

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1129

To amend the Fair Labor Standards Act of 1938 to permit employers to provide for flexible and compressed schedules, to permit employers to give priority treatment in hiring decisions to former employees after periods of family care responsibility, to maintain the minimum wage and overtime exemption for employees subject to certain leave policies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 7 (legislative day, JULY 10), 1995

Mr. ASHCROFT introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Fair Labor Standards Act of 1938 to permit employers to provide for flexible and compressed schedules, to permit employers to give priority treatment in hiring decisions to former employees after periods of family care responsibility, to maintain the minimum wage and overtime exemption for employees subject to certain leave policies, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Work and Family Inte-  
3 gration Act”.

4 **SEC. 2. FLEXIBLE AND COMPRESSED SCHEDULES AND RE-**  
5 **HIRING PREFERENCE.**

6 The Fair Labor Standards Act of 1938 is amended  
7 by inserting after section 13 (29 U.S.C. 213) the following  
8 new sections:

9 **“SEC. 13A. FLEXIBLE AND COMPRESSED SCHEDULES.**

10 “(a) PURPOSE.—The purpose of this section is to bal-  
11 ance the demands of workplaces with the needs of families  
12 in the United States.

13 “(b) COMPRESSED SCHEDULES.—

14 “(1) IN GENERAL.—Notwithstanding any other  
15 provision of law, an employer may establish pro-  
16 grams that allow the use of a compressed schedule  
17 that consists of—

18 “(A) in the case of a schedule of a full-  
19 time employee, a 160-hour basic work require-  
20 ment, over a 4-week period, that is scheduled  
21 for less than 20 workdays; and

22 “(B) in the case of a schedule of a part-  
23 time employee, a basic work requirement of less  
24 than 160 hours, over a 4-week period, that is  
25 scheduled for less than 20 workdays.

1           “(2) OVERTIME COMPENSATION PROVISIONS.—  
2       Section 7 and any other provision of law that relates  
3       to premium pay for overtime work shall not apply to  
4       the hours that constitute such a compressed sched-  
5       ule.

6           “(3) COMPUTATION OF OVERTIME.—In the case  
7       of any full-time employee, hours worked in excess of  
8       such a compressed schedule shall be overtime hours  
9       and shall be paid for as provided by the applicable  
10      provisions referred to in paragraph (2). In the case  
11      of any part-time employee on such a compressed  
12      schedule, overtime pay shall begin to be paid after  
13      the same number of hours of work after which a  
14      full-time employee on a similar schedule would begin  
15      to receive overtime pay.

16          “(c) FLEXIBLE SCHEDULES.—

17               “(1) IN GENERAL.—Notwithstanding any other  
18       provision of law, an employer may establish pro-  
19       grams that allow the use of flexible schedules that  
20       include—

21                   “(A) designated hours and days during  
22                   which an employee on such a schedule must be  
23                   present for work; and

24                   “(B) designated hours during which an  
25                   employee on such a schedule may elect the time

1 of the arrival of such employee at and depar-  
2 ture of such employee from work, solely for  
3 such purpose or, if and to the extent permitted,  
4 for the purpose of accumulating credit hours to  
5 reduce the length of the workweek or another  
6 workday.

7 “(2) OVERTIME COMPENSATION PROVISIONS.—

8 For purposes of determining compensation for over-  
9 time hours in the case of an employee participating  
10 in a program under this subsection—

11 “(A) the employer may, on request of the  
12 employee, grant the employee compensatory  
13 time off in lieu of payment for such overtime  
14 hours, whether or not irregular or occasional in  
15 nature and notwithstanding section 7 or any  
16 other provision of law; or

17 “(B) the employee shall be compensated  
18 for such overtime hours in accordance with such  
19 provisions, as applicable.

20 “(3) COMPUTATION OF OVERTIME.—Notwith-

21 standing the provisions of law referred to in para-  
22 graph (2)(A), an employee shall not be entitled to be  
23 compensated for credit hours worked except to the  
24 extent such employee is allowed to have such hours

1 taken into account with respect to the basic work re-  
2 quirement of the employee.

