

PROVIDING FOR THE CONSIDERATION OF H.R. 1, THE
WORKING FAMILIES FLEXIBILITY ACT OF 1997

MARCH 18, 1997.—Referred to the House Calendar and ordered to be printed

Mr. PRYCE of Ohio, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 99]

The Committee on Rules, having had under consideration House Resolution 99, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 1, the “Working Families Flexibility Act of 1997” under a modified closed rule. The rule provides one hour of general debate divided equally between the chairman and ranking minority member of the Committee on Education and the Workforce.

The rule makes in order the Committee on Education and the Workforce amendment on the nature of a substitute now printed in the bill as an original bill for the purpose of amendment and provides that it shall be considered as read.

The rule further makes in order only those amendments printed in this report, and provides that the amendments made in order shall be considered only in the order specified, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole.

The rule also provides that an amendment designated to be offered by the chairman of the Committee on Education and the Workforce or his designee may be offered en bloc with one or more other such amendments.

Finally, the rule provides for one motion to recommit, with or without instructions.

COMMITTEE VOTES

Pursuant to clause 2(1)(2)(B) of House rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Rollcall No. 3

Date: March 18, 1997.

Measure: H.R. 1, the Working Families Flexibility Act of 1997.

Motion by: Mr. Frost.

Summary of motion: Make in order the changes to the Miller amendment that Mr. Miller presented in the Rules Committee hearing.

Results: Defeated 4-7.

Vote by Members: Dreier—Nay; Goss—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Hastings—Nay; Moakley—Yea; Frost—Yea; Hall—Yea; Slaughter—Yea; Solomon—Nay.

SUMMARY OF AMENDMENTS MADE IN ORDER FOR H.R. 1, THE WORKING FAMILIES FLEXIBILITY ACT OF 1997

(1) Goodling—10 min.: Requires that an employee have worked at least 1000 hours during a period of continuous employment with the employer within the last year before the employee may agree to compensatory time or receive compensatory time.

(2) Goodling—10 min.: Reduces maximum hours of compensatory time that may be accrued by an employee from 240 to 160 hours.

(3) Goodling—10 min.: Sunsets the private sector compensatory time provision after 5 years.

(4) Owens—10 min.: Exempts workers who earn less than 2.5 times the minimum wages.

(5) Miller (CA)—60 min.: Substitute amendment includes many of the amendments that were offered in committee mark up (and additional amendments). Prohibits employers from directly or indirectly soliciting employees to take comp. time; requires the Secretary of Labor to define what constitutes a knowing decision to accept comp. time; prohibits employers from offering comp. time, unless the employer provides all employees 24 hours of leave that may be used to further partake in children's educational activities or to provide routine medical care to children or elders; prohibits comp. time to employees who work less than 35 hours per week, work less than 12 months for the employer, are seasonal, or are employed in the construction industry, agricultural industry, garment industry, or any industry designated by the Secretary of Labor; provides that an employer may not deny comp. time where the leave is otherwise protected by the Family and Medical Leave Act; limits the amount of comp. time an employee can accrue to 80 hours annually; specifically provides that an employer may not condition employment benefits or availability of overtime upon an employee's decision to accept or reject comp. time or to use comp. time; and creates a commission to study comp. time.

AMENDMENTS MADE IN ORDER BY THE RULE

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOODLING OF PENNSYLVANIA, OR A DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 4, insert after line 10 the following:

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.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOODLING OF PENNSYLVANIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 4, line 13, strike "240" and insert "160".

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOODLING OF PENNSYLVANIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, add after line 2 the following:

SEC. 5. SUNSET.

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

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE OWENS OF NEW YORK, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 10, insert before the period the following: "or an employee whose rate of pay is less than 2.5 times the minimum wage rate in effect under section 6(a)(1)".

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MILLER OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 60 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Paycheck Protection and Family Flexibility Act of 1997".

