

111TH CONGRESS  
2D SESSION

# S. 3840

To permit employees to request, and to ensure employers consider requests for, flexible work terms and conditions, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 2010

Mr. CASEY (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To permit employees to request, and to ensure employers consider requests for, flexible work terms and conditions, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Working Families  
5 Flexibility Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) EMPLOYEE.—The term “employee” means  
9 an individual—

1 (A) who is—

2 (i)(I) an employee (including an appli-  
3 cant), as defined in section 3(e) of the Fair  
4 Labor Standards Act of 1938 (29 U.S.C.  
5 203(e)), who is not covered under any of  
6 clauses (ii) through (v), including such an  
7 employee of the Library of Congress, ex-  
8 cept that a reference in such section to an  
9 employer shall be considered to be a ref-  
10 erence to an employer described in clauses  
11 (i)(I) and (ii) of paragraph (2)(A); or

12 (II) an employee (including an appli-  
13 cant) of the Government Accountability  
14 Office;

15 (ii) a State employee (including an ap-  
16 plicant) described in section 304(a) of the  
17 Government Employee Rights Act of 1991  
18 (42 U.S.C. 2000e–16e(a));

19 (iii) a covered employee (including an  
20 applicant), as defined in section 101 of the  
21 Congressional Accountability Act of 1995  
22 (2 U.S.C. 1301);

23 (iv) a covered employee (including an  
24 applicant), as defined in section 411(c) of  
25 title 3, United States Code; or

1 (v) a Federal officer or employee (in-  
2 cluding an applicant) covered under sub-  
3 chapter V of chapter 63 of title 5, United  
4 States Code; and

5 (B) who works an average of at least 20  
6 hours per week or, in the alternative, at least  
7 1,000 hours per year.

8 (2) EMPLOYER.—

9 (A) IN GENERAL.—The term “employer”  
10 means a person who is—

11 (i)(I) a covered employer, as defined  
12 in subparagraph (B), who is not covered  
13 under any of subclauses (II) through (V);

14 (II) an entity employing a State em-  
15 ployee described in section 304(a) of the  
16 Government Employee Rights Act of 1991;

17 (III) an employing office, as defined  
18 in section 101 of the Congressional Ac-  
19 countability Act of 1995;

20 (IV) an employing office, as defined in  
21 section 411(c) of title 3, United States  
22 Code; or

23 (V) an employing agency covered  
24 under subchapter V of chapter 63 of title  
25 5, United States Code; and

1 (ii) is engaged in commerce (including  
2 government), in the production of goods  
3 for commerce, or in an enterprise engaged  
4 in commerce (including government) or in  
5 the production of goods for commerce.

6 (B) COVERED EMPLOYER.—

7 (i) IN GENERAL.—In subparagraph  
8 (A)(i)(I), the term “covered employer”—

9 (I) means any person engaged in  
10 commerce or in any industry or activ-  
11 ity affecting commerce who employs  
12 15 or more employees for each work-  
13 ing day during each of 20 or more  
14 calendar workweeks in the current or  
15 preceding calendar year;

16 (II) includes—

17 (aa) any person who acts,  
18 directly or indirectly, in the inter-  
19 est of such an employer to any of  
20 the employees of such employer;  
21 and

22 (bb) any successor in inter-  
23 est of such an employer; and

24 (III) includes an agency de-  
25 scribed in clause (iii) or (iv) of sub-

1 paragraph (A) of section 101(4) of  
2 the Family and Medical Leave Act of  
3 1993 (29 U.S.C. 2611(4)), to which  
4 subparagraph (B) of such section  
5 shall apply.

6 (ii) DEFINITIONS.—For purposes of  
7 this subparagraph:

8 (I) COMMERCE.—The terms  
9 “commerce” and “industry or activity  
10 affecting commerce” have the mean-  
11 ings given the terms in section 101 of  
12 such Act (29 U.S.C. 2611).