3 “(4) ACCUMULATION AND COMPENSATION.—

4 “(A) ACCUMULATION.—A full-time em-  
5 ployee on a flexible schedule under this sub-  
6 section can accumulate not more than 48 credit  
7 hours, and a part-time employee can accumu-  
8 late not more than  $\frac{1}{4}$  of the hours in the basic  
9 work requirement, over a 4-week period, of the  
10 employee, for carryover from a 4-week period to  
11 a succeeding 4-week period for credit to the  
12 basic work requirement for such period.

13 “(B) COMPENSATION.—Any employee who  
14 is on a flexible schedule program under this  
15 subsection and who is no longer subject to such  
16 a program shall be paid at the then current  
17 rate of basic pay of the employee for—

18 “(i) in the case of a full-time em-  
19 ployee, not more than 48 credit hours ac-  
20 cumulated by such employee; or

21 “(ii) in the case of a part-time em-  
22 ployee, the number of credit hours (not in  
23 excess of  $\frac{1}{4}$  of the hours in the basic work  
24 requirement, over a 4-week period, of the  
25 employee) accumulated by such employee.

1 “(d) PARTICIPATION.—

2 “(1) IN GENERAL.—Except as provided in para-  
3 graph (3), no employee may be required to partici-  
4 pate in a program described in this section.

5 “(2) PROHIBITION OF COERCION.—

6 “(A) An employer may not directly or indi-  
7 rectly intimidate, threaten, or coerce, or at-  
8 tempt to intimidate, threaten, or coerce, any  
9 employee for the purpose of interfering with  
10 such employee’s rights under this section to  
11 elect a time of arrival or departure, to elect or  
12 not to elect to work a compressed work sched-  
13 ule, to work or not to work credit hours, or to  
14 request or not to request compensatory time off  
15 in lieu of payment for overtime hours.

16 “(B) For the purpose of subsection (A),  
17 the term ‘intimidate, threaten, or coerce’ in-  
18 cludes, but is not limited to, promising to con-  
19 fer or conferring any benefit (such as appoint-  
20 ment, promotion, or compensation), or effecting  
21 or threatening to effect any reprisal (such as  
22 deprivation of appointment, promotion, or com-  
23 pensation).”

24 “(3) COLLECTIVE BARGAINING AGREEMENT.—

25 In a case in which a valid collective bargaining

1       agreement exists, an employee may only be required  
2       to participate in such a program in accordance with  
3       the agreement.

4       “(e) APPLICATION OF PROGRAMS IN THE CASE OF  
5 COLLECTIVE BARGAINING AGREEMENTS.—

6           “(1) APPLICABLE REQUIREMENTS.—In the case  
7       of employees in a unit represented by an exclusive  
8       representative, any flexible or compressed schedule  
9       described in subsection (b) or (c), respectively, and  
10      the establishment and termination of any such  
11      schedule, shall be subject to the provisions of this  
12      section and the terms of a collective bargaining  
13      agreement between the employer and the exclusive  
14      representative.

15          “(2) INCLUSION OF EMPLOYEES.—Employees  
16      within a unit represented by an exclusive representa-  
17      tive shall not be included within any program under  
18      this section except to the extent expressly provided  
19      under a collective bargaining agreement between the  
20      employer and the exclusive representative.

21          “(3) COLLECTIVE BARGAINING AGREEMENTS.—  
22      Nothing in this section shall be construed to dimin-  
23      ish the obligation of an employer to comply with any  
24      collective bargaining agreement or any employment  
25      benefits program or plan that provides lesser or

1 greater rights to employees than the benefits estab-  
2 lished under this section.

3 “(f) DEFINITIONS.—

4 “(1) BASIC WORK REQUIREMENT.—The term  
5 ‘basic work requirement’ means the number of  
6 hours, excluding overtime hours, that an employee is  
7 required to work or is required to account for by  
8 leave or otherwise.

9 “(2) COLLECTIVE BARGAINING.—The term ‘col-  
10 lective bargaining’ means the performance of the  
11 mutual obligation of the representative of an em-  
12 ployer and the exclusive representative of employees  
13 in an appropriate unit to meet at reasonable times  
14 and to consult and bargain in a good-faith effort to  
15 reach agreement with respect to the conditions of  
16 employment affecting such employees and to exe-  
17 cute, if requested by either party, a written docu-  
18 ment incorporating any collective bargaining agree-  
19 ment reached, but the obligation referred to in this  
20 paragraph does not compel either party to agree to  
21 a proposal or to make a concession.