SEC. 2. IN GENERAL.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended to add at the end the following:

"(r)(1) 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 1½ hours for each hour of employment for which overtime is required by subsection (a).

"(2) An employer may provide compensatory time to an eligible employee under paragraph (1) only—

"(A) pursuant to—

"(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization

which has been certified or recognized as the representative of the employees under applicable law, or

“(ii) in the case of employees who are not represented by a collective bargaining agent or other representative designated by the employee, a plan adopted by the employer and provided in writing to the employer’s employees which provides employees with a voluntary, informed option to receive compensatory time off for overtime work where there is an express, voluntary written request by an individual employee for compensatory time off in lieu of overtime pay provided to the employer prior to the performance of any overtime assignment;

“(B) if the employee has not earned compensatory time in excess of the applicable limit prescribed by paragraph (4)(A) or in regulations issued by the Secretary pursuant to paragraph (13);

“(C) if the employee is not required as a condition of employment to accept or request compensatory time;

“(D) if the agreement or plan complies with the requirements of this subsection and the regulations issued by the Secretary under paragraph (13), including the availability of compensatory time to similarly situated employees on an equal basis; and

“(E) if, for purposes of a plan established under subparagraph (A)(ii), the employer, in providing compensatory time, does not modify a leave policy so as to reduce any paid or unpaid leave or does not reduce any other type of benefit or compensation an employee would otherwise be entitled to receive.

“(3) An employee may, at any time, withdraw a request for compensatory time made under a plan under paragraph (2)(A)(ii).

“(4)(A) An employee may earn not more than a total of 80 hours of compensatory time in any year or alternative 12-month period designated pursuant to subparagraph (C). The employer shall regularly report to the employee on the number of compensatory hours earned by the employee and the total amount of the employee’s earned-and-unused compensatory time, in accordance with regulations issued by the Secretary.

“(B) Upon the request of an employee who has earned compensatory time, the employer shall on the payday of the pay period during which the request is received provide monetary compensation for any such compensatory time at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee’s regular rate at the time such monetary compensation is paid, whichever is higher.

“(C) Not later than January 31 of each calendar year, each employer shall provide monetary compensation to each employee for any compensatory time earned during the preceding calendar year for which the employee has not already received monetary compensation (either through paid time off or cash payment) at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee’s regular rate at the time such monetary compensation is paid, whichever is higher. An agreement or plan under paragraph (2) may designate 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. An employee may voluntarily, at the employee's own initiative, request in writing that such end-of-year payment of monetary compensation for earned compensatory time be delayed for a period not to exceed 3 months. This subparagraph shall have no effect on the limit on earned compensatory time set forth in subparagraph (A) or in regulations issued by the Secretary pursuant to paragraph (13).

"(5) An employee who has earned compensatory time authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid for unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher.

"(6) An employee shall be permitted to use, at the time the employee has requested, any compensatory time earned pursuant to paragraph (1)—

"(A) for any reason which would qualify for leave under section 102(a) of the Family and Medical Leave Act (29 U.S.C. 2612(a)) or any comparable State law; or

"(B) for any other purpose—

"(i) upon notice to the employer at least 2 weeks prior to the date on which the time off is to be used, unless use of the compensatory time at that time will cause substantial and grievous injury to the employer's operations; or

"(ii) upon notice to the employer within the 2 weeks prior to the date on which the time off is to be used unless use of the compensatory time at that time will unduly disrupt the operations of the employer.

"(7) An employee shall not be required by the employer to use any compensatory time earned pursuant to paragraph (1).

"(8) Except where there is a collective bargaining agreement, an employer may modify or terminate a compensatory time plan upon not less than 60 days notice to employees. When a plan is terminated, an employer may not, except as provided in paragraph (4)(C), require that an employee who has earned compensatory time receive monetary compensation in lieu of such time.

"(9) An employer may not pay monetary compensation in lieu of earned compensatory time except as expressly prescribed in this subsection. Any payment owed to an employee under this subsection for unused compensatory time shall be considered unpaid overtime compensation.

