their employers to have much more flexibility in their schedules than non-exempt employees. But for non-exempt employees, the law has denied them the flexibility that they need and want. 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." [15]

COMMITTEE VIEWS

H.R. 1 amends the FLSA to permit employers in the private sector to offer their employees the voluntary option to receive overtime pay in the form of paid 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 paid 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. As is the case where compensatory time is already used in the public sector, the employee would be paid, at the employee's regular hourly rate of pay, when the compensatory time is used.

H.R. 1 would not alter current public sector use of compensatory time in any way. Rather, the legislation seeks to extend the option of paid 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 numerous protections for employees to assure that employees' choice and use of compensatory time is voluntary. Compensatory time, as provided in H.R. 1, is not a mandate on employers or employees. H.R. 1 simply gives employees and employers the opportunity to agree to this arrangement, an opportunity which is now denied to them by law.

Agreement

Under H.R. 1, an employer and employee must reach an express mutual agreement that overtime compensation will be in the form of paid 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

[15] 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.

to each hour of overtime, or it may be a blanket agreement covering overtime worked within a set period of time.

The bill allows two types of employer-employee agreements on compensatory time. Where the employee is represented by a recognized or certified labor organization, the agreement must be in the collective bargaining agreement between the employer and the recognized or certified labor organization. By referring to a labor organization which has been recognized or certified under applicable law, H.R. 1 includes any law providing for recognition or certification of labor organizations representing private sector workers in collective bargaining, including, at the federal level, the National Labor Relations Act and the Railway Labor Act.

Where the employees are not represented by a recognized or certified labor organization, the agreement must be made between the employer and the individual employee. The bill specifies that any such agreement between the employer and an individual employee must be entered into knowingly and voluntarily by the employee, and may not be a condition of employment.

The bill also requires that, with regard to agreements between employers and individual 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. To further assure that such agreements are authentic, H.R. 1 provides that, pursuant to the general recordkeeping authority of the FLSA,[16] the Secretary of Labor has authority to prescribe the information which the records of such agreement must include and the period of time the records should be maintained by the employer.

The assurance that the individual employee's agreement to take compensatory time in lieu of cash overtime pay is voluntary is further protected by provisions in the bill which allow an employee who has entered into such an agreement to withdraw it at any time. Thus an employee who agrees that all or a portion of the overtime hours he or she works will be compensated in this form may at any point withdraw from that arrangement, in which case any subsequent hours of overtime worked by the employee must be compensated in the form of cash compensation.

Just as is the case with compensatory time as it has been approved and operates in the public sector,[17] H.R. 1 does not require that the same agreement be entered with every employee, or that the employer agree to offer compensatory time to all employees. Opponents of compensatory time have claimed that this allows an employer to unfairly single out employees and to force them to take compensatory time in lieu of cash overtime against the employee's wishes. However, the bill's express prohibition on "direct or indirect coercion" and attempted coercion of employees (see discussion

[16] 16 29 U.S.C. § 211(c).
[17] 29 C.F.R. § 553.23 c.

below) would prohibit an employer from conferring any benefit or compensation for the purpose of interfering with an employee's right to request or not request compensatory time. Thus, an employer may not single out employees for overtime work for the purpose of rewarding or punishing employees for their willingness or unwillingness to take compensatory time.[18]

The opponents of compensatory time have argued that compensatory time should be denied to everyone, but if it is allowed at all, then "low-wage" workers and certain occupations should be excluded. 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.

Furthermore, there are a great many workers who likely would be included in a national definition of "low wage" who want to have the option of paid compensatory time—and who feel perfectly capable of making that decision themselves. Indeed, some of the most forceful and compelling testimony before the Subcommittee on Workforce Protections in support of allowing workers the option of paid compensatory time was given by a "low wage worker," Mr. Peter Faust, who likely would be denied that option if all such workers were excluded from H.R. 1.[19] The Committee sees no reason to deny certain employees the option of compensatory time, based solely upon their level of income or their occupation.

Conditions on compensatory time

The Committee intends that compensatory time be a matter of agreement between employers and employees and to that end, the law should permit employers and employees some flexibility in structuring compensatory time arrangements. H.R. 1 provides certain parameters for such compensatory time arrangements, primarily in order to assure that employees are fully protected, which apply whether the compensatory time agreement is with a labor organization or with an individual employee (see discussion above). The agreement between the employer and employee may include other provisions governing the preservation, use or cashing out of compensatory time, so long as these provisions are consistent with the Working Families Flexibility Act. To the extent that any provision of an agreement is in violation of the Working Families Flexibility Act, the provision would be superseded by the requirement of the Act.[20]

H.R. 1 provides that an employee may accrue no more than 240 hours of compensatory time. This limit is designed to protect both employers and employees against accrual of excessive amounts of compensatory time liability. The Committee emphasizes that this 240 hour limit is the legal maximum that may be accrued. Employers may establish a lower limit for compensatory time accrual for

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[18] Obviously an employer also may not use any overtime policy, including compensatory time, to discriminate among employees for any reason prohibited by law. See testimony of Mr. Robert Weisman, Hearing on H.R. 1, the Working Families Flexibility Act before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 105th Congress, First Session, February 5, 1997.

[19] Testimony of Mr. Peter Faust, Hearing on H.R. 1, the Working Families Flexibility Act before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 105th Congress, First Session, February 5, 1997.

[20] This relationship between the agreement and the parameters stated in law is the same as applies to public sector compensatory time. See 29 C.F.R. § 553.23 (a)(2).

their employees, and employees, of course, may agree to fewer hours of compensatory time, or decline compensatory time as the payment for overtime altogether.

The bill also requires an annual "cash out" of all accrued compensatory time. Such an annual cash out also protects both employers and employees against accrual of excessive amounts of compensatory time liability. Unless an alternative date is established by the employer, the annual cash out date is the end of the calendar year (December 31) and the employee must be paid for the accrued compensatory time not later than the following January 31. The employer may establish an alternative annual cash out date, in which case the employer must pay the employee for any accrued and unused compensatory time within 31 days of the end of the 12 month period. Subject to continued agreement between the employer and employee, the employee may begin to accrue compensatory time anew after the cash out date.

An employer may cash out some accrued compensatory time more frequently than annually. However, the employer must provide an employee with 30 days notice prior to cashing out the employee's accrued, unused compensatory time, and may only cash out accrued compensatory time which is in excess of 80 hours.

An employee may also choose to cash out his or her accrued compensatory time at any time. The employee may submit a written request to such effect to the employer, upon which request the employer must cash out the employee's accrued compensatory time within 30 days of receiving the request. There is no hour limit on the employee's ability to cash out accrued compensatory time.

As described above, an employee who has an individual agreement with the employer regarding compensatory time may withdraw that agreement at any time. Similarly, an employer who offers compensatory time to employees may discontinue such policy upon giving employees 30 days notice, except where a collective bargaining agreement provides otherwise. In the event an employer does discontinue offering compensatory time, any hours of compensatory time already accrued by employees remain the employees' hours and must be so recognized by the employer.