22 “(3) COLLECTIVE BARGAINING AGREEMENT.—  
23 The term ‘collective bargaining agreement’ means an  
24 agreement entered into as a result of collective bar-  
25 gaining.



1           “(4) CREDIT HOURS.—The term ‘credit hours’  
2       means any hours, within a flexible schedule estab-  
3       lished under subsection (c), that are in excess of the  
4       basic work requirement of an employee and that the  
5       employee elects to work so as to vary the length of  
6       a workweek or a workday.

7           “(5) EMPLOYEE.—The term ‘employee’ means  
8       an employee, as defined in section 3, except that the  
9       term shall not include an employee, as defined in  
10      section 6121(2) of title 5, United States Code.

11          “(6) EMPLOYER.—The term ‘employer’ means  
12      an employer, as defined in section 3, except that the  
13      term shall not include any person acting in relation  
14      to an employee, as defined in section 6121(2) of title  
15      5, United States Code.

16          “(7) EXCLUSIVE REPRESENTATIVE.—The term  
17      ‘exclusive representative’ means any labor organiza-  
18      tion that—

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

22              “(B) was recognized by an employer imme-  
23              diately before the date of enactment of this sec-  
24              tion as the exclusive representative of employees  
25              in an appropriate unit—

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

2 “(ii) on any basis other than an elec-

3 tion;

4 and continues to be so recognized.

5 “(8) OVERTIME HOURS.—The term ‘overtime

6 hours’—

7 “(A) when used with respect to flexible

8 schedule programs under subsection (c), means

9 all hours in excess of 8 hours in a day or 40

10 hours in a week that are officially ordered in

11 advance, but does not include credit hours; and

12 “(B) when used with respect to compressed

13 schedule programs under subsection (b), means

14 any hours in excess of the specified hours that

15 constitute the compressed schedule.

16 **“SEC. 13B. PRIORITY REHIRING.**

17 “(a) PRIORITY.—

18 “(1) IN GENERAL.—Notwithstanding the Civil

19 Rights Act of 1964 (42 U.S.C. 2000e et seq.), the

20 Age Discrimination in Employment Act of 1967 (29

21 U.S.C. 621 et seq.), or any other provision of law,

22 if an employee of an employer takes a period of not

23 more than 5 years to care for a son, daughter or

24 parent of the employee, the employer may give prior-

1       ity treatment to the former employee in a hiring de-  
2       cision after the family care period.

3           “(2) NO BASIS FOR VIOLATION OR ACTION.—  
4       Notwithstanding any other provision of law, priority  
5       treatment to a former employee as described in  
6       paragraph (1)(B) that is provided by an employer in  
7       a manner consistent with this section shall not con-  
8       stitute a violation by the employer of, or serve as a  
9       basis for an action against an employer by another  
10      individual under, the Civil Rights Act of 1964, the  
11      Age Discrimination in Employment Act of 1967, or  
12      any other provision of law.

13      “(b) RELATIONSHIP TO LEAVE.—Nothing in this sec-  
14      tion shall be construed to affect any leave benefit available  
15      under other law.

16      “(c) EFFECT ON BENEFITS.—Nothing in this section  
17      shall be construed to entitle any rehired employee to—

18           “(1) the accrual of any seniority or employment  
19      benefits during any family care period; or

20           “(2) any right, benefit, or position of employ-  
21      ment other than any right, benefit, or position to  
22      which the employee was entitled prior to taking the  
23      family care period.

24      “(d) PERIODIC REPORTS.—Nothing in this section  
25      shall be construed to prohibit an employer from requiring

1 a former employee to report periodically to the employer  
2 on the status and intention of the former employee to  
3 apply for reemployment with the employer.

4 “(e) COLLECTIVE BARGAINING AGREEMENTS.—  
5 Nothing in this section shall be construed to diminish the  
6 obligation of an employer to comply with any collective  
7 bargaining agreement or any employment benefits pro-  
8 gram or plan that provides lesser or greater rights to em-  
9 ployees than the benefits established under this section.

