

Working Families Flexibility Act of 2013

Background

The Working Families Flexibility Act, to be introduced in the U.S. House of Representatives the week of April 8, 2013 by Martha Roby (R-AL), claims to give working men and women in hourly jobs more time with their families by allowing them, through an agreement with their employer, to choose paid time off as compensation for working more than 40 hours in one week (“comp time”). This proposal is one of the centerpieces of House Majority Leader Eric Cantor’s “make life work” agenda. The Working Families Flexibility Act:

- ▶ Allows employers to offer comp time in lieu of time-and-a-half pay to hourly, non-supervisory (“non-exempt”) workers who work more than 40 hours in a week.
- ▶ Allows a worker to bank up to 160 hours of comp time, but without giving the employee the guaranteed right to use the time when they need it, even in the case of a personal or family emergency. There is no remedy for a worker whose request to use comp time is denied other than requesting cash-out for the unused time.
- ▶ Allows employers to unilaterally decide to pay employees for any earned comp time that has been banked beyond 80 hours, jeopardizing an employee’s careful planning for time off for a parental leave or major surgery.
- ▶ Allows workers to request that their banked comp time be paid out in cash rather than time, but gives employers up to 30 days to comply.
- ▶ Provides the right to sue if a worker is intimidated, threatened or coerced with respect to a comp time agreement, but does not permit a worker to use more cost-effective administrative remedies through the Department of Labor.
- ▶ Provides no additional funding to the Department of Labor for investigation, enforcement or education despite adding significant new complexities to the Fair Labor Standards Act (FLSA).

The misnamed Working Families Flexibility Act will likely mean more overtime hours and less money for workers without any guarantee of time off when they need it. Here are nine key flaws and a tenth point listing better family friendly policy solutions:

1. Workers would have less time, less money and less flexibility if this bill becomes law.
2. The proposal would likely increase involuntary overtime by making it cheaper for employers. People would get to spend more time with their families only after being forced to more time away from their families.
3. The key family time flexibility bill is the Fair Labor Standards Act, which for 75 years has required overtime pay for more than 40 hours a week in order to create a **disincentive** for employers to work people too hard. This bill instead provides an **incentive** for long hours.
4. Wage theft is a major problem for low-wage workers today. This bill would add to the problem by making it easier for employers to avoid overtime compensation obligations.

5. The employer, not the employee, has the final say over when comp time can be used. Employers can veto an employee's request if they feel it would "unduly disrupt" the employer's business. And employees are required to make a request in advance without any leeway in emergency situations. Far from guaranteeing that workers can use the comp time they've earned when they need it most, this bill makes work less flexible for employees.
6. Comp time as proposed in the Cantor/Roby "flexibility" bill will make it harder for those who need to work extra hours to pay their bills. Although the bill provides the right to sue in court to workers who face coercion, intimidation or threats, low-wage workers are not in a position to endure costly and protracted litigation, nor are they in a position to jeopardize their jobs by taking their employers to court.
7. Employees have no special protections for recouping the value of their banked comp time if their employer goes out of business or goes bankrupt. 160 hours of banked comp time is the equivalent of more than \$2200 for a typical worker aged 25 and older.
8. Nothing stops employers from offering flexible schedules right now, as best practice employers know. The FLSA's 40-hour workweek is entirely compatible with flexible scheduling.
9. Nothing in current law prohibits employers from providing unpaid leave to employees who work a lot of overtime and want more time off. But current law also requires that those same employees be paid fairly for their overtime hours.
10. **Workers desperately need more time and more flexibility as well as fair wages.** Lawmakers who value families should support the following proposals:

For time to care for loved ones and true flexibility:

- ▶ **The Healthy Families Act** (H.R. 1286/S. 631) would provide workers the right to earn up to seven paid sick days each year to recover from short-term illness, to care for a sick family member, to seek routine medical care or to obtain assistance related to domestic violence, sexual assault or stalking. Employers that already provide this type of leave would not have to provide additional sick time.
- ▶ **Family and Medical Leave Act Expansions** would extend the 1993 Family and Medical Leave Act's (FMLA's) guarantee of job-protection to workers in smaller businesses and to those who work part time. FMLA leave should also be extended to workers who need to care for grandparents, grandchildren, siblings, in-laws and domestic partners. And the law's uses should be amended to include a basic number of hours each year that parents can use to meet with their child's teachers or school administrators. The FMLA should also be available for victims of domestic violence, sexual assault or stalking to seek assistance.
- ▶ **National Paid Family and Medical Leave Insurance**, modeled on successful programs in California and New Jersey, would allow workers and employers to fund partially paid leaves for employees who need to take a limited amount of time away from work to care for a newborn, newly adopted child or newly placed foster child; care for a family member with a serious health condition; address their own serious health conditions; or deal with exigencies arising from a military service member's deployment.

- ▶ **Fair scheduling practices policies** would protect workers who refuse overtime and create barriers to just-in-time scheduling and on-call shifts, which result in underemployment, lost opportunities and extra expenses for workers. Policies should also encourage predictability and true flexibility in workers' ability to vary their work hours consistent with current FLSA protections.

For fairer wages:

- ▶ **The Fair Minimum Wage Act** (H.R. 1010/S. 5460) would provide an updated federal minimum wage for all workers, including tipped workers.
- ▶ **The Paycheck Fairness Act** (H.R. 377/S. 460) would help women challenge and eliminate discriminatory pay practices in the workplace, would help train women and girls about salary negotiation, support government collection of critical wage data, and reward employers that have good pay practices.