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. B Bachus, Mrs. Black, Mr. Thornberry, Mr. Gingles 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
A BILL

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Working Families Flexi-
ibility Act of 2013”.

SEC. 2. COMPENSATORY TIME.

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

“(s) COMPENSATORY TIME OFF FOR PRIVATE EM-
ployees.—

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

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

“(A) applicable provisions of a collective
bargaining agreement between the employer and
the labor organization that has been certified or
recognized as the representative of the employees under applicable law; or

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

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

“(ii) entered into knowingly and voluntarily by such employees and not as a condition of employment.

No employee may receive or agree to receive compensatory time off under this subsection unless the employee has worked at least 1,000 hours for the employee’s employer during a period of continuous employment with the employer in the 12-month period before the date of agreement or receipt of compensatory time off.
“(3) HOUR LIMIT.—

“(A) Maximum Hours.—An employee may accrue not more than 160 hours of compensatory time.

“(B) Compensation Date.—Not later than January 31 of each calendar year, the employee’s employer shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding year at the rate prescribed by paragraph (6). An employer may designate and communicate to the employer’s employees a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

“(C) Excess of 80 Hours.—The employer may provide monetary compensation for an employee’s unused compensatory time in excess of 80 hours at any time after giving the employee at least 30 days notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

“(D) Policy.—Except where a collective bargaining agreement provides otherwise, an em-
ployer that has adopted a policy offering compensatory time to employees may discontinue such policy upon giving employees 30 days notice.

“(E) WRITTEN REQUEST.—An employee may withdraw an agreement described in paragraph (2)(B) at any time. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time accrued that has not yet been used. Within 30 days of receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

“(4) PRIVATE EMPLOYER ACTIONS.—An employer that provides compensatory time under paragraph (1) to employees shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce any employee for the purpose of—

“(A) interfering with such employee’s rights under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours; or
“(B) requiring any employee to use such compensatory time.

“(5) TERMINATION OF EMPLOYMENT.—An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time in accordance with paragraph (6).

“(6) RATE OF COMPENSATION.—

“(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off, such compensation shall be paid at a rate of compensation not less than—

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

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

whichever is higher.

“(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time shall be considered unpaid overtime compensation.

“(7) USE OF TIME.—An employee—
“(A) who has accrued compensatory time off authorized to be provided under paragraph (1); and

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

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

“(8) DEFINITIONS.—For purposes of this subsection—

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

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

SEC. 3. REMEDIES.

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

(1) in subsection (b), by striking “(b) Any employer” and inserting “(b) Except as provided in subsection (f), any employer”; and

(2) by adding at the end the following:

“(f) An employer that violates section 7(s)(4) shall be liable to the employee affected in the amount of the rate
of compensation (determined in accordance with section 7(s)(6)(A)) for each hour of compensatory time accrued by the employee and in an additional equal amount as liquidated damages reduced by the amount of such rate of compensation for each hour of compensatory time used by such employee.”.

SEC. 4. NOTICE TO EMPLOYEES.

Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that such notice reflects the amendments made to such Act by this Act.

SEC. 5. SUNSET.

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

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

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.