"(10) It shall be an unlawful act of discrimination, within the meaning of section 15(a)(3), for an employer—

"(A) to discharge or in any other manner penalize, discriminate against, or otherwise interfere with any employee—

"(i) because such employee may refuse or has refused to request or accept compensatory time off in lieu of overtime pay, or

"(ii) because such employee may request to use or has used compensatory time off in lieu of overtime pay;

“(B) to request, directly or indirectly, that an employee accept compensatory time off in lieu of overtime pay, to require an employee to request or to refuse to request such compensatory time as a condition of employment or as a condition of employment rights or benefits or to qualify the availability of work for which overtime compensation is required upon an employee’s request for or acceptance of compensatory time off in lieu of overtime compensation; or

“(C) to deny an employee the right to use or force an employee to use earned compensatory time in violation of this subsection.

“(11) An employer who violates any provision of this subsection shall be liable, in an action brought pursuant to section 16(b) or 16(c), in the amount of overtime compensation that would have been paid for the overtime hours worked or overtime hours that would have been worked, plus such other legal or equitable relief as may be appropriate to effectuate the purpose of this section, as well as an additional equal amount as liquidated damages, costs, and, in the case of an action filed under section 16(b), reasonable attorney’s fees. Where an employee has used compensatory time off or received monetary compensation for earned compensatory time for such overtime hours worked, the amount of such time used or monetary compensation paid to the employee shall be offset against the employer’s liability under this paragraph.

“(12) For the purpose of protecting overtime compensation wages of employees, the Secretary may by regulation require employers who provide compensatory time to their employees under this subsection to secure a payment bond with a surety satisfactory for protection of the overtime compensation of such employees.

“(13)(A) The Secretary may issue regulations as necessary and appropriate to implement this subsection including regulations implementing recordkeeping requirements and prescribing the content of plans and employee notification.

“(B) The Secretary may issue regulations regarding classes of employees, including all employees in particular occupations or industries, to—

“(i) exempt such employees from the provisions of this subsection,

“(ii) limit the number of compensatory hours that such employees may earn to less than the number provided in paragraph (4)(A), or

“(iii) require employers to provide such employees with monetary compensation for earned compensatory time at more frequent intervals than specified in paragraph (4)(C),

where the Secretary has determined that such regulations are necessary or appropriate to protect vulnerable employees, that a pattern of violations of the Act may exist, or that such regulations are necessary or appropriate to assure that employees receive the compensation due them.

“(C) The Secretary shall issue regulations—

“(i) which bar employers with a pattern or practice of violations of this Act from offering compensatory time under this subsection;

“(ii) prescribing the content of plans described in paragraph (2)(A)(ii) and employee notification, including the provision of information regarding who is eligible for compensatory time and under what circumstances it may be earned and used and information regarding the impact, if any, that choosing compensatory time may have on the eligibility, accrual, and receipt of other compensation and benefits; and

“(iii) requiring employers to keep records in accordance with section 11(c) of compensatory time earned and overtime worked.

“(14) When an employee uses earned compensatory time off, the employee shall be paid for the time off at the employee’s regular rate at the time the employee performed the overtime work or at the employee’s regular rate when the time off is taken, whichever is higher.

“(15) For purposes of this subsection—

“(A) the terms ‘compensatory time’ and ‘compensatory time off’ mean hours during which an employee is not working and for which the employee is compensated at the employee’s regular rate in accordance with this subsection;

“(B) the term ‘elderly relative’ means an individual of at least 60 years of age who is related by blood or marriage to the employee, including a parent;

“(C) the term ‘employee’ does not include—

“(i) a part-time, temporary, or seasonal employee;

“(ii) an employee of a public agency;

“(iii) an employee in the garment industry;

“(iv) an employee who is not entitled to take not less than 24 hours of leave during any 12-month period to participate in school activities directly related to the educational advancement of a son or daughter of the employee, accompany such son or daughter to routine medical or dental appointments, and accompany an elderly relative of the employee to routine medical or dental appointments for other professional services related to such elder’s care; or

“(v) an employee exempted by the Secretary under paragraph (13)(B);

“(D) The term ‘overtime compensation’ shall have the meaning given such term by subsection (o)(7).