13 (II) EMPLOYEE; PERSON.—The  
14 terms “employee” and “person” have  
15 the meanings given such terms in sec-  
16 tion 3 of the Fair Labor Standards  
17 Act of 1938 (29 U.S.C. 203).

18 (C) PREDECESSORS.—Any reference in  
19 this paragraph to an employer shall include a  
20 reference to any predecessor of such employer.

21 (3) SECRETARY.—The term “Secretary” means  
22 the Secretary of Labor.

1 **SEC. 3. STATUTORY RIGHT TO REQUEST FLEXIBLE WORK**  
2 **TERMS AND CONDITIONS.**

3 (a) IN GENERAL.—An employee may apply to the  
4 employee's employer for a change in the employee's terms  
5 or conditions of employment if the change relates to—

6 (1) the number of hours the employee is re-  
7 quired to work;

8 (2) the times when the employee is required to  
9 work; or

10 (3) where the employee is required to work.

11 (b) CONTENTS.—An application submitted under this  
12 section shall—

13 (1) state that the application is an application  
14 described in subsection (a);

15 (2) specify the change applied for and the date  
16 on which the employee requests that the change be-  
17 come effective; and

18 (3) explain what effect, if any, the employee  
19 thinks the change applied for would have on the em-  
20 ployer and how, in the employee's opinion, any such  
21 effect might be dealt with.

22 (c) SUBMISSIONS.—

23 (1) PERIOD BETWEEN SUBMISSIONS.—If an  
24 employee, who has submitted an application under  
25 this section to an employer, submits a further appli-  
26 cation under this section to the same employer be-

1 fore the end of the period of 12 months beginning  
2 with the date on which the previous application was  
3 submitted, that further application shall not be cov-  
4 ered by section 4.

5 (2) FORM AND TIMING.—The Secretary shall by  
6 regulation specify—

7 (A) the form of applications submitted  
8 under this section; and

9 (B) when such an application shall be con-  
10 sidered to be submitted.

11 **SEC. 4. EMPLOYER'S DUTIES IN RELATION TO APPLICA-**  
12 **TIONS.**

13 (a) IN GENERAL.—An employer to whom an em-  
14 ployee submits an application under section 3 shall con-  
15 sider the application in accordance with regulations issued  
16 by the Secretary.

17 (b) REGULATIONS.—Regulations issued under sub-  
18 section (a)—

19 (1) shall include provisions that provide—

20 (A) that the employer and the employee  
21 shall hold a meeting to discuss an application  
22 submitted under section 3 within 14 days after  
23 the date of submission;

24 (B) that the employer shall give the em-  
25 ployee a written decision regarding the applica-

1           tion within 14 days after the date of the meet-  
2           ing described in subparagraph (A);

3           (C) that a decision under subparagraph  
4           (B) to reject the application shall state the  
5           grounds for the decision, including whether  
6           those grounds included—

7                   (i) the identifiable cost of the change  
8                   in a term or condition of employment re-  
9                   quested in the application, including the  
10                  costs of loss of productivity, of retraining  
11                  or hiring employees, or of transferring em-  
12                  ployees from 1 facility to another facility;

13                  (ii) the overall financial resources in-  
14                  volved;

15                  (iii) for an employer with multiple fa-  
16                  cilities, the geographic separateness or ad-  
17                  ministrative or fiscal relationship of the fa-  
18                  cilities;

19                  (iv) the effect of the change on the  
20                  employer's ability to meet customer de-  
21                  mand; or

22                  (v) other factors specified by the Sec-  
23                  retary in regulation;

24           (D) that if the employer rejects the em-  
25           ployee's application, the employer may propose



1 in writing an alternative change to the employ-  
2 ee's hours, times, and place of work;

3 (E) that if the employee is dissatisfied with  
4 the employer's decision under subparagraph (B)  
5 and the alternative described in subparagraph  
6 (D), the employee has the right to request re-  
7 consideration of the decision within 14 days  
8 after the later of—

