

105TH CONGRESS  
1ST SESSION

# H. R. 1

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

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

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Working Families  
5 Flexibility Act of 1997”.

1 **SEC. 2. COMPENSATORY TIME.**

2 Section 7 of the Fair Labor Standards Act of 1938  
3 (29 U.S.C. 207) is amended by adding at the end the fol-  
4 lowing:

5 “(r) COMPENSATORY TIME OFF FOR PRIVATE EM-  
6 PLOYEES.—

7 “(1) GENERAL RULE.—

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

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

18 “(2) CONDITIONS.—An employer may provide  
19 compensatory time to employees under paragraph  
20 (1)(A) only pursuant to the following:

21 “(A)(i) Such time may be provided only in  
22 accordance with—

23 “(I) applicable provisions of a collec-  
24 tive bargaining agreement between the em-  
25 ployer and the representative of the em-  
26 ployees recognized as provided in section

1           9(a) of the National Labor Relations Act,  
2           or

3           “(II) in the case of employees who are  
4           not represented by a labor organization  
5           recognized as provided in section 9(a) of  
6           the National Labor Relations Act, an  
7           agreement or understanding arrived at be-  
8           tween the employer and employee before  
9           the performance of the work if such agree-  
10          ment or understanding was entered into  
11          knowingly and voluntarily by such em-  
12          ployee, but only if such agreement or un-  
13          derstanding was not a condition of employ-  
14          ment.

15          “(B) If such employee has affirmed, in a  
16          written or otherwise verifiable statement that is  
17          made, kept, and preserved in accordance with  
18          section 11(c), that the employee has chosen to  
19          receive compensatory time in lieu of overtime  
20          compensation.

21          “(C) If the employee has not accrued com-  
22          pensatory time in excess of the limit applicable  
23          to the employee prescribed by paragraph (3).

24          “(3) HOUR LIMIT.—

1           “(A) MAXIMUM HOURS.—An employee  
2 may accrue not more than 240 hours of com-  
3 pensatory time.

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

17           “(C) EXCESS OF 80 HOURS.—The em-  
18 ployer may provide monetary compensation for  
19 an employee’s unused compensatory time in ex-  
20 cess of 80 hours at any time after giving the  
21 employee at least 30 days notice. Such com-  
22 pensation shall be provided at the rate pre-  
23 scribed by paragraph (6).

24           “(D) POLICY.—An employer which has  
25 adopted a policy offering compensatory time to

1 employees may discontinue such policy upon  
2 giving employees 30 days notice.

3 “(E) WRITTEN REQUEST.—An employee  
4 may withdraw an agreement or understanding  
5 described in paragraph (2)(A)(II) at any time.  
6 An employee may also request in writing that  
7 monetary compensation be provided, at any  
8 time, for all compensatory time accrued which  
9 has not yet been used. Within 30 days of receiv-  
10 ing the written request, the employer shall pro-  
11 vide the employee the monetary compensation  
12 due in accordance with paragraph (6).

13 “(4) PRIVATE EMPLOYER ACTIONS.—An em-  
14 ployer which provides compensatory time under  
15 paragraph (1) to employees shall not directly or indi-  
16 rectly intimidate, threaten, or coerce or attempt to  
17 intimidate, threaten, or coerce any employee for the  
18 purpose of—

19 “(A) interfering with such employee’s  
20 rights under this subsection to request or not  
21 request compensatory time off in lieu of pay-  
22 ment of overtime compensation for overtime  
23 hours; or

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

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

7           “(6) RATE OF COMPENSATION.—

8           “(A) GENERAL RULE.—If compensation is  
9           to be paid to an employee for accrued compen-  
10          satory time off, such compensation shall be paid  
11          at a rate of compensation not less than—

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

15                   “(ii) the final regular rate received by  
16                   such employee,

17          whichever is higher.

18          “(B) CONSIDERATION OF PAYMENT.—Any  
19          payment owed to an employee under this sub-  
20          section for unused compensatory time shall be  
21          considered unpaid overtime compensation.

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

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

1           “(B) who has requested the use of such  
2           compensatory time,  
3           shall be permitted by the employee’s employer to use  
4           such time within a reasonable period after making  
5           the request if the use of the compensatory time does  
6           not unduly disrupt the operations of the employer.”

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

10 **SEC. 3. REMEDIES.**

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

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

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

17           “(f) An employer which violates section 7(r)(3) shall  
18           be liable to the employee affected in the amount of the  
19           rate of compensation (determined in accordance with sec-  
20           tion 7(r)(6)(A)) for each hour of compensatory time ac-  
21           crued by the employee and in an additional equal amount  
22           as liquidated damages reduced by the amount of such rate  
23           of compensation for each hour of compensatory time used  
24           by such employee.”

1 **SEC. 4. NOTICE TO EMPLOYEES.**

2       Not later than 30 days after the date of the enact-  
3 ment of this Act, the Secretary of Labor shall revise the  
4 materials the Secretary provides, under regulations pub-  
5 lished at 29 C.F.R. 516.4, to employers for purposes of  
6 a notice explaining the Fair Labor Standards Act of 1938  
7 to employees so that such notice reflects the amendments  
8 made to such Act by this Act.

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