

113TH CONGRESS
1ST SESSION

H. R. 1406

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

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
5 Flexibility 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:

1 “(s) COMPENSATORY TIME OFF FOR PRIVATE EM-
2 PLOYEES.—

3 “(1) GENERAL RULE.—

4 “(A) COMPENSATORY TIME OFF.—An em-
5 ployee may receive, in accordance with this sub-
6 section and in lieu of monetary overtime com-
7 pensation, compensatory time off at a rate not
8 less than one and one-half hours for each hour
9 of employment for which overtime compensation
10 is required by this section.

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

14 “(2) CONDITIONS.—An employer may provide
15 compensatory time to employees under paragraph
16 (1)(A) only if such time is provided in accordance
17 with—

18 “(A) applicable provisions of a collective
19 bargaining agreement between the employer
20 and the labor organization which has been cer-
21 tified or recognized as the representative of the
22 employees under applicable law; or

23 “(B) in the case of employees who are not
24 represented by a labor organization which has
25 been certified or recognized as the representa-

1 tive of such employees under applicable law, an
2 agreement arrived at between the employer and
3 employee before the performance of the work
4 and affirmed by a written or otherwise
5 verifiable record maintained in accordance with
6 section 11(c)—

7 “(i) in which the employer has offered
8 and the employee has chosen to receive
9 compensatory time in lieu of monetary
10 overtime compensation; and

11 “(ii) entered into knowingly and vol-
12 untarily by such employees and not as a
13 condition of employment.

14 No employee may receive or agree to receive com-
15 pensatory time off under this subsection unless the
16 employee has worked at least 1,000 hours for the
17 employee’s employer during a period of continuous
18 employment with the employer in the 12-month pe-
19 riod before the date of agreement or receipt of com-
20 pensatory time off.

21 “(3) HOUR LIMIT.—

22 “(A) MAXIMUM HOURS.—An employee
23 may accrue not more than 160 hours of com-
24 pensatory time.

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

14 “(C) EXCESS OF 80 HOURS.—The em-
15 ployer may provide monetary compensation for
16 an employee’s unused compensatory time in ex-
17 cess of 80 hours at any time after giving the
18 employee at least 30 days notice. Such com-
19 pensation shall be provided at the rate pre-
20 scribed by paragraph (6).

21 “(D) POLICY.—Except where a collective
22 bargaining agreement provides otherwise, an
23 employer which has adopted a policy offering
24 compensatory time to employees may dis-

1 continue such policy upon giving employees 30
2 days notice.

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

13 “(4) PRIVATE EMPLOYER ACTIONS.—An em-
14 ployer which provides compensatory time under
15 paragraph (1) to employees shall not directly or indi-
16 rectly intimidate, threaten, or coerce or attempt to
17 intimidate, threaten, or coerce any employee for the
18 purpose of—

19 “(A) interfering with such employee’s
20 rights under this subsection to request or not
21 request compensatory time off in lieu of pay-
22 ment of monetary overtime compensation for
23 overtime hours; or

24 “(B) requiring any employee to use such
25 compensatory time.

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

7 “(6) RATE OF COMPENSATION.—

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

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

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

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

22 “(7) USE OF TIME.—An employee—

23 “(A) who has accrued compensatory time
24 off authorized to be provided under paragraph
25 (1); and

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

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

10 **SEC. 3. REMEDIES.**

11 Section 16 of the Fair Labor Standards Act of 1938
12 (29 U.S.C. 216) is amended—

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

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

17 “(f) An employer which violates section 7(s)(4) shall
18 be liable to the employee affected in the amount of the
19 rate of compensation (determined in accordance with sec-
20 tion 7(s)(6)(A)) for each hour of compensatory time ac-
21 crued by the employee and in an additional equal amount
22 as liquidated damages reduced by the amount of such rate
23 of compensation for each hour of compensatory time used
24 by such employee.”.

1 **SEC. 4. NOTICE TO EMPLOYEES.**

2 Not later than 30 days after the date of the enact-
3 ment of this Act, the Secretary of Labor shall revise the
4 materials the Secretary provides, under regulations pub-
5 lished in section 516.4 of title 29, Code of Federal Regula-
6 tions, to employers for purposes of a notice explaining the
7 Fair Labor Standards Act of 1938 to employees so that
8 such notice reflects the amendments made to such Act by
9 this Act.

10 **SEC. 5. SUNSET.**

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

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