9 (i) the date on which the employer  
10 gives the employee the decision under sub-  
11 paragraph (B); and

12 (ii) if applicable, the date on which  
13 the employer proposes the alternative de-  
14 scribed in subparagraph (D);

15 (F) for procedures for exercising the right  
16 to request reconsideration described in subpara-  
17 graph (E), including procedures requiring the  
18 employee to set out the grounds for reconsider-  
19 ation, including any inaccuracies or misstate-  
20 ments that the employee contends were in the  
21 employer's decision;

22 (G) that the decision under subparagraph  
23 (B) shall include such information as the regu-  
24 lations shall specify relating to the right to re-  
25 quest reconsideration under subparagraph (E);

1           (H) that the employer and the employee  
2 shall hold a meeting to discuss the request for  
3 reconsideration described in subparagraph (E)  
4 within 14 days after the date on which the em-  
5 ployee gives notice of the request for reconsider-  
6 ation to the employer;

7           (I) that the employer shall give the em-  
8 ployee a written decision regarding the request  
9 for reconsideration within 14 days after the  
10 date of the meeting described in subparagraph  
11 (H);

12           (J) that a decision under subparagraph (I)  
13 to deny the request for reconsideration shall  
14 state the grounds for the decision, including  
15 whether those grounds included the factors de-  
16 scribed in clauses (i) through (v) of subpara-  
17 graph (C);

18           (K) that a statement made under subpara-  
19 graph (C) or (J) shall contain a sufficient ex-  
20 planation of the grounds for the decision in-  
21 volved;

22           (L) that the employee shall have a right to  
23 be accompanied at meetings described in sub-  
24 paragraph (A) or (H) by a representative of the

1 employee's choosing with such qualifications as  
2 the regulations shall specify; and

3 (M) that if such a representative of the  
4 employee's choosing is not available to attend a  
5 meeting described in subparagraph (A) or (H),  
6 the meeting shall be postponed;

7 (2) may include provisions that provide—

8 (A) that any requirement of the regula-  
9 tions shall not apply in a case in which such an  
10 application is disposed of by agreement or with-  
11 drawn;

12 (B) for extension of a time limit in a case  
13 in which the employer and employee agree, or  
14 in such other circumstances as the regulations  
15 may specify; and

16 (C) for applications to be treated as with-  
17 drawn in specified circumstances; and

18 (3) may include different provisions for dif-  
19 ferent cases or circumstances.

20 **SEC. 5. PROHIBITED ACTS.**

21 (a) INTERFERENCE WITH RIGHTS.—It shall be un-  
22 lawful for any employer to interfere with, restrain, or deny  
23 the exercise of, or the attempt to exercise, any right pro-  
24 vided under this Act.

1 (b) INTERFERENCE WITH APPLICATION, PRO-  
2 CEEDINGS, OR INQUIRIES.—It shall be unlawful for any  
3 employer to discharge or in any other manner discriminate  
4 against (including retaliating against) any individual be-  
5 cause such individual—

6 (1) has submitted (or attempted to submit) an  
7 application under section 3;

8 (2) has filed an action, or has instituted or  
9 caused to be instituted any proceeding, under or re-  
10 lated to this Act;

11 (3) has given, or is about to give, any informa-  
12 tion in connection with any inquiry or proceeding re-  
13 lating to any right provided under this Act;

14 (4) has testified, or is about to testify, in any  
15 inquiry or proceeding relating to any right provided  
16 under this Act;

17 (5) has opposed any practice made unlawful by  
18 this Act; or

19 (6) has in any other way exercised or attempted  
20 to exercise any right provided under this Act.

21 **SEC. 6. ENFORCEMENT.**

22 (a) DEFINITIONS.—Except as provided in subsection  
23 (d), in this section:

1           (1) EMPLOYEE.—The term “employee” means  
2           an employee described in clause (i) or (ii) of section  
3           2(1)(A).