The bill provides that upon the voluntary or involuntary termination of employment, an employee's unused compensatory time must be cashed out by the employer, and is to be treated as a wage payment due and owing the employee. The bill further provides that any payment owed to an employee or former employee (whether by operation of the annual cash out of all accrued compensatory time, because of the employee's request to cash out accrued compensatory time, because of the employer's decision to cash out certain accrued compensatory time as described above, or because of the voluntary or involuntary termination of employment) shall be considered unpaid overtime compensation to the employee. In addition to making explicit that the remedies for unpaid overtime compensation under the FLSA apply, this provision also assures that any unpaid, accrued compensatory time is treated as unpaid employee wages in the event of the employer's bankruptcy. Thus any unpaid, accrued compensatory time would have the same priority claim and legal status as other employee wages under both the FLSA and the Bankruptcy Code. As described above, the payment

for accrued compensatory time is owed to the employee or former employee when the claim for payment is made, and takes the same priority as other wages of that date.

In all cases in which accrued compensatory time is cashed out, the rate of cash out must be the employee's regular rate when the compensatory time was earned or the employee's current regular rate, 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.

Opponents of H.R. 1 have raised concerns that compensatory time would reduce an employee's pension benefits. These concerns are unfounded. The overtime hours for which the employee receives compensatory time are hours "for which the employee is paid or entitled to pay for the performance of duties for the employer." They are therefore defined as "hours of service" under the Employee Retirement Income Security Act (ERISA),[21] for which the employee would be credited for purposes of accrual, participation, and vesting of benefits. Obviously in some cases the employee has also not worked hours that he or she otherwise would have when the employee uses (as compared to accrues) paid compensatory time. Thus the employee's total hours worked may be reduced, not by the earning of compensatory time but by substituting the paid compensatory time off for other hours of work. If as a result, the employee works less total hours, the employee's total monetary earnings and credits for benefits may be less. But that effect is no different than any other decision by the employee (for example, refusing optional overtime work) that reduces the total number of hours actually worked by the employee. Of course, employees who choose to take compensatory time off have gained an advantage which enables them to spend more paid time off with their family or for whatever purpose they wish, which is not available to employees who choose cash wages.

Similarly, opponents have raised concerns that compensatory time disadvantages an employee's eligibility for unemployment benefits, or the amount of unemployment benefits. H.R. 1 clearly treats compensatory time as employee wages and any payments for accrued compensatory time would be treated as are other employee wages under state laws, for purposes of eligibility for unemployment benefits and determination of the amount of benefits. Receipt of compensation for accrued compensatory time when an employee's employment is terminated may, depending on state law on "disqualifying income," defer receipt of unemployment benefits but would not diminish the total benefits to which the employee may be entitled. Furthermore, to attempt to dictate that compensatory time payments should not be considered in any unemployment benefit determination, as some have suggested, would be to turn existing federal policy on "disqualifying income" on its head, by dictating to the States how this form of employee wages should be treat-

[21] 29 C.F.R. § 2530.200b–2.

ed and by dictating that these wages should not be considered as wages.

Finally, H.R. 1 requires the Secretary of Labor to revise the posting requirements under the regulations of the FLSA to reflect the compensatory time provisions of the bill. This will help to ensure that employees are informed of the circumstances under which compensatory time may be offered by an employer, the employees' right to accept or decline such offer, and the employees' rights regarding the use of compensatory time.

Employee use of accrued compensatory time

Under H.R. 1, an employee who has accrued compensatory time may generally use the time whenever he or she so desires. The only limitations which the bill puts on the use of compensatory time is that the employee's request to use compensatory time be made a reasonable time in advance of using it, and that the employer may deny the employee's request 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 which apply to compensatory time for public sector employees.[22] Regulations issued by the Department of Labor define "unduly disrupt" as follows:

> When an employer receives a request for compensatory time off, it shall be honored unless to do so would be 'unduly disruptive' to the agency's operations. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off. 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.[23]

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 determined 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 does not allow the employer to control the use of the employee's compensatory time or to force the employee to use compensatory time when the employee does not want to use it.

Similarly, in *Moreau* v. *Harris County,* DC STexas, (No. H–94–1427, 11/25/96) the District Court held that the employer's policy of forcing employees to use accrued compensatory time at the employer's convenience in order to reduce compensatory time balances was illegal. Regarding the employee's control of the use of accrued compensatory time, the Court said:

[22] 29 U.S.C. § 207(o).
[23] 29 C.F.R. § 553.25.

> A public employer may exercise control over an employee's use of compensatory time only when the employee's requested use of that time would disrupt the employer's operations. An employee could attempt to extort concessions from her employer by taking compensatory time at a time when her presence is critical to the operation, but no suggestion has been made that the sheriff's office has been the victim of abusive workers * * * Although an employer may establish reasonable restrictions on vacations, sick leave, and other time-off forms of compensation, it cannot evade its statutory obligation for extra pay for overtime work, even when the statute allows the extra pay to be in the form of time off. Compensatory time is far less amenable to management adjustment than the others because the time off is in place of cash pay required by statute.

The Committee notes that a similar standard as is proposed in H.R. 1 limits an employee's right to take leave for medical treatments for the employee or a member of his or her family under the Family and Medical Leave Act. ("* * * the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer * * *")[24]

Given the long history of this language in the FLSA with regard to compensatory time in the public sector and the adoption of similar language in the Family and Medical Leave Act, it is simply dishonest for the opponents of private sector use of compensatory time to claim that H.R. 1 allows the employer to control when compensatory time is used. The employer's right to deny compensatory time off under H.R. 1 is very limited. But the employer must have 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 coworkers, who in many cases would have to handle the workload of the absent employee. Just as was the case in 1985 when workers in the public sector were allowed to use compensatory time, the Committee bill 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."[25]

Enforcement and remedies

As an amendment to the FLSA, the compensatory time provisions in H.R. 1 would be subject to the applicable enforcement and remedies of the FLSA. Section 15 (a)(2) of the FLSA[26] makes it unlawful for any person to violate any provision of section 7, of which the compensatory time provisions of H.R. 1 would be a part. In ad-

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[24] 29 U.S.C. § 2612(e). As one district court recently said in construing these provisions of the Family and Medical Leave Act, "The FMLA also does not give employees the unfettered right to take time off subject only to their own convenience without any consideration of its effect upon the employer." *Kaylor* v. *Fannin Regional Hospital,* 946 F.Supp. 988, 999 (N.D. Georgia, 1996).

[25] Report on S. 1570, Committee on Labor and Human Resources, U.S. Senate, 99th Congress, First Session, Senate Report No. 99–159, p. 11.

[26] 29 U.S.C. § 215(a)(2).

dition, section 15(a)(3)[27] makes it unlawful to "discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to" the employee's rights under the FLSA.

Section 16 (b)[28] authorizes an action by an employee against his or her employer for any violations of section 7. The suit may be filed in any federal or state court. An employee may also file a complaint with the U.S. Department of Labor. The Department of Labor generally attempts to resolve such complaints; however, the Department of Labor may also sue the employer for damages on behalf of the employee or employees whose rights were violated, or may also seek injunctive relief.[29] Section 16 (e)[30] also authorizes the Secretary of Labor to seek civil penalties of up to $1000 per violation against an employer who "willfully or repeatedly" violates section 7. In any action in which the employee has been wrongfully denied overtime compensation, the FLSA authorizes damages equal to the amount of the unpaid compensation required by the FLSA and an equal amount as liquidated damages;[31] liquidated damages may be reduced or eliminated if the court finds that the employer acted in good faith and had reasonable grounds for believing that he or she was in compliance with the FLSA.[32] In any action brought by an employee, the employee may also be paid for his or her attorney's fees and costs.[33]

H.R. 1 adds a prohibition to those already applicable under the FLSA. The bill prohibits an employer from directly or indirectly intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any employee for purposes of interfering with the employee's right to take or not take compensatory time in lieu of cash overtime, or to use accrued compensatory time. Opponents of compensatory time have claimed that H.R. 1 would allow employers to force employees to take compensatory time against their will or to use accrued compensatory time at the employer's convenience. Those claims are contrary to the plain language of the bill.