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

11 “(1) EMPLOYMENT BENEFITS.—The term ‘em-  
12 ployment benefits’ means all benefits provided or  
13 made available to employees by an employer, includ-  
14 ing group life insurance, health insurance, disability  
15 insurance, sick leave, annual leave, educational bene-  
16 fits, and pensions, regardless of whether such bene-  
17 fits are provided by a practice or written policy of  
18 an employer or through an ‘employee benefit plan’,  
19 as defined in section 3(3) of the Employee Retire-  
20 ment Income Security Act of 1974 (29 U.S.C.  
21 1002(3)).

22 “(2) FAMILY CARE PERIOD.—The term ‘family  
23 care period’ means a period of not more than 5  
24 years during which an individual who was an em-

1        ployee cares for a son, daughter, or parent of the  
2        employee, as described in subsection (a)(1).

3            “(3) FORMER EMPLOYEE.—The term ‘former  
4        employee’ means an individual who—

5            “(A) was an employee; and

6            “(B) is taking a family care period.

7            “(4) PARENT.—The term ‘parent’ means the  
8        biological parent of an employee or an individual  
9        who stood in loco parentis to an employee when the  
10       employee was under 18 years of age.

11          “(5) REHIRED EMPLOYEE.—The term ‘rehired  
12       employee’ means an individual who—

13          “(A) was the employee of an employer; and

14          “(B) has been rehired by the employer  
15       after taking a family care period.

16          “(6) SON OR DAUGHTER.—The term ‘son or  
17       daughter’ means a biological, adopted, or foster  
18       child, a stepchild, a legal ward, or a child of a per-  
19       son standing in loco parentis, who is—

20          “(A) under 6 years of age; or

21          “(B) 6 years of age or older and incapable  
22       of self-care because of a mental or physical dis-  
23       ability.

24          “(g) EFFECTIVE DATES.—This section shall take ef-  
25       fect 6 months after the date of enactment of this section.”.

1 **SEC. 3. FAIR LABOR STANDARDS EXEMPTIONS.**

2 (a) EMPLOYEES SUBJECT TO CERTAIN LEAVE POLI-  
3 CIES.—Section 13(a)(1) of the Fair Labor Standards Act  
4 of 1938 (29 U.S.C. 213(a)(1)) is amended by inserting  
5 before the semicolon at the end thereof the following: “,  
6 regardless of whether or not such executive, administra-  
7 tive, professional, or outside sales employee—

8 “(A) is subject to reductions—

9 “(i) in accrued leave of any type; or

10 “(ii) in pay because of an absence of  
11 the employee and because—

12 “(I) the accrued leave of the em-  
13 ployee was exhausted, or

14 “(II) the employee chose to be  
15 absent without charging the accrued  
16 leave of the employee,

17 regardless of the length of the leave or absence  
18 for which the reductions are to be made, or

19 “(B) is subject to employer management  
20 policies or practices with respect to—

21 “(i) the recording of hours worked,

22 “(ii) the establishment of regular  
23 working hours,

24 “(iii) compensation of any type (irre-  
25 spective of the amount or method of deter-

1 mination) that is above the salaried level  
2 for a work week or work period, and  
3 “(iv) suspension from work without  
4 pay for disciplinary purposes”.

5 (b) EFFECTIVE DATE.—The amendment made by  
6 subsection (a) shall apply to an employee (described in  
7 such amendment) before, on, and after the date of enact-  
8 ment of this Act unless—

9 (1) an action was brought in a court involving  
10 the application of section 13(a)(1) of the Fair Labor  
11 Standards Act of 1938 (29 U.S.C. 213(a)(1)) to the  
12 employee; and

13 (2) a final judgment has been entered in the ac-  
14 tion on or before the date of enactment of this Act.

15 **SEC. 4. CONFORMING AMENDMENT TO TITLE 5, UNITED**  
16 **STATES CODE.**

17 Section 6121(5) of title 5, United States Code, is  
18 amended to read as follows:

19 “(5) ‘compressed schedule’ means—

20 “(A) in the case of a schedule of a full-  
21 time employee, a 160-hour basic work require-  
22 ment, over a 4-week period, that is scheduled  
23 for less than 20 workdays, and

24 “(B) in the case of a schedule of a part-  
25 time employee, a basic work requirement, over

- 1 a 4-week period, of less than 160 hours, that is
- 2 scheduled for less than 20 workdays;”.