4           (2) EMPLOYER.—The term “employer” means  
5           an employer described in subclause (I) or (II) of sec-  
6           tion 2(2)(A)(i).

7           (b) GENERAL AUTHORITY.—The provisions of this  
8           Act may be enforced pursuant to the following provisions:

9           (1) INVESTIGATION AND ASSESSMENT.—An em-  
10          ployee who is affected by a violation of a right in  
11          section 5 (including a violation relating to a right  
12          provided under section 3 or 4) may make a com-  
13          plaint to the Administrator of the Wage and Hour  
14          Division of the Employment Standards Administra-  
15          tion of the Department of Labor, alleging that the  
16          employer involved has violated section 5. The Ad-  
17          ministrator shall investigate, and may issue an order  
18          making determinations, and assessing a civil penalty  
19          described in section 7(a)(1) or awarding relief de-  
20          scribed in section 7(a)(2), as appropriate, with re-  
21          spect to the alleged violation.

22          (2) ADMINISTRATIVE HEARING.—An affected  
23          person who takes exception to an order issued under  
24          paragraph (1) may request an administrative hear-  
25          ing concerning the order under procedures estab-

1 lished by the Secretary that comply with the require-  
2 ments of sections 554, 556, and 557 of title 5,  
3 United States Code, and regulations promulgated by  
4 the Secretary. Such hearing shall be conducted expe-  
5 ditiously. If no affected person requests the hearing  
6 within 60 days after the order is issued under para-  
7 graph (1), the order shall be deemed to be a final  
8 order that is not subject to judicial review.

9 (3) ENFORCEMENT.—The amount of any pen-  
10 alty assessed against an employer under this sub-  
11 section, when finally determined, may be—

12 (A) deducted from any sums owed by the  
13 United States to the employer; or

14 (B) recovered in a civil action brought  
15 against the employer by the Secretary in any  
16 court of competent jurisdiction, in which action  
17 the Secretary shall be represented by the Sec-  
18 retary of Labor.

19 (4) CIVIL ACTION.—An affected person desiring  
20 review of an order issued under paragraph (2) (other  
21 than a nonreviewable order) may file a petition for  
22 review in an appropriate Federal court of appeals.

23 (5) CIVIL ACTION BY THE SECRETARY FOR IN-  
24 JUNCTIVE RELIEF.—The Secretary may bring an ac-  
25 tion for a violation described in paragraph (1) in a

1 district court of the United States to obtain the in-  
2 junctive relief described in section 7(b).

3 (c) GOVERNMENT ACCOUNTABILITY OFFICE AND LI-  
4 BRARY OF CONGRESS.—Notwithstanding any other provi-  
5 sion of this section, the Secretary is authorized to enter  
6 into agreements with the Librarian of Congress and the  
7 Comptroller General of the United States with respect to  
8 individuals employed in the Library of Congress and the  
9 Government Accountability Office, respectively, to provide  
10 for the carrying out of functions of the Secretary under  
11 subsection (b) with respect to such individuals.

12 (d) OTHER EMPLOYEES.—

13 (1) EMPLOYEES COVERED BY CONGRESSIONAL  
14 ACCOUNTABILITY ACT OF 1995.—Notwithstanding  
15 any other provision of this section or section 7, the  
16 powers, remedies, and procedures provided in the  
17 Congressional Accountability Act of 1995 (2 U.S.C.  
18 1301 et seq.) to the Board (as defined in section  
19 101 of that Act (2 U.S.C. 1301)), or any person, al-  
20 leging a violation of section 202(a)(1) of that Act (2  
21 U.S.C. 1312(a)(1)) shall be the powers, remedies,  
22 and procedures this Act provides to that Board, or  
23 any person, alleging an unlawful employment prac-  
24 tice in violation of this Act against an employee de-  
25 scribed in section 2(1)(A)(iii).