The language of H.R. 1 prohibiting intimidation, threats and coercion, or attempts thereto, is identical to prohibitory language in the Family and Medical Leave Act,[34] and the Federal Employees Flexible and Compressed Work Schedules Act.[35] The term "intimidate, threaten, or coerce" has been defined under those laws as "promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation)."[36] Thus, H.R. 1 prohibits an employer, for example, from forcing employees to take compensatory time in lieu of

[27] 29 U.S.C. § 215(a)(3).
[28] 29 U.S.C. § 216(b).
[29] 29 U.S.C. § 217.
[30] 29 U.S.C. § 216(e).
[31] 29 U.S.C. § 216(b).
[32] 29 U.S.C. § 260.
[33] 29 U.S.C. § 216(b).
[34] 5 U.S.C. § 6385.
[35] 5 U.S.C. § 6132.
[36] 5 U.S.C. § 6385.

monetary compensation by offering overtime hours only to employees who ask for compensation in the form of compensatory time.

The bill also creates a new remedy under the FLSA for employers who violate the anti-coercion language just described. Section 3 of H.R. 1 provides that an employer who violates the anti-coercion provision 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 damages is reduced by that amount.

Opponents of compensatory time have claimed that, while it may be prohibited conduct under H.R. 1, there is no sanction in H.R. 1 for an employer who either forces an employee to take compensatory time or denies the employee the right to use accrued compensatory time. In both cases they are wrong. An employee who is forced to take compensatory time may receive the amount of the employee's compensation for each hour of compensatory time plus an equal amount of liquidated damages, less the amount of compensation the employee has already received for those hours of compensatory time. Similarly, where an employee has been wrongfully denied use of accrued compensatory time, the employee or the Department of Labor may if necessary, seek injunctive relief and the employer who refuses to comply may be subject to civil penalties.

In addition, there is a "self-policing" aspect: the employee retains his or her compensation and can demand to cash out at the employee's current rate of pay or the rate when the time was earned, whichever is higher. In short, the employer does not benefit by denying the employee the use of his or her compensatory time, and where necessary, there are effective sanctions under the bill and the FLSA for employees who violate the employee protections and other provisions of H.R. 1.

SUMMARY

H.R. 1 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. H.R. 1 would not affect the compensatory time provisions already applicable to employees of federal, state and local governments. The bill would permit private sector employers to offer their employees the option of selecting paid 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. 1 would provide new employee protections, in addition to those contained in current law, in order to protect against the coer-

cive use of compensatory time. The bill requires any arrangement for the use of paid compensatory time to be an express mutual agreement between the employer and the employee. In the case of employees who are represented by a recognized or certified labor organization, the agreement must be between the employer and the labor organization. In other cases, the agreement is with the individual employee, and must be entered into knowingly and voluntarily by the employee, and may not be a condition of employment.

The agreement for the use of compensatory time by an individual employee must be affirmed by 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.[37]

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, at any time, withdraw from a compensatory time agreement with the employer. 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 monetary compensation for the unused, accrued compensatory time.

A private sector employer must provide an employee with 30 days notice prior to cashing out an employee's accrued, unused compensatory time. However, the employer may only cash out unused compensatory time accrued by an employee in excess of 80 hours, unless the cash out is employee-initiated. A private sector employer must also provide employees with 30 days notice prior to discontinuing a policy of offering compensatory time to employees.

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, all of the remedies under the Act would apply. Any employer who directly or indirectly 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 dam-

[37] 20 U.S.C. § 211(c).

ages, 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 1997."

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.

For the purposes of this subsection, the term "employee" does not include an employee of a public agency.

An employer may provide compensatory time to employees only if such time is in accordance with the applicable provisions of a collective bargaining agreement between the employer and the labor organization which has been certified or recognized as the representative of the employees under applicable law.

In the case of employees who are not represented by a labor organization which has been certified or recognized as the representative of such employees under applicable law, there must be an agreement arrived at between the employer and employee before the performance of the work and affirmed by a written or otherwise verifiable record maintained in accordance with section 11(c) of the Fair Labor Standards Act in which the employer has offered and the employee has chosen to receive compensatory time in lieu of monetary overtime compensation; and entered into knowingly and voluntarily by such employees and not as a condition of employment.

An employee may accrue not more than 240 hours of compensatory time. Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any unused compensatory time accrued during the preceding calendar year, which was not used prior to December 31 of that year. Monetary compensation must be provided at the regular rate received when the compensatory time was earned or at the final regular rate, whichever is higher. An employer may designate and communicate to the employees 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.

An employer may provide monetary compensation for an employee's unused compensatory time in excess of 80 hours at any time after giving the employee at least 30 days notice. The compensation shall be provided at the regular rate received when the compensatory time was earned or the final regular rate, whichever is higher.

Except where a collective bargaining agreement provides otherwise, an employer which has adopted a policy offering compensatory time to employees may discontinue such policy upon giving employees 30 days notice.

An employee may withdraw from an agreement or understanding at any time. 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 the written request, the employer shall provide the employee with the monetary compensation at a rate received when the compensatory time was earned or at the final regular rate, whichever is higher.

An employer which provides compensatory time to employees 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 payment of monetary overtime compensation for overtime hours; or requiring any employee to use such compensatory time.

An employee who has accrued compensatory time off shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time.

If compensation is to be paid to an employee for accrued compensatory time off, the compensation will be paid at a rate not less than the regular rate received by an employee when the compensatory time was earned or the final regular rate received by such employee, whichever is higher.

Any payment owed to an employee for unused compensatory time shall be considered to be unpaid overtime compensation.

An employee who has accrued compensatory time off and 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.

The terms "overtime compensation" and "compensatory time" shall have the meanings given by subsection (o)(7) of the Fair Labor Standards Act.

SECTION 3. REMEDIES

An employer which violates section 7(r)(4) of this bill shall be liable to the employee affected in the amount of the rate of compensation (determined in accordance with section 7(r)(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 the employee.

SECTION 4. NOTICE TO EMPLOYEES

Not later than 30 days after the date of the enactment of this Act, the Secretary of Labor shall revise the materials provided to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that the notice reflects the amendments made by this bill to the Act.

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(l)(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.

GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(l)(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. 1.

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. 1. 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.

CONSTITUTIONAL AUTHORITY

The Fair Labor Standards Act of 1938 has been determined, by the Supreme Court, to be within Congress' Constitutional authority. In *United States* v. *Darby,* 312 U.S. 100 (1941) and *OPP Cotton Mills, Inc., et al.* v. *Administrator of Wage and Hour Division of Department of Labor,* 312 U.S. 126 (1941), the Supreme Court found that the regulation of hours and wages of work to be within the scope of Congressional powers under Article 1, Section 8, Clause 3 of the Constitution of the United States. In addition the Supreme Court has ruled that the Fair Labor Standards Act of 1938 does not violate the First or Fifth Amendments.

H.R. 1, the Working Families Flexibility Act, amends the Fair Labor Standards Act of 1938. Because the Working Families Flexibility Act modifies but does not extend the federal regulation of overtime hours, the Committee believes that the Act falls within the same scope of Congressional authority as the Fair Labor Standards Act of 1938.

