119TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
119–413

EMPOWERING EMPLOYER CHILD AND ELDER CARE SOLUTIONS ACT

DECEMBER 18, 2025.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. WALBERG, from the Committee on Education and Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2270]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Workforce, to whom was referred the bill (H.R. 2270) to amend the Fair Labor Standards Act of 1938 to exclude child and dependent care services and payments from the rate used to compute overtime compensation, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Empowering Employer Child and Elder Care Solutions Act".

SEC. 2. EXCLUSION OF CHILD AND DEPENDENT CARE IN COMPUTING OVERTIME COMPENSATION.

(a) IN GENERAL.—Section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)) is amended—

(1) in paragraph (2), by inserting "payments or reimbursements for child or dependent care services;" after "by the employer;";

(2) in paragraph (7), by striking "or" at the end;

(3) in paragraph (8)(D)(ii), by striking the period at the end and inserting "; or"; and

(4) by adding at the end the following:

"(9) the value of any child or dependent care services provided by an employer.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to overtime compensation required to be paid for workweeks beginning on or after the date of enactment of this Act.

PURPOSE

To amend the *Fair Labor Standards Act of 1938* to exclude child and dependent care services and payments from the rate used to compute overtime compensation.

COMMITTEE ACTION

117TH CONGRESS

Second Session—Hearing

On May 11, 2022, the Subcommittee on Workforce Protections held a hearing titled "Standing Up for Workers: Preventing Wage Theft and Recovering Stolen Wages." Witnesses were Tammy McCutchen, Senior Affiliate, Resolution Economics, New Market, TN; Karen Cacace, Labor Bureau Chief, New York State Office of the Attorney General, New York, NY; Daniel Swenson-Klatt, Owner/Operator, Butter Bakery Café, Minneapolis, MN; and Francisco Esparza, Representative, United Brotherhood of Carpenters, Upper Marlboro, MD. Ms. McCutchen testified about excluding child care benefits from the regular rate of pay, among other topics.

Legislative Action

On July 14, 2022, Representative Elise Stefanik (R–NY) introduced H.R. 8388, the *Empowering Employer Child and Elder Care Solutions Act*, which was referred solely to the Committee on Education and Labor, but there was no action taken on the legislation.

118TH CONGRESS

Legislative Action

On May 11, 2023, Representative Stefanik introduced H.R. 3271, the *Empowering Employer Child and Elder Care Solutions Act*, which was referred to the Committee on Education and the Workforce, but there was no action taken on the legislation.

119TH CONGRESS

First Session—Hearing

On March 25, 2025, the Subcommittee on Workforce Protections held a hearing titled "The Future of Wage Laws: Assessing the FLSA's Effectiveness, Challenges, and Opportunities." Witnesses were Tammy McCutchen, Senior Affiliate, Resolution Economics, New Market TN; Paige Boughan, Senior Vice President and Director of Human Resources, Farmers and Merchants Bank, on behalf of SHRM, Westminster, MD; Andrew Stettner, Director of Economy and Jobs, The Century Foundation, Washington, DC; and Jonathan Wolfson, Chief Legal Officer and Policy Director, Cicero Institute, Austin, TX. Witnesses discussed H.R. 2270, the *Empowering Employer Child and Elder Care Solutions Act*, among other topics.

Legislative Action

On March 21, 2025, Representative Mark Messmer (R–IN) introduced H.R. 2270, the *Empowering Employer Child and Elder Care*

Solutions Act, with Representatives Ashley Hinson (