1           (2) EMPLOYEES COVERED BY CHAPTER 5 OF  
2           TITLE 3, UNITED STATES CODE.—Notwithstanding  
3           any other provision of this section or section 7, the  
4           powers, remedies, and procedures provided in chap-  
5           ter 5 of title 3, United States Code, to the Presi-  
6           dent, the Merit Systems Protection Board, or any  
7           person, alleging a violation of section 412(a)(1) of  
8           that title, shall be the powers, remedies, and proce-  
9           dures this Act provides to the President, that Board,  
10          or any person, respectively, alleging an unlawful em-  
11          ployment practice in violation of this Act against an  
12          employee described in section 2(1)(A)(iv).

13          (3) EMPLOYEES COVERED BY CHAPTER 63 OF  
14          TITLE 5, UNITED STATES CODE.—Notwithstanding  
15          any other provision of this section or section 7, the  
16          powers, remedies, and procedures provided in title 5,  
17          United States Code, to an employing agency, pro-  
18          vided in chapter 12 of that title to the Merit Sys-  
19          tems Protection Board, or provided in that title to  
20          any person, alleging a violation of chapter 63 of that  
21          title, shall be the powers, remedies, and procedures  
22          this Act provides to that agency, that Board, or any  
23          person, respectively, alleging an unlawful employ-  
24          ment practice in violation of this Act against an em-  
25          ployee described in section 2(1)(A)(v).



1 **SEC. 7. REMEDIES.**

2 (a) ADMINISTRATIVE PROCEEDINGS AND ACTIONS  
3 FOR REVIEW.—

4 (1) INTERFERENCE WITH EXERCISE OF  
5 RIGHTS.—In an action brought under paragraph (1),  
6 (2), or (4) of section 6(b), an employer who violates  
7 the provisions of section 5(a) (including a violation  
8 relating to a right provided under section 3 or 4)  
9 shall be subject to a civil penalty of not less than  
10 \$1000 and not more than \$5,000 for each employee  
11 who was the subject of such a violation.

12 (2) RETALIATION.—In an action brought under  
13 paragraph (1), (2), or (4) of section 6(b), if an em-  
14 ployer violates section 5(b), the employee who is af-  
15 fected by the violation or the Secretary, as appro-  
16 priate, may obtain an order awarding such equitable  
17 relief as may be appropriate, including employment,  
18 reinstatement, promotion, back pay, and a change in  
19 the terms or conditions of employment.

20 (b) CIVIL ACTION BY THE SECRETARY FOR INJUNC-  
21 TIVE RELIEF.—In an action brought under section  
22 6(b)(5), the Secretary may obtain an order—

23 (1) restraining violations of section 5 (including  
24 a violation relating to a right provided under section  
25 3 or 4); or

1           (2) awarding such other equitable relief as may  
2           be appropriate, including employment, reinstatement,  
3           promotion, back pay, and a change in the  
4           terms or conditions of employment.

5 **SEC. 8. NOTICE.**

6           (a) IN GENERAL.—Each employer shall post and  
7           keep posted, in conspicuous places on the premises of the  
8           employer where notices to employees and applicants for  
9           employment are customarily posted, a notice, to be prepared or approved by the Secretary (or the appropriate  
10          officer specified in section 12(a), as applicable), setting  
11          forth excerpts from, or summaries of, the pertinent provisions of this Act and information pertaining to the filing  
12          of a complaint under section 6(b).

13          (b) PENALTY.—Any employer that willfully violates  
14          this section may be assessed a civil money penalty not to  
15          exceed \$500 for each separate offense.

16 **SEC. 9. RECORDKEEPING.**

17          Any employer shall make, keep, and preserve records  
18          pertaining to compliance with this Act in accordance with  
19          regulations issued under section 12.