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. 1 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 Act[38] to covered employees and employing offices of the legislative branch. Therefore, the changes made by H.R. 1 to section 7 of the Fair Labor Standards Act[39] apply to the legislative branch.

[38] 29 U.S.C. § 206(a)(1) and (d); 207; 212(c).
[39] 29 U.S.C. § 207.

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 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 & 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 as 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(l)(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(l)(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. 1 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 6, 1997.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1, the Working Families Flexibility Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Sadoti.

Sincerely,

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

Enclosure.

H.R. 1—Working Families Flexibility Act of 1997

Summary: H.R. 1 would amend the Fair Labor Standards Act (FLSA) to allow compensatory time off in lieu of monetary overtime compensation for private employees, so long as the arrangement is in accordance with a collective bargaining agreement or both the employer and the employee agree. 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. 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. 1.

CBO estimates that enactment of H.R. 1 would result in a small savings to the federal government. H.R. 1 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill would impose no new intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA).

Estimated cost to the Federal Government: Enacting H.R. 1 would save about $1 million annually, assuming that appropriations are reduced accordingly.

Basis of estimate: H.R. 1 would apply directly only to the private sector, but it would probably have a minor impact on the legislative branch of the federal government. Within the legislative branch, employees who are not exempt from the FLSA may receive compensatory time in lieu of overtime pay in limited conditions governed, for the most part, by regulations that implement the Congressional Accountability Act. If H.R. 1 were enacted, it is likely that these regulations would be rewritten to reflect more closely the options available to the private 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 employers would provide compensatory time instead of overtime pay. CBO estimates that the resulting savings would amount to about $1 million annually, beginning in fiscal year 1998.

Additionally, H.R. 1 would require the Secretary of Labor to revise the materials that explain the Fair Labor Standards Act to employees to reflect the changes made by the Working Families Flexibility Act of 1997. These requirements are provided for in current law, and therefore would pose no additional costs to the Department of Labor.

The budgetary impact of this legislation falls within budget subfunction 801 (Legislative Branch).

Pay-as-you-go-considerations: None.

Estimated impact on State, local and tribal governments: Because state and local governments would be excluded from the effects of this bill, it would have no impact on them. However, enactment of the bill would affect tribal governments, although any budgetary impacts are likely to be insignificant.

The wage provisions of the FLSA apply to tribal governments on a case by case basis. Under current law, in cases where the FLSA applies (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 the flexibility to provide compensatory time and could reduce employment costs. At the same time, the bill would increase the cost of another FLSA mandate on tribal governments that requires them to post a notice explaining the FLSA to their employees. CBO estimates that these additional posting costs would be insignificant.

Estimated impact on the private sector: By relaxing an existing mandate on employers to make cash payments for overtime, the bill would reduce employment costs for some employers. At the same time, the bill would increase slightly the cost of an existing mandate on employers that requires them to post a notice explaining the Fair Labor Standards Act to their employees. CBO estimates that any added cost to employers would be well under the $100 million annual threshold specified in UMRA and that the bill would most likely result in net savings for employers.

Estimate prepared by: Federal Cost: Christina Hawley Sadoti and Mary Maginniss. Impact on State, Local, and Tribal Governments: John Patterson. Impact on the Private Sector: Kathryn Rarick.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 **BILL** H.R. 1 **DATE** March 5, 1997

AMENDMENT NUMBER 4 **DEFEATED** 15 - 25

SPONSOR/AMENDMENT Mr. Owens / prohibits workers who earn less than 2.5 times the minimum wage from being offered compensatory time option

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. SOUDER		X		
Mr. McINTOSH		X		
Mr. NORWOOD		X		
Mr. PAUL		X		
Mr. SCHAFFER		X		
Mr. PETERSON		X		
Mr. UPTON		X		
Mr. DEAL		X		
Mr. HILLEARY		X		
Mr. SCARBOROUGH				X
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE				X
Mr. MARTINEZ	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS				X
Mr. ROEMER		X		
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO				X
Mr. FATTAH	X			
Mr. BLUMENAUER				X
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Ms. SANCHEZ	X			
Mr. FORD	X			
TOTALS	15	25		5

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 2 **BILL** H.R. 1 **DATE** March 5, 1997

AMENDMENT NUMBER 3 **DEFEATED** 15 - 25

SPONSOR/AMENDMENT Mr. Miller / regarding discrimination against employees who choose compensatory time option

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. TALENT				X
Mr. GREENWOOD		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. SOUDER		X		
Mr. McINTOSH		X		
Mr. NORWOOD		X		
Mr. PAUL		X		
Mr. SCHAFFER		X		
Mr. PETERSON		X		
Mr. UPTON		X		
Mr. DEAL		X		
Mr. HILLEARY		X		
Mr. SCARBOROUGH		X		
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE				X
Mr. MARTINEZ	X			
Mr. OWENS				X
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. ROEMER		X		
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO				X
Mr. FATTAH	X			
Mr. BLUMENAUER				X
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Ms. SANCHEZ	X			
Mr. FORD	X			
TOTALS	15	25		5

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 3 **BILL** H.R. 1 **DATE** March 5, 1997

AMENDMENT NUMBER 5 **DEFEATED** 14 - 25

SPONSOR/AMENDMENT Mr. Clay / prohibits employees who are not offered certain types of leave from being offered compensatory time

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. SOUDER				X
Mr. McINTOSH		X		
Mr. NORWOOD		X		
Mr. PAUL		X		
Mr. SCHAFFER		X		
Mr. PETERSON		X		
Mr. UPTON		X		
Mr. DEAL		X		
Mr. HILLEARY		X		
Mr. SCARBOROUGH		X		
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE				X
Mr. MARTINEZ	X			
Mr. OWENS				X
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. ROEMER		X		
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO				X
Mr. FATTAH	X			
Mr. BLUMENAUER				X
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Ms. SANCHEZ	X			
Mr. FORD				X
TOTALS	14	25		6

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 **BILL** H.R. 1 **DATE** March 5, 1997

AMENDMENT NUMBER 6 **DEFEATED** 16 - 25

SPONSOR/AMENDMENT Ms. Woolsey / restricts an employee's ability to take compensatory time to certain specified uses

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. SOUDER		X		
Mr. McINTOSH		X		
Mr. NORWOOD		X		
Mr. PAUL		X		
Mr. SCHAFFER		X		
Mr. PETERSON		X		
Mr. UPTON		X		
Mr. DEAL		X		
Mr. HILLEARY		X		
Mr. SCARBOROUGH		X		
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. MARTINEZ	X			
Mr. OWENS				X
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. ROEMER	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO				X
Mr. FATTAH				X
Mr. BLUMENAUER				X
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Ms. SANCHEZ	X			
Mr. FORD	X			
TOTALS	16	25		4

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 5 **BILL** H.R. 1 **DATE** March 5, 1997

AMENDMENT NUMBER 7 **DEFEATED** 15 - 25

SPONSOR/AMENDMENT Mr. Payne / prohibits seasonal and agricultural employees from being offered compensatory time option

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD		X		
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. SOUDER		X		
Mr. McINTOSH		X		
Mr. NORWOOD		X		
Mr. PAUL				X
Mr. SCHAFFER		X		
Mr. PETERSON		X		
Mr. UPTON		X		
Mr. DEAL		X		
Mr. HILLEARY		X		
Mr. SCARBOROUGH		X		
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. MARTINEZ				X
Mr. OWENS				X
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. ROEMER		X		
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH				X
Mr. BLUMENAUER				X
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Ms. SANCHEZ	X			
Mr. FORD	X			
TOTALS	15	25		5

