

Union Calendar No. 30

113TH CONGRESS
1ST SESSION

H. R. 1406

[Report No. 113–49]

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2013

Mrs. ROBY (for herself, Mrs. McMORRIS RODGERS, Mr. KLINE, and Mr. WALBERG) introduced the following bill; which was referred to the Committee on Education and the Workforce

APRIL 30, 2013

Additional sponsors: Ms. FOXX, Mr. McKEON, Mr. HECK of Nevada, Mr. WALDEN, Mr. MESSER, Mrs. WAGNER, Mr. BONNER, Mr. BROOKS of Alabama, Mrs. NOEM, Mr. BUCSHON, Ms. JENKINS, Mr. CAMPBELL, Mr. ROE of Tennessee, Mrs. BROOKS of Indiana, Mr. WILSON of South Carolina, Mr. ROGERS of Alabama, Mr. CASSIDY, Mr. PRICE of Georgia, Mrs. ELLMERS, Mr. HUNTER, Mr. ROSKAM, Mrs. HARTZLER, Mr. LUCAS, Mr. GOWDY, Mrs. WALORSKI, Mr. SOUTHERLAND, Mr. ROHRABACHER, Mr. COBLE, Mr. SAM JOHNSON of Texas, Mr. GOODLATTE, Mr. BACHUS, Mrs. BLACK, Mr. THORNBERRY, Mr. GINGREY of Georgia, Mr. BRADY of Texas, Mr. FORBES, Mr. MCCARTHY of California, Mr. REED, Mr. NUGENT, Ms. HERRERA BEUTLER, Mrs. BLACKBURN, Mr. CALVERT, Mr. CAMP, Mr. CARTER, Mr. CULBERSON, Ms. GRANGER, Mr. BURGESS, Mr. KINGSTON, Mr. COLE, Mr. PAULSEN, Mr. McHENRY, Mr. ROONEY, Mr. JORDAN, Mr. TERRY, Mr. SMITH of Texas, Mr. ADERHOLT, Mr. ISSA, Mr. FRANKS of Arizona, Mr. McCLINTOCK, Mr. MARCHANT, Mr. KELLY of Pennsylvania, Mr. LATTA, Mr. CONAWAY, Mr. HUDSON, Mr. GRIFFIN of Arkansas, Mr. TIBERI, Mr. POSEY, Mr. MILLER of Florida, Mr. ROGERS of Kentucky, Mr. BOUSTANY, Mr. ALEXANDER, Mr. GRAVES of Missouri, Mr. SESSIONS, Mrs. LUMMIS, Mrs. BACHMANN, Mr. McCAUL, Mr. ROYCE, Mr. BRIDENSTINE, Mr. KING of Iowa, Mrs. MILLER of Michigan, Mr. SALMON, Mr. SHUSTER, Mr. HUIZENGA of Michigan, Mr. DESJARLAIS, Mr. UPTON, Mr. HARPER, Mr. FLEISCHMANN, Mr. WEBER of Texas, Mr. MULLIN, Mr. ROKITA, Mr. COTTON, Mr. DUNCAN of South

Carolina, Mr. GARDNER, Mr. TIPTON, Mr. YODER, Mr. AUSTIN SCOTT of Georgia, Mr. GRAVES of Georgia, Mr. DAINES, Mr. ROGERS of Michigan, Mr. CHAFFETZ, Mr. HENSARLING, Mr. FARENTHOLD, Mr. WESTMORELAND, Mr. STIVERS, Mr. WOODALL, Mr. ROSS, Mr. DUFFY, Mr. SIMPSON, Mr. HURT, Mr. FINCHER, Mr. LONG, Mr. FLORES, Mr. WOMACK, Mr. SMITH of Nebraska, Mr. LANKFORD, Mr. GUTHRIE, Mr. GRIFFITH of Virginia, Mr. NUNNELEE, Mr. AMODEI, Mr. YOUNG of Indiana, Mr. OLSON, Mr. NEUGEBAUER, Mr. HASTINGS of Washington, Mr. STEWART, Mr. CRAMER, Mr. STUTZMAN, Mr. WITTMAN, Mr. LABRADOR, Mr. HOLDING, Mr. BISHOP of Utah, Mr. DESANTIS, Mr. RIBBLE, Mr. JOHNSON of Ohio, Mr. GIBBS, Mr. BENTIVOLIO, Mr. HARRIS, Mr. REICHERT, Mr. VALADAO, Mr. COLLINS of New York, Mr. COFFMAN, Mr. THOMPSON of Pennsylvania, Mr. NUNES, Mr. CRAWFORD, Mr. MULVANEY, Mr. LATHAM, Mr. MEADOWS, Mr. GARRETT, Mr. BUCHANAN, Mr. HALL, Mr. SENSENBRENNER, Mr. FORTENBERRY, Mr. SCALISE, Mr. PEARCE, Mr. GOHMERT, Mr. FLEMING, Mr. ROTHFUS, Mr. LAMBORN, Mr. WEBSTER of Florida, Mr. RYAN of Wisconsin, Mr. SCHWEIKERT, Mr. GOSAR, Mr. POMPEO, Mr. STOCKMAN, Mr. COLLINS of Georgia, and Mr. HUELSKAMP