20 **SEC. 10. RESEARCH, EDUCATION, AND TECHNICAL ASSISTANCE PROGRAM.**

21          (a) IN GENERAL.—The Secretary (and each officer  
22          specified in section 12(a), as applicable) shall provide in-

1 formation and technical assistance to employers, labor or-  
2 ganizations, and the general public concerning compliance  
3 with this Act.

4 (b) PROGRAM.—In order to achieve the objectives of  
5 this Act, the Secretary (and each officer specified in sec-  
6 tion 12(a), as applicable) shall carry on a continuing pro-  
7 gram of research, education, and technical assistance, in-  
8 cluding—

9 (1) conducting and promoting research with the  
10 intent of encouraging flexibility in work terms and  
11 conditions;

12 (2) publishing and otherwise making available  
13 to employers, labor organizations, professional asso-  
14 ciations, educational institutions, the various com-  
15 munication media, and the general public the find-  
16 ings of studies and other materials for promoting  
17 compliance with this Act;

18 (3) sponsoring and assisting State and commu-  
19 nity informational and educational programs; and

20 (4) providing technical assistance to employers,  
21 labor organizations, professional associations, and  
22 other interested persons on means of achieving and  
23 maintaining compliance with the provisions of this  
24 Act.

1 **SEC. 11. RIGHTS RETAINED BY EMPLOYEES.**

2 Nothing in this Act shall be considered to diminish  
3 the rights, privileges, or remedies of any employee under  
4 any Federal or State law, or under a collective bargaining  
5 agreement.

6 **SEC. 12. APPLICATION OF PROVISIONS.**

7 (a) APPLICATION TO CLASSES OF EMPLOYEES.—Not  
8 later than 120 days after the date of enactment of this  
9 Act—

10 (1)(A) except as provided in subparagraph (B),  
11 the Secretary shall issue such regulations as are nec-  
12 essary to carry out this Act with respect to employ-  
13 ees described in clause (i) or (ii) of section 2(1)(A);  
14 and

15 (B) the Comptroller General of the United  
16 States and the Librarian of Congress shall issue  
17 such regulations as are necessary to carry out this  
18 Act with respect to employees of the Government  
19 Accountability Office and the Library of Congress,  
20 respectively;

21 (2) the Board of Directors of the Office of  
22 Compliance shall issue (in accordance with section  
23 304 of the Congressional Accountability Act of 1995  
24 (2 U.S.C. 1384)) such regulations as are necessary  
25 to carry out this Act with respect to employees de-  
26 scribed in section 2(1)(A)(iii);

1           (3) the President (or the designee of the Presi-  
2           dent) shall issue such regulations as are necessary to  
3           carry out this Act with respect to employees de-  
4           scribed in section 2(1)(A)(iv); and

5           (4) the Director of the Office of Personnel  
6           Management shall issue such regulations as are nec-  
7           essary to carry out this Act with respect to employ-  
8           ees described in section 2(1)(A)(v).

9           (b) TRANSITIONAL PROVISIONS.—A regulation issued  
10          under subsection (a) may contain such transitional provi-  
11          sions as the Secretary determines to be appropriate in con-  
12          nection with the application of any of the provisions of  
13          this Act.

14       **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

15          There are authorized to be appropriated to carry out  
16          this Act such sums as may be necessary for fiscal year  
17          2010 and each subsequent fiscal year.

18       **SEC. 14. EFFECTIVE DATE.**

19          (a) IN GENERAL.—This Act takes effect 6 months  
20          after the date of enactment of this Act, except as provided  
21          in subsection (b).

22          (b) COLLECTIVE BARGAINING AGREEMENTS.—In the  
23          case of a collective bargaining agreement in effect on the  
24          effective date prescribed by subsection (a), this Act shall  
25          apply on the earlier of—

1           (1) the date of the termination of such agree-  
2           ment; or

3           (2) the date that occurs 12 months after the  
4           date of enactment of this Act.

○