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 6 **BILL** H.R. 1 **DATE** March 5, 1997

AMENDMENT NUMBER 9 **DEFEATED** 15 - 24

SPONSOR/AMENDMENT Mr. Miller / treatment of compensatory time hours

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA		X		
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. TALENT		X		
Mr. GREENWOOD				X
Mr. KNOLLENBERG		X		
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. SOUDER		X		
Mr. McINTOSH		X		
Mr. NORWOOD				X
Mr. PAUL		X		
Mr. SCHAFFER		X		
Mr. PETERSON		X		
Mr. UPTON		X		
Mr. DEAL		X		
Mr. HILLEARY		X		
Mr. SCARBOROUGH		X		
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. MARTINEZ				X
Mr. OWENS				X
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. ROEMER	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH				X
Mr. BLUMENAUER				X
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Ms. SANCHEZ		X		
Mr. FORD	X			
TOTALS	15	24		6

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 7 **BILL** H.R. 1 **DATE** March 5, 1997

H.R. 1 - Ordered Reported Amended by a vote of 23 - 17

SPONSOR/AMENDMENT Mr. Petri / Motion to Report the bill favorably to the House with an amendment in the nature of substitute and with the recommendation that the bill as amended do pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mrs. ROUKEMA	X			
Mr. FAWELL	X			
Mr. BALLENGER	X			
Mr. BARRETT	X			
Mr. HOEKSTRA	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. TALENT	X			
Mr. GREENWOOD				X
Mr. KNOLLENBERG	X			
Mr. RIGGS	X			
Mr. GRAHAM	X			
Mr. SOUDER	X			
Mr. McINTOSH	X			
Mr. NORWOOD				X
Mr. PAUL	X			
Mr. SCHAFFER	X			
Mr. PETERSON	X			
Mr. UPTON	X			
Mr. DEAL	X			
Mr. HILLEARY	X			
Mr. SCARBOROUGH	X			
Mr. CLAY		X		
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. MARTINEZ		X		
Mr. OWENS				X
Mr. PAYNE		X		
Mrs. MINK		X		
Mr. ANDREWS		X		
Mr. ROEMER		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. ROMERO-BARCELO		X		
Mr. FATTAH				X
Mr. BLUMENAUER				X
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KIND		X		
Ms. SANCHEZ		X		
Mr. FORD		X		
TOTALS	23	17		5

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) * * *

* * * * * * *

(r) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

(1) GENERAL RULE.—

(A) COMPENSATORY TIME OFF.—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.

(B) DEFINITION.—For purposes of this subsection, the term "employee" does not include an employee of a public agency.

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

(A) applicable provisions of a collective bargaining agreement between the employer and the labor organization which has been certified or recognized as the representative of the employees under applicable law, or

(B) in the case of employees who are not represented by a labor organization which has been certified or recognized as the representative of such employees under applicable law, an agreement arrived at between the employer and employee before the performance of the work and affirmed by a written or otherwise verifiable record maintained in accordance with section 11(c)—

(i) in which the employer has offered and the employee has chosen to receive compensatory time in lieu of monetary overtime compensation; and

(ii) entered into knowingly and voluntarily by such employees and not as a condition of employment.

(3) HOUR LIMIT.—

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

(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any unused 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 des-

ignate 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.

(C) EXCESS OF 80 HOURS.—The employer may provide monetary compensation for an employee's unused compensatory time in excess of 80 hours at any time after giving the employee at least 30 days notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

(D) POLICY.—Except where a collective bargaining agreement provides otherwise, an employer which has adopted a policy offering compensatory time to employees may discontinue such policy upon giving employees 30 days notice.

(E) WRITTEN REQUEST.—An employee may withdraw an agreement described in paragraph (2)(B) at any time. 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).

(4) PRIVATE EMPLOYER ACTIONS.—An employer 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 monetary overtime compensation for overtime hours; or

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

(5) TERMINATION OF EMPLOYMENT.—An employee 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 in accordance with paragraph (6).

(6) RATE OF COMPENSATION.—

(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off, such compensation shall be paid at a rate of compensation not less than—

(i) the regular rate received by such employee when the compensatory time was earned, or

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

(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time shall be considered unpaid overtime compensation.

(7) USE OF TIME.—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.

(8) DEFINITIONS.—The terms "overtime compensation" and "compensatory time" shall have the meanings given such terms by subsection (o)(7).

* * * * * * *

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 violates section 7(r)(4) shall be liable to the employee affected in the amount of the rate of compensation (determined in accordance with section 7(r)(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

INTRODUCTION

In our view, the inevitable consequence of enactment of H.R. 1 would be to require employees to work longer hours for less pay. Through entitled the "Working Family Flexibility Act," H.R. 1 diminishes the flexibility of working families.

Sponsors of this deceptively titled bill insist that it is replete with employee flexibility and protections. We beg to differ; there is much that this bill lacks as far as the interests of working families are concerned.

H.R. 1 does not afford employers the right to grant leave in a single circumstance that is prohibited under current law. It does not guarantee that a single worker will be able to earn more time off. It does not guarantee to a single worker the right to use the time off that the legislation purports to afford workers the ability to earn. It does not adequately protect workers from being coerced into forfeiting their right to be paid in a timely manner for the overtime they have worked. And, this bill will inevitably result in a greater number of workers receiving no compensation whatsoever for their overtime work. In effect, the main consequence of this legislation is to extend workers a means, and in some cases the obligation, to provide to their employer an unsecured loan equal to up to 240 hours worth of time and a half pay. This is a bill about employer flexibility and power, plain and simple.

If this bill were "pro-worker" and "employee flexible," why would major worker representatives such as the AFL–CIO, the United Auto Workers, and the Teamsters oppose it? If this bill were so "pro-family" and "gender friendly," why would such prominent women's advocates as the Women's Legal Defense Fund, the American Nurses Association, and Business and Professional Women, U.S.A., oppose it? If H.R. 1 were really for the benefit of workers, why did a representative of the National Federation of Independent Business engage in this exchange with Senator Paul Wellstone (D–MN) and Mr. Silverman, a witness opposed to this legislation, at a recent Senate hearing:

> Senator WELLSTONE. We have the flexibility in existing law. Why would be want to move in the direction that goes against the basic idea of overtime pay for overtime work with all sorts of potential for abuse around that very important principle when we already have this existing flexibility? I mean, small businesses and large businesses can take advantage of that and the best do.
>
> Ms. ECKERLY. Well, no. Real small businesses, our members, cannot take advantage of that. A lot of employees do not get paid overtime. *Our members cannot afford to pay their employees overtime. This is something that they can*

offer in exchange that gives them a benefit. (emphasis added)

Senator WELLSTONE. But your employers can provide—you said you wanted this to be family-friendly, you said you wanted this to be for employees. Right now, whether it is a small business or a large business, you have it within your power to be family-friendly. You can let people vary their hours. Companies do that. In Minnesota, I am proud of the business community. Many large and small businesses do that now.

Ms. ECKERLY. But Senator, you cannot do that on a biweekly schedule, for instance. Let us say you are a building contractor, and because of the seasonal nature of the work, you want your employees to work thirty hours one week and fifty hours the next because of the way it works. You do not want to have to pay in that second week ten hours of additional overtime to your employees.

Senator WELLSTONE. But excuse me, this flexibility does not require any time-and-a-half.