APRIL 30, 2013

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on April 9, 2013]

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 Flexi-*
5 *bility Act of 2013”.*

6 **SEC. 2. COMPENSATORY TIME.**

7 *Section 7 of the Fair Labor Standards Act of 1938*
8 *(29 U.S.C. 207) is amended by adding at the end the fol-*
9 *lowing:*

10 “(s) *COMPENSATORY TIME OFF FOR PRIVATE EM-*
11 *PLOYEES.—*

12 “(1) *GENERAL RULE.—An employee may receive,*
13 *in accordance with this subsection and in lieu of*
14 *monetary overtime compensation, compensatory time*
15 *off at a rate not less than one and one-half hours for*
16 *each hour of employment for which overtime com-*
17 *penensation is required by this section.*

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

22 “(A) *applicable provisions of a collective*
23 *bargaining agreement between the employer and*
24 *the labor organization that has been certified or*

1 *recognized as the representative of the employees*
2 *under applicable law; or*

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

12 “(i) *in which the employer has offered*
13 *and the employee has chosen to receive com-*
14 *pensatory time in lieu of monetary overtime*
15 *compensation; and*

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

19 *No employee may receive or agree to receive compen-*
20 *satory time off under this subsection unless the em-*
21 *ployee has worked at least 1,000 hours for the employ-*
22 *ee’s employer during a period of continuous employ-*
23 *ment with the employer in the 12-month period before*
24 *the date of agreement or receipt of compensatory time*
25 *off.*

1 “(3) *HOUR LIMIT.*—

2 “(A) *MAXIMUM HOURS.*—*An employee may*
3 *accrue not more than 160 hours of compensatory*
4 *time.*

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

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

24 “(D) *POLICY.*—*Except where a collective*
25 *bargaining agreement provides otherwise, an em-*

1 *ployer that has adopted a policy offering com-*
2 *pensatory time to employees may discontinue*
3 *such policy upon giving employees 30 days no-*
4 *tice.*

5 *“(E) WRITTEN REQUEST.—An employee*
6 *may withdraw an agreement described in para-*
7 *graph (2)(B) at any time. An employee may also*
8 *request in writing that monetary compensation*
9 *be provided, at any time, for all compensatory*
10 *time accrued that has not yet been used. Within*
11 *30 days of receiving the written request, the em-*
12 *ployer shall provide the employee the monetary*
13 *compensation due in accordance with paragraph*
14 *(6).*

15 *“(4) PRIVATE EMPLOYER ACTIONS.—An em-*
16 *ployer that provides compensatory time under para-*
17 *graph (1) to employees shall not directly or indirectly*
18 *intimidate, threaten, or coerce or attempt to intimi-*
19 *date, threaten, or coerce any employee for the purpose*
20 *of—*

21 *“(A) interfering with such employee’s rights*
22 *under this subsection to request or not request*
23 *compensatory time off in lieu of payment of*
24 *monetary overtime compensation for overtime*
25 *hours; or*

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

3 “(5) *TERMINATION OF EMPLOYMENT.*—An em-
4 ployee who has accrued compensatory time off author-
5 ized to be provided under paragraph (1) shall, upon
6 the voluntary or involuntary termination of employ-
7 ment, be paid for the unused compensatory time in
8 accordance with paragraph (6).

9 “(6) *RATE OF COMPENSATION.*—

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

14 “(i) the regular rate received by such
15 employee when the compensatory time was
16 earned; or

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

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

24 “(7) *USE OF TIME.*—An employee—

1 “(A) who has accrued compensatory time off
2 authorized to be provided under paragraph (1);
3 and

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

10 “(8) *DEFINITIONS.*—For purposes of this sub-
11 section—

12 “(A) the term ‘employee’ does not include
13 an employee of a public agency; and

14 “(B) the terms ‘overtime compensation’ and
15 ‘compensatory time’ shall have the meanings
16 given such terms by subsection (o)(7).”.

17 **SEC. 3. REMEDIES.**

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

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

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

24 “(f) An employer that violates section 7(s)(4) shall be
25 liable to the employee affected in the amount of the rate

1 of compensation (determined in accordance with section
2 7(s)(6)(A)) for each hour of compensatory time accrued by
3 the employee and in an additional equal amount as liq-
4 uidated damages reduced by the amount of such rate of com-
5 pensation for each hour of compensatory time used by such
6 employee.”.

7 **SEC. 4. NOTICE TO EMPLOYEES.**

8 Not later than 30 days after the date of enactment of
9 this Act, the Secretary of Labor shall revise the materials
10 the Secretary provides, under regulations published in sec-
11 tion 516.4 of title 29, Code of Federal Regulations, to em-
12 ployers for purposes of a notice explaining the Fair Labor
13 Standards Act of 1938 to employees so that such notice re-
14 flects the amendments made to such Act by this Act.

15 **SEC. 5. SUNSET.**

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

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