

108TH CONGRESS  
1ST SESSION

# H. R. 1119

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

MARCH 6, 2003

Mrs. BIGGERT (for herself, Ms. PRYCE of Ohio, Ms. DUNN, Ms. GRANGER, Mr. BOEHNER, Mr. NORWOOD, Mrs. BLACKBURN, Mr. BALLENGER, Mrs. MYRICK, Ms. HART, Mr. BLUNT, Mr. STENHOLM, Mrs. JOHNSON of Connecticut, Mrs. WILSON of New Mexico, Mr. LIPINSKI, Mrs. BONO, Mr. SAM JOHNSON of Texas, Mrs. MUSGRAVE, Mrs. NORTHUP, Mr. COLE, Mrs. JO ANN DAVIS of Virginia, Mr. GINGREY, Mr. REYNOLDS, Mr. TIBERI, Mr. PETRI, Mr. HOEKSTRA, Mr. MCKEON, Mr. GREENWOOD, Mr. EHLERS, Mr. DEMINT, Mr. ISAKSON, Mr. KELLER, Mr. PLATTS, Mr. OSBORNE, Mr. WILSON of South Carolina, Mr. KLINE, Mr. BARRETT of South Carolina, Ms. GINNY BROWN-WAITE of Florida, Mr. BRADY of Texas, Mr. BURTON of Indiana, Mr. BUYER, Mr. BROWN of South Carolina, Mr. CAMP, Mr. CRANE, Mr. CULBERSON, Mr. CUNNINGHAM, Mr. DREIER, Mr. FRANKS of Arizona, Mr. GOODLATTE, Mr. HASTINGS of Washington, Mr. KENNEDY of Minnesota, Mr. KIRK, Mr. KOLBE, Mr. MANZULLO, Mr. OTTER, Mr. OSE, Mr. PAUL, Mr. PITTS, Mr. ROGERS of Michigan, Mr. ROHRABACHER, Mr. SCHROCK, Mr. SIMMONS, Mr. SMITH of Michigan, Mr. SOUDER, Mr. TANCREDO, Mr. TERRY, Mr. WALDEN of Oregon, Mr. WELDON of Florida, Mr. HYDE, Mr. BAKER, Mr. GILLMOR, Mr. CHABOT, and Mr. SHADEGG) 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,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Family Time Flexi-  
5 bility Act”.

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

12               “(1) GENERAL RULE.—

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

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

23               “(2) CONDITIONS.—An employer may provide  
24 compensatory time to employees under paragraph

1 (1)(A) only if such time is provided in accordance  
2 with—

3 “(A) applicable provisions of a collective  
4 bargaining agreement between the employer  
5 and the labor organization which has been cer-  
6 tified or recognized as the representative of the  
7 employees under applicable law; or

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

17 “(i) in which the employer has offered  
18 and the employee has chosen to receive  
19 compensatory time in lieu of monetary  
20 overtime compensation; and

21 “(ii) entered into knowingly and vol-  
22 untarily by such employees and not as a  
23 condition of employment.

24 No employee may receive or agree to receive com-  
25 pensatory time off under this subsection unless the

1 employee has worked at least 1000 hours for the  
2 employee's employer during a period of continuous  
3 employment with the employer in the 12-month pe-  
4 riod before the date of agreement or receipt of com-  
5 pensatory time off.

6 “(3) HOUR LIMIT.—

7 “(A) MAXIMUM HOURS.—An employee  
8 may accrue not more than 160 hours of com-  
9 pensatory time.

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

23 “(C) EXCESS OF 80 HOURS.—The em-  
24 ployer may provide monetary compensation for  
25 an employee's unused compensatory time in ex-

1           cess of 80 hours at any time after giving the  
2           employee at least 30 days notice. Such com-  
3           pensation shall be provided at the rate pre-  
4           scribed by paragraph (6).

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

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

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

1 intimidate, threaten, or coerce any employee for the  
2 purpose of—

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

8 “(B) requiring any employee to use such  
9 compensatory time.

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

16 “(6) RATE OF COMPENSATION.—

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

21 “(i) the regular rate received by such  
22 employee when the compensatory time was  
23 earned; or

24 “(ii) the final regular rate received by  
25 such employee,

1           whichever is higher.

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

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

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

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

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

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

19   **SEC. 3. REMEDIES.**

20           Section 16 of the Fair Labor Standards Act of 1938  
21   (29 U.S.C. 216) is amended—

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

25           (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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