Ms. ECKERLY. No, but the reason why a contractor, for instance, cannot on that second week have them work for fifty hours is because he cannot afford to pay the overtime for that ten additional hours.

Senator WELLSTONE. But that is another whole issue.

Ms. ECKERLY. But let us say that means getting the job.

Mr. SILBERMAN. If I may, Senator, it seems to me that that is the most compelling evidence I have heard——

Senator WELLSTONE. Against it.

Mr. SILBERMAN. As to why this bill will not permit employee free choice.

Senator WELLSTONE. That is correct.

Mr. SILBERMAN. If you are saying to people, "we cannot afford to pay overtime," then there is no choice here. There is only one choice. If you have in mind this contractor who goes to his employees and says, "I cannot afford to pay you, but I need you to work fifty hours this week, otherwise the business is going to go under," the notion that there is a lot of employee free choice there seems to me to be a myth.

Senator WELLSTONE. That is correct.

We do not contend that all, most, or even a majority of employers are bad actors. Nevertheless, Federal labor law must protect employees, indeed even law-abiding employers, from the illegal and ill-begotten gain of unconscionable employers. In the real world, most employees lack the bargaining position, wherewithal, and nerve to insist that their employers respect employee needs and rights.

In the final analysis, a more appropriate title for H.R. 1 would be the "Paycheck Reduction Act."

H.R. 1 fails to provide genuine employee choice

The Majority states that H.R. 1 gives employees "the voluntary option to receive overtime pay." It does not. This bill gives the employer complete discretion over whether to offer overtime at all, the

option of offering or denying it to any group or groups of employees, and the authority to withdraw the comp time plan at any time.

The Majority also emphasizes the purported voluntary nature of their version of comp time. H.R. 1 requires "express mutual agreement" that overtime will be paid in lieu of cash. In the real world, many employees are reluctant or fearful to buck their employer's wishes regarding their terms and conditions of employment. This is especially true for some 85% of the workforce who do not have the protections of collective bargaining agreements. This point was emphatically made by Helen Norton of the Women's Legal Defense Fund:

> H.R. 1 does not give employees a true choice between comp time and overtime pay, because in the real world, employers will have the last word * * * Most hourly workers have little bargaining power in the workplace as it is. And they are also the most likely to rely on overtime pay just to make ends meet. If they insist on getting money instead of time, they run a very real risk. If an employer would rather keep the money in the bank, employees who do not accept comp time could find that they just are not getting the hours they have counted on, or are getting assigned to bad shifts, or have otherwise put their jobs and livelihoods at risk. * * * The bill gives unscrupulous employers a substantial new opportunity to coerce employees into taking time off even when they need or prefer to have money in their paychecks instead.

H.R. 1 permits employers to extend comp time in a manner that is wholly arbitrary and capricious. In the absence of a compelling business necessity, an employer should be required to extend that offer to all employees. There is simply no justification, short of condoning discrimination, for permitting an employer to offer comp time to one employee without extending that offer to all employees.

Employees cannot choose when to use comp time

H.R. 1 provides that an employee may be denied the request to use compensatory time if it "unduly disrupts" the operations of the employer. The Majority states that the employer's prerogative to deny compensatory time off under H.R. 1 is "very limited," and they even attack opponents of their bill as "dishonest" for suggesting that H.R. 1 gives the employer control over when compensatory time is used.

However, the Majority specifically rejected amendments offered by us to incorporate the leave standards of the Family and Medical Leave Act, which give employees real control over when they can take leave than H.R. 1. Ironically, the proponents of H.R. 1 have wrongly suggested that the leave standard under this bill is indistinguishable from the FMLA standard. In testimony before the Subcommittee on Employment and Training of the Senate Committee on Labor and Human Resources, Senator Tim Hutchinson (R–AR), a sponsor of S. 4, the Senate companion bill to H.R. 1, stated "[w]e use the same standard in our bill as the Family and Medical

Leave Act does with regard to disruption of work, so I think we are doing everything we can to accommodate concerns."[1]

However, a simple comparison of H.R. 1 to the FMLA standard reveals striking dissimilarities. Under the FMLA, an employee of a covered employer has an absolute right to take up to 12 weeks of leave in the event of certain family or medical emergencies. An employer may not deny an employee such leave nor terminate an employee for exercising the right to take such leave.

The FMLA further provides, in the case of planned medical treatment, that it is the duty of the employee to make a reasonable effort to schedule leave in a manner that does not disrupt unduly the operations of the employer. If, despite that reasonable effort, the employee cannot schedule leave at a time that does not disrupt unduly the operations of the employer, the employer has no right to deny the employee leave.

Further, even where the leave under FMLA may be scheduled at a time that does not disrupt unduly the operations of the employer, it may only be done so subject to the approval of the health care provider. If the health care provider is unable to accommodate a treatment schedule that is more convenient to the employer, the employer may not infringe upon the employee's right. By contrast, under H.R. 1 an employer may deny the use of earned compensatory time to the employee whenever the leave would "unduly disrupt" the employer's operations; it is that plain.

During Committee consideration of H.R. 1, Rep. Lynn Woolsey (D–CA) (along with Reps. Mink, Sanchez, and Tierney) offered an amendment that guaranteed that workers would be able to use comp time in circumstances that would otherwise qualify for leave under the FMLA or a similar State law. The amendment further provided that where an employee provided two weeks or more notice of the intent to use compensatory time, the employer may only deny that use when the employee's absence would cause "substantial and grievous injury" to the employer's operations. And, where the employee provided less than two weeks notice, the employer may deny the use of compensatory time when the employee's absence would "unduly disrupt" the employer's operations. This amendment, which was defeated on a party-line vote, would have provided working men and women the real flexibility they need to meet the responsibilities of work and home.

Finally, a word about the public sector analogy cited by the Republicans. The Majority cites various cases and regulations applicable to the public sector standard for taking leave time. These precedents and regulations will not be controlling to the comp time provisions of this bill. Further, public sector employers operate in a substantially different setting than private sector employers. Public sector employers don't face the business cycles and competitive economic pressure of private sector employers. Further, public sector employees are generally organized and have substantial procedural protections to protect against arbitrary and capricious employer actions.

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[1] Senator Hutchinson in response to Senator Kennedy, "Fair Labor Standards Act Reform: Review of Flexible Workplace Measures," Hearing Before the Subcommittee on Employment and Training of the Committee on Labor and Human Resources, U.S. Senate, February 4, 1997.

H.R. 1 offers inadequate protections and remedies

In fiscal year 1996 alone, the Department of Labor (DOL) found overtime violations involving some 170,000 workers. In industries such as the garment industry, the law is more typically violated than obeyed. A 1994 survey by DOL found that 78 percent of the garment contractors in the Los Angeles area violated overtime requirements. Despite a concerted and well-publicized enforcement effort by DOL, a 1996 survey found that 55 percent of the garment contractors still operated in violation of the overtime requirement. The agriculture industry has a similar history of abuse.