“(E) The terms ‘compensatory time’ and ‘compensatory time off’ means hours during which an employee is not working and for which the employee is compensated at the employee’s regular rate in accordance with this section;

“(F) the term ‘part-time, temporary, or seasonal employee’ means—

“(i) an employee whose regular workweek for the employer is less than 35 hours per week;

“(ii) an employee who is employed by the employer for a season or other term of less than 12 months or is otherwise treated by the employer as not a permanent employee of the employer; or

“(iii) an employee in the construction industry, in agricultural employment (as defined by section 3(3) of the Mi-

grant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(3)), or in any other industry which the Secretary by regulation has determined is a seasonal industry; and

“(G) the term ‘overtime assignment’ means an assignment of hours for which overtime compensation is required under subsection (a).

“(H) The term ‘school’ means an elementary or secondary school (as such terms are defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), a Head Start program assisted under the Head Start Act (42 U.S.C. 9831 et seq.), and a child care facility licensed under State law.”.

SEC. 3. CIVIL MONEY PENALTIES.

The second sentence of section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended to read as follows: “Any person who violates section 7(r) of this Act shall be subject to a civil penalty not to exceed \$1,000 for each such violation.”.

SEC. 4. CONSTRUCTION.

Section 18 of the Fair Labor Standards Act of 1938 (29 U.S.C. 218) is amended by designating existing section 18 as subsection (a) and by adding a new subsection (b) to read as follows:

“(b)(1) No provision of section 7(r) or of any order thereunder shall be construed to—

“(A) supersede any provision of any State or local law that provides greater protection to employees who are provided compensatory time off in lieu of paid overtime compensation;

“(B) diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater protection to employees provided compensatory time off in lieu of paid overtime; or

“(C) discourage employers from adopting or retaining compensatory time plans that provide more protection to employees.

“(2) Nothing in this subsection shall be construed to allow employers to provide compensatory time plans to classes of employees who are exempted from subsection 7(r), to allow employers to provide more compensatory time than allowed under subsection 7(r), or to supersede any limitations placed by subsection 7(r), including exemptions and limitations in regulations issued by the Secretary thereunder.”.

SEC. 5. COMMISSION ON WORKPLACE FLEXIBILITY.

(a) ESTABLISHMENT.—There is established a Commission on Workplace Flexibility (hereafter in this section referred to as the “Commission”). The members of the Commission shall be selected in accordance with the procedures set forth in section 303 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2633) and the compensation and powers of the Commission shall be as prescribed in sections 304 and 305 of that Act (29 U.S.C. 2634, 2635).

(b) DUTIES.—The Commission shall conduct a comprehensive study of the impact of compensatory time on private sector employees, including the impact of the law on average earnings, hours of work, work schedules, flexibility of scheduling work to accommo-

date family needs, and the ability of vulnerable employees or other employees to obtain the compensation to which they are entitled, and shall make a comparison of the compensatory time offered to public and private employees. A report concerning the findings of the study shall be submitted to the appropriate committees of Congress and to the Secretary of Labor not later than 1 year before the expiration of this title. The report shall include recommendations as to whether the compensatory time provisions of section 7(r) of the Fair Labor Standards Act of 1938 should be modified or extended, including a recommendation as to whether particular classes of employees or industries should be exempted or otherwise given special treatment and whether additional protections should be given. The Commission shall have no obligation to conduct a study and issue a report pursuant to this section if funds are not authorized and appropriated for that purpose.

SEC. 6. EFFECTIVE DATE; SUNSET.

(a) **EFFECTIVE DATE.**—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act.

(b) **SUNSET.**—The provisions of this Act shall expire 4 years after date of the enactment of this Act.

