

106TH CONGRESS  
1ST SESSION

# H. R. 1380

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

APRIL 13, 1999

Mr. BALLENGER (for himself, Mr. GOODLING, Ms. DUNN, Mrs. FOWLER, Mr. STENHOLM, Mrs. ROUKEMA, Mr. DOOLEY of California, Mrs. MYRICK, Mr. SHAYS, Ms. PRYCE of Ohio, Mr. CAMPBELL, Ms. GRANGER, Mrs. NORTHUP, Mr. GREENWOOD, Mrs. CUBIN, Mrs. CHENOWETH, Mr. BARRETT of Nebraska, Mrs. BONO, Mr. BOEHNER, Mrs. BIGGERT, Mr. HOEKSTRA, Mr. MCKEON, Mr. SAM JOHNSON of Texas, Mr. TALENT, Mr. GRAHAM, Mr. NORWOOD, Mr. SCHAFFER, Mr. DEAL of Georgia, Mr. HILLEARY, Mr. KNOLLENBERG, Mr. LATHAM, Mr. CUNNINGHAM, Mr. EHRLICH, Mr. PETERSON of Pennsylvania, Mr. BURR of North Carolina, Mr. MILLER of Florida, Mr. BARTLETT of Maryland, Mr. GOODLATTE, Mr. KOLBE, Mr. HANSEN, Mr. TAYLOR of North Carolina, Mr. COBLE, Mr. WATKINS, Mr. RILEY, Mr. WELDON of Florida, Mr. SMITH of Michigan, Mr. SPENCE, and Mr. HASTINGS of Washington) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Working Families  
3 Flexibility Act of 1999”.

4 **SEC. 2. COMPENSATORY TIME.**

5 Section 7 of the Fair Labor Standards Act of 1938  
6 (29 U.S.C. 207) is amended by adding at the end the fol-  
7 lowing:

8 “(r) COMPENSATORY TIME OFF FOR PRIVATE EM-  
9 PLOYEES.—

10 “(1) GENERAL RULE.—

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

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

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

25 “(A) applicable provisions of a collective  
26 bargaining agreement between the employer

1 and the labor organization which has been cer-  
2 tified or recognized as the representative of the  
3 employees under applicable law, or

4 “(B) in the case of employees who are not  
5 represented by a labor organization which has  
6 been certified or recognized as the representa-  
7 tive of such employees under applicable law, an  
8 agreement arrived at between the employer and  
9 employee before the performance of the work  
10 and affirmed by a written or otherwise  
11 verifiable record maintained in accordance with  
12 section 11(c)—

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

17 “(ii) entered into knowingly and vol-  
18 untarily by such employees and not as a  
19 condition of employment.

20 No employee may receive or agree to receive com-  
21 pensatory time off under this subsection unless the  
22 employee has worked at least 1000 hours for the  
23 employee’s employer during a period of continuous  
24 employment with the employer in the 12 month pe-

1       riod before the date of agreement or receipt of com-  
2       pensatory time off.

3           “(3) HOUR LIMIT.—

4               “(A) MAXIMUM HOURS.—An employee  
5       may accrue not more than 160 hours of com-  
6       pensatory time.

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

20              “(C) EXCESS OF 80 HOURS.—The em-  
21      ployer may provide monetary compensation for  
22      an employee’s unused compensatory time in ex-  
23      cess of 80 hours at any time after giving the  
24      employee at least 30 days notice. Such com-

1           pensation shall be provided at the rate pre-  
2           scribed by paragraph (6).

3           “(D) POLICY.—Except where a collective  
4           bargaining agreement provides otherwise, an  
5           employer which has adopted a policy offering  
6           compensatory time to employees may dis-  
7           continue such policy upon giving employees 30  
8           days notice.

9           “(E) WRITTEN REQUEST.—An employee  
10          may withdraw an agreement described in para-  
11          graph (2)(B) at any time. An employee may  
12          also request in writing that monetary com-  
13          pensation be provided, at any time, for all com-  
14          pensatory time accrued which has not yet been  
15          used. Within 30 days of receiving the written  
16          request, the employer shall provide the em-  
17          ployee the monetary compensation due in ac-  
18          cordance with paragraph (6).

19          “(4) PRIVATE EMPLOYER ACTIONS.—An em-  
20          ployer which provides compensatory time under  
21          paragraph (1) to employees shall not directly or indi-  
22          rectly intimidate, threaten, or coerce or attempt to  
23          intimidate, threaten, or coerce any employee for the  
24          purpose of—

1           “(A) interfering with such employee’s  
2 rights under this subsection to request or not  
3 request compensatory time off in lieu of pay-  
4 ment of monetary overtime compensation for  
5 overtime hours; or

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

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

14           “(6) RATE OF COMPENSATION.—

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

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

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

1           “(B) CONSIDERATION OF PAYMENT.—Any  
2           payment owed to an employee under this sub-  
3           section for unused compensatory time shall be  
4           considered unpaid overtime compensation.

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

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

9                   “(B) who has requested the use of such  
10           compensatory time,

11           shall be permitted by the employee’s employer to use  
12           such time within a reasonable period after making  
13           the request if the use of the compensatory time does  
14           not unduly disrupt the operations of the employer.

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

18 **SEC. 3. REMEDIES.**

19           Section 16 of the Fair Labor Standards Act of 1938  
20           (29 U.S.C. 216) is amended—

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

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

1       “(f) An employer which violates section 7(r)(4) shall  
2 be liable to the employee affected in the amount of the  
3 rate of compensation (determined in accordance with sec-  
4 tion 7(r)(6)(A)) for each hour of compensatory time ac-  
5 crued by the employee and in an additional equal amount  
6 as liquidated damages reduced by the amount of such rate  
7 of compensation for each hour of compensatory time used  
8 by such employee.”.

9 **SEC. 4. NOTICE TO EMPLOYEES.**

10       Not later than 30 days after the date of the enact-  
11 ment of this Act, the Secretary of Labor shall revise the  
12 materials the Secretary provides, under regulations pub-  
13 lished at 29 C.F.R. 516.4, to employers for purposes of  
14 a notice explaining the Fair Labor Standards Act of 1938  
15 to employees so that such notice reflects the amendments  
16 made to such Act by this Act.

17 **SEC. 5. SUNSET.**

18       This Act and the amendments made by this Act shall  
19 expire 5 years after the date of the enactment of this Act.

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