

## EXTENSIONS OF REMARKS

### INTRODUCTION OF LEGISLATION TO REFORM THE FAIR LABOR STANDARDS ACT

#### HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 13, 1999

Mr. BALLENGER. Mr. Speaker, today I am introducing two bills which reflect our continued efforts to make the Fair Labor Standards Act (FLSA) applicable to today's workforce. The FLSA is one of the most outdated workplace regulatory schemes faced by businesses and employees. As the primary statute governing the payment of wages and hours of work, the FLSA has changed little since it was enacted in 1938.

In today's business environment, employers and employees must find ways to compete and meet the challenges of an increasingly competitive and global economy. Government should be user-friendly, less confrontational, and less costly. The regulatory scheme must be designed to be flexible to accommodate different situations and future challenges. The demographics of the workforce and the characteristics of jobs have changed dramatically over the past 60 years. But, the FLSA has not kept pace with these changes and it now stands out as being rigid and inflexible for today's work styles and work arrangements.

The two bills that I am introducing today will update areas of the FLSA which regulate scheduling and compensation. Currently, the FLSA does not allow private sector employers to give their employees the choice of compensatory time off in lieu of overtime wages. The first bill, "The Working Families Flexibility Act of 1999," would give private sector employers and employees an option which Federal, State, and local governments have had for many years—the choice of "comp time" in lieu of overtime pay. The legislation is identical to that which the House passed during the 105th Congress.

The Working Families Flexibility Act answers the call of many workers for increased flexibility and choices in the workplace. Many employees are finding it increasingly difficult to find enough time for important family obligations or outside interests, which makes receiving comp time instead of cash overtime an attractive option.

Many employers who want to be family-friendly find that flexible scheduling can be extremely difficult for employees who are paid by the hour and covered by the overtime provisions in the FLSA. Suppose an employee has a terminally ill parent who lives several states away. Days off with pay can become precious for that employee when a 2-day weekend does not provide enough time to travel and spend time with that parent. When that employee works a few hours of overtime each week, he or she may prefer to be paid with

time off rather than with cash wages. If the individual is employed in the public sector, then he or she would have the choice of receiving paid time off in lieu of cash wages for overtime hours worked. However, under current Federal law, if the individual is employed in the private sector then he or she cannot choose paid time off, even if that form of compensation is preferred.

The Working Families Flexibility Act would allow employers to make comp time available as an option for employees. Employees would have the choice, through an agreement with the employer, to take overtime pay in the form of paid time off. As with overtime pay, comp time hours would accrue at a rate of one and one-half hours of comp time for each hour of overtime worked. In response to concerns about employees being coerced by employers into choosing comp time over cash wages, the legislation includes numerous protections to ensure that employees cannot be pressured into one choice or the other.

Employees could accrue up to 160 hours of comp time within a 12-month period. The legislation would require the employer to annually cash-out any unused comp time accrued by the employee. Employees may withdraw from a comp time agreement at any time and request a cash-out of any or all accrued, unused comp time. The employer would have 30 days in which to comply with the request. The legislation would also require an employer to provide the employee with at least 30 days notice prior to cashing out any accrued time in excess of 80 hours or prior to discontinuing a policy of offering comp time.

Employees would be able to use their accrued comp time at anytime, so long as its use did not unduly disrupt the operations of the business (the same standard used in the public sector and under the Family and Medical Leave Act.) Employers would be prohibited from requiring employees to take accrued time solely at the convenience of the employer.

I want to emphasize that this legislation does not eliminate or change the traditional 40-hour workweek. It simply provides employees with another option in the workplace—time off instead of overtime pay. This concept may be revolutionary to some, but to America's workers, who are increasingly frustrated about coping with the demands of work and family responsibilities, it is a long overdue change.

The second bill, "The Rewarding Performance in Compensation Act," would help workers to share, financially, when their efforts help produce gains for their company in productivity, sales, fewer injuries, or other important aspects of performance.

The pressures of worldwide competition and rapid technological change have forced most employees to seek continuous improvement in productivity, quality, and other aspects of company performance. Employers often seek to

encourage and reward employee efforts to improve productivity, quality, etc. through what are called "gainsharing" plans—linking additional compensation to measurable improvements in company, team, or individual performance. Employees are assigned individual or group productivity goals and the savings achieved from improved productivity, or the gains, are then shared between the company and the employees. The payouts are based directly on factors under an employee's control, such as productivity or costs, rather than on the company's profits. Thus, employees directly benefit from improvements that they help to produce by increasing their overall compensation.

Unfortunately, employers who choose to implement such programs can be burdened with unpredictable and complex requirements by the Fair Labor Standards Act, which clearly did not envision these types of "pay based upon performance" plans.

For example, if a bonus is based on production, performance or other factors, the payment must then be divided by the number of hours worked by the employee during the time period that the bonus is meant to cover, and added to the employee's regular hourly pay rate. This adjusted hourly rate must then be used to calculate the employee's overtime rate of pay. For other types of employees, such as executive, administrative, or professional employees who are exempt from minimum wage and overtime, an employer can easily give financial rewards without having to recalculate rates of pay.

The Rewarding Performance in Compensation Act would amend the FLSA to specify that an employee's regular rate of pay for the purposes of calculating overtime would not be affected by additional payments that reward or provide incentives for employees who meet productivity, quality, efficiency or sales goals. By eliminating disincentives in current law, this legislation will encourage employers to reward their employees and make it easier for employers to "share the wealth" with their employees.

I would urge my colleagues to support these two common sense reforms that will help to bring the FLSA, passed in 1938, a little closer to the needs of employees that the law is meant to benefit, as we enter the 21st century.

#### CONCERNED WOMEN FOR AMERICA'S 20TH ANNIVERSARY

#### HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 13, 1999

Mr. SCHAFFER. Mr. Speaker, I am honored to call attention to America's largest women's public policy organization, Concerned Women for America (CWA), on its 20th anniversary.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.