To quote The Wall Street Journal:

> While employees like overtime pay, a lot of employers don't. Violations are so common that the Employer Policy Foundation, and employer-supported think tank in Washington, estimates that workers would get an additional $19 billion a year if the rules were observed.
>
> That estimate is considered conservative by many researchers because it assumes that only 10 percent of employees not getting overtime should be * * * A Wall Street Journal analysis of 74,514 cases brought by the department from October 1991 to June 1995 found that some industries, such as railroad and tobacco, had almost no violations, while industries such as construction and apparel were cited for illegally denying overtime to one out of every 50 employees during the period. Overall, nearly eight out of every thousand workers, or 695,280 employees, were covered by settlements, even though enforcement was limited.[2]

H.R. 1 will engender more overtime violations. Under current law, employers must pay workers in a timely manner for the work they perform. If the employee is not paid by the appropriate payday, there is no confusion as to the fact that a potential violation of the law has occurred. If H.R. 1 were enacted, enforcement of the overtime law will become even more problematic. Under current law, employees are typically paid for overtime shortly after the work is performed. It is well within the ability of most employees to be able to track the amount of overtime they have worked and the amount of money they may be owed. However, under a compensatory time system, employees may not be paid for their overtime for up to a year after the work is performed; the ability of workers to trace their earned time is dubious. And yet, there is no requirement in H.R. 1 that employers inform workers of the amount of compensatory time they have accrued. Rather, H.R. 1 seems to place the burden on the employee to track, for as long as a year, how much overtime the employee has worked and how much compensation the employee is due.

If H.R. 1 makes it harder for employees to recognize when an overtime violation has occurred, it also substantially increases the need for resources available to those seeking to enforce the FLSA's overtime. Under current law, an employee is either paid for over-

[2] "Shortchanged: Many Firms Refuse to Pay for Overtime, Employees Complain," The Wall Street Journal, June 24, 1996.

time work or is not. Where an employee has not been paid for overtime work, there may be an issue as to whether the employee was eligible for overtime pay and as to whether the overtime work was performed. Resolving those issues is not terribly difficult. If H.R. 1 is enacted, one must still make that determination as to whether an employee is eligible for overtime pay and whether the employee performed overtime work. In addition, however, one would have to determine whether an employer operated a comp time system, whether an employee had freely chosen comp time or had been coerced into accepting comp time, and whether the employee had been unlawfully coerced into using comp time or had been unlawfully denied the use of comp time. Even though an employee had received nothing for the overtime work performed, it may not be clear that there has been a violation of the overtime law until a full year after the overtime work was performed.

Reps. Miller, Ford, and Tierney, offered an amendment to improve the H.R. 1 remedies to deter employer misconduct, and to strengthen the power of workers to achieve redress for employer abuse. The amendment addressed discrimination in offering the comp time. Additionally, the amendment provided that an employer who violates any part of the comp time provisions may be sued by an employee or by the Secretary of Labor. And, where the employer is found to be in violation, the amendment makes the employer liable for the amount of overtime compensation that would have been paid for overtime hours worked or the overtime hours that would have been worked by the employee (plus an additional equal amount as liquidated damages, other appropriate legal or equitable relief, and reasonable attorney's fees).

An example demonstrates H.R. 1's flawed remedy section. Assume a worker received initial approval to use comp time to care for an elderly parent at home following a serious illness. At the last moment before the employee takes the comp time, the employer, without cause, revokes permission. Under H.R. 1, there is no remedy to compensate the employee, even if he had to pay for expensive alternative care.

Finally, the amendment authorized the Secretary of Labor to prohibit employers who have a pattern or practice of violating the FLSA from offering comp time. The Republican Majority rejected these important employee protections and remedies.

Comp time jeopardizes the employee workweek

Under H.R. 1, comp time is not considered "hours worked" for the purpose of calculating overtime. Consequently, employers would be able to manipulate the workweek to the detriment of the employee. For example, assume an employer uses 3 comp days in a week. If the employee normally worked from 9 to 5 on Monday through Friday and on a particular occasion took comp time Monday, Tuesday, and Wednesday, the employer could still require the employee to work 10 hours a day Thursday through Sunday.

Further, since the employer is not required to count compensatory time off for purposes of calculating overtime, the employer would not have to pay time and a half for the 20 hours worked during the weekend. For a worker earning $10 an hour, the loss of overtime pay would be $100 for the weekend.

To address this quandary, Rep. Miller (D–CA) offered an amendment to provide that used compensatory time shall be treated as hours worked for purposes of calculating overtime compensation. The amendment further provided that earned compensatory time may not be substituted for any other paid or unpaid leave to which the employee was entitled. Unfortunately, the Republican Majority rejected this amendment.

H.R. 1 is especially dangerous for vulnerable employees

When the Committee considered H.R. 1, several amendments were offered by Democratic Members to ensure that comp time does not have the effect of undermining the income of those workers struggling to make ends meet and those workers most vulnerable to employer abuse.

H.R. 1 applies only to wage employees, that is, those who are entitled to be paid overtime for hours worked in excess of 40 hours a week. In 1995, the latest year for which we were able to obtain statistics, there were almost 60,000,000 hourly workers in the private sector. Almost two-thirds of those workers earned less than $10 an hour.[3] Eighty percent of women earned less than $20,000 a year (approximately $10 an hour).

These are workers who, at one and the same time, are both more likely to be dependent upon overtime pay in order to make ends meet and who are least likely to be able to exercise much bargaining power at the workplace. If H.R. 1 has the effect we fear, these workers will lose the most.

Rep. Owens (D–NY) offered an amendment to exempt employees making less than 2.5 times the minimum wage from the legislation.

Rep. Payne (on behalf of himself, and Reps. Owens and Hinojosa) offered a second "vulnerable employees" amendment to exempt part-time, temporary, and seasonal employees (including employees in the construction, agricultural, and garment industries) from the bill. These are the classes of workers who most likely are today's victims of overtime violations. These are also the workers most likely to be coerced into accepting compensatory time and are least likely to be actually paid the compensatory time they have earned. Both the Owens and Payne amendments were summarily rejected by the Republican Majority.

H.R. 1 fails to safeguard employee wages and paid leave

H.R. 1 poses a significant risk to employees who find that there is no money in the employer's coffers when they seek to collect their overtime wages or to use their comp time. The bill permits employers to defer paying anything for overtime work for up to one year. In industries that are characterized by thinly capitalized enterprises, the promise of compensatory time is likely to be illusory. Ironically, a witness for the National Federal of Independent Business (NFIB) provided the clearest statement regarding the pressures employers face that raise the potential for abuse in a compensatory time system:

[3] U.S. Bureau of Labor Statistics, Hourly earnings of employed wage and salaried workers paid hourly rates by class of worker, detailed industry, sex, race, and Hispanic origin, 1995 annual averages.

> One-half of small business owners start their business with less than $20,000, most of it coming from their personal savings. Most small business owners do not make a lot of money. * * * They survive on cash flow, not profitability.
>
> * * * Of the 800,000 to 900,000 businesses that start each year, half will be out of business within five years.* * *[4]

H.R. 1 provides that unpaid comp time shall be treated as unpaid wages for purposes of the Fair Labor Standards Act, only. Bankruptcy courts are bound by the Bankruptcy Code, not by the FLSA. Absent specific legislative instruction as to how the bankruptcy courts are to treat unpaid comp time, the courts are free to determine that matter for themselves. Indeed, notwithstanding the current language in the bill, there is nothing to prevent the courts from treating comp time as an unsecured loan. The fact that the Congress could have specifically directed the bankruptcy courts to treat comp time as unpaid wages, but did not do so, would lend credence to the view that the Congress did not intend to afford any protection for unpaid comp time. During the markup, Rep. Mink, along with Rep. Owens, offered an amendment specifically instructing the bankruptcy courts on how to treat unpaid compensatory time. In our view, adoption of this kind of amendment is essential if we are to provide protection for unpaid comp time in instances where under-capitalized employers go out of business. Technical excuses should not have blocked consideration of this critical protection.

A second amendment offered by Rep. Miller (on behalf of Reps. Mink and Owens) would have permitted the Secretary of Labor to require employers who offer compensatory time to secure a payment bond, such as those typically required for public construction projects, for protection of the overtime compensation of such employees. Both these amendments were rejected by the Republican Majority.

H.R. 1 invites abuse of existing leave policies, as well. While H.R. 1 provides that an employer may not require an employee to use compensatory time, it does not prohibit an employer from requiring that compensatory time be counted as a substitute for other forms of leave. For example, an employee who uses compensatory time may have that time also counted toward the employee's vacation leave, sick leave, or family and medical leave. It is clearly unfair to permit such a practice. It is akin to requiring an employee who used a day of sick leave to work an extra eight hours to make up for the day the employee was out while still charging the employee for having used a day's sick leave. If the intent of this legislation is, in fact, to afford greater flexibility to working families, it is counterproductive to allow this.

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[4] Statement of Susan M. Eckerly, Director of Senate Federal Government Relations, National Federation of Independent Business, "S. 4, The Family Friendly Workplace Act," Hearing before the Subcommittee on Employment and Training of the Committee on Labor and Human Resources, U.S. Senate, February 13, 1997.

H.R. 1 would reduce employee benefits

H.R. 1 fails to protect employee benefits for individuals who choose to take comp time. For example, employees who work fewer hours because they take comp time would receive lower employer contributions to a 401K plan. Similarly, overtime pay which would otherwise be credited to establish unemployment eligibility and benefits amounts would be forfeited.

The Majority admits that comp time would defer receipt of unemployment benefits because it would be "disqualifying income," but asserts that "it would not diminish the total benefits to which the employee may be entitled." This, however, would only be true if the worker exhausted his or her unemployment benefits. Because all States require workers to actively seek work during unemployment, few workers exhaust their benefits. Therefore, under H.R. 1 an employee's hard earned wages from overtime are being used instead of unemployment insurance benefits to which they would have been entitled. This would essentially nullify the benefit of comp time in many cases where the worker became unemployed.

The Republican majority deliberately rejected improvements to the FMLA

At the end of the last Congress, President Clinton sent a legislative proposal to the Congress promoting flexibility for working families by expanding the FMLA to provide an additional 24 hours of leave. Workers could use such leave to participate in the educational activities of their children or to provide routine medical care to their children or elders. Unlike the Republican view of comp time, the President's proposal would ensure at least a modest increase in the highly popular approach to flexibility already afforded millions of working families. The ranking Democrat on the Committee, Rep. Clay (D–MO) intended to offer an amendment which would have raised consideration of this proposed expansion of the FMLA. The Republican Majority made clear it would block such consideration solely on procedural grounds that are otherwise waivable. Consequently, Rep. Clay offered an alternative approach providing that employers who offer employees comp time must also provide employees with a right to take up to 24 hours of expanded family leave.

While the Clay amendment could not directly force the issue of expanding the FMLA, it at least sought to assure that where employers offer comp time, employees would also be guaranteed the right to take a minimal amount of leave to participate further in their children's education or to provide care to their children and elders. The Clay amendment was defeated on a strictly party-line vote.

CONCLUSION

Prior to the Committee's consideration of H.R. 1, the Acting Secretary of Labor, Cynthia Metzler, sent a letter to Chairman Goodling articulating the Clinton Administration's fundamental objections to H.R. 1 and promising a veto if those objections are not met:

> Any comp time legislation must effectively and satisfactorily address three fundamental principles: real choice for

employees; real protection against employer abuse; and preservation of basic worker rights including the 40-hour week * * *

President Clinton will veto any bill that does not meet these three fundamental principles. While the President has called for and strongly supports enactment of responsible comp time legislation, he will not sign any bill—including H.R. 1—that diminishes employees' rights to receive time-and-a-half overtime premium pay when they work more than a 40-hour workweek. Workers—not employers—must be able to decide how best to meet the current needs of their families. *(See Exhibit A—[full text of letter])*

We emphatically concur with the Acting Secretary and will urge our colleagues to oppose H.R. 1, this proverbial "Trojan Horse," when it reaches the House Floor.

WILLIAM L. CLAY.
DALE E. KILDEE.
PATSY T. MINK.
LYNN WOOLSEY.
CHAKA FATTAH.
CAROLYN MCCARTHY.
RON KIND.
HAROLD E. FORD, Jr.
GEORGE MILLER.
MATTHEW G. MARTINEZ.
DONALD M. PAYNE.
ROBERT E. ANDREWS.
BOBBY SCOTT.
CARLOS ROMERO-BARCELÓ.
RUBÉN HINOJOSA.
JOHN F. TIERNEY.
LORETTA SANCHEZ.
DENNIS J. KUCINICH.

EXHIBIT A

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, March 4, 1997.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR CHAIRMAN GOODLING: We understand that your Committee will consider H.R. 1, the "Working Families Flexibility Act of 1997," on Wednesday, March 5. I am writing to emphasize the Administration's strong opposition to H.R. 1, and to urge your Committee not to order the bill reported.

The Administration believes strongly that any legislation to authorize compensatory time—"comp time," or paid time-off—under the Fair Labor Standards Act (FLSA) should be linked to expansion of the Family and Medical Leave Act (FMLA), as the President proposed during the last Congress. The FMLA provides important ben-

efits to working families and has proved effective in meeting the needs of both families and businesses. And, unlike comp time, which would be optional, family and medical leave is a right that covered employers may not deny to eligible employees. Expanding FMLA to give working families the flexibility they need for greater involvement in the education of their children and elder care will go a long way toward achieving the stated goals of H.R. 1. The bill before your Committee does not include FMLA expansion, and it should.

Any comp time legislation must effectively and satisfactorily address three fundamental principles: real choice for employees; real protection against employer abuse; and preservation of basic worker rights including the 40-hour workweek.

Real choice for employees must include the right to choose whether to earn comp time or overtime premium pay; the right to take comp time when needed for FMLA purposes; the right to choose to use comp time for any purpose with two weeks notice unless its use would cause substantial injury to the employer; and the right to "cash out" accrued comp time for pay on 15 days notice, as well as a prohibition against giving employers the unilateral right to cash out an employee's accrued comp time at their discretion. Real protection against employer abuse must include a number of protections that are entirely absent from H.R. 1, such as the exclusion of vulnerable workers and part-time, seasonal and temporary workers, including garment and construction workers; special protections in cases where the employer goes bankrupt or out-of-business; prohibitions against employers' substituting comp time for paid vacation or sick leave benefits, or penalizing employees who choose overtime premium pay instead of comp time; a reasonable limit on the number of bankable hours for comp time; damages that allow an employee to obtain adequate relief if denied the use of comp time or denied overtime assignments; and strong effective provisions for enforcement. Preservation of worker rights requires preserving the 40-hour workweek and the right to receive premium pay for overtime work.

President Clinton will veto any bill that does not meet these three fundamental principles. While the President has called for and strongly supports enactment of responsible comp time legislation, he will not sign *any* bill—including H.R. 1—that diminishes employees' rights to receive time-and-a-half overtime premium pay when they work more than a 40-hour workweek. Workers—not employers—must be able to decide how best to meet the current needs of their families.

The Office of Management and Budget advises that there is no objection to the submission of this report.

Sincerely,

CYNTHIA A. METZLER,
Acting Secretary of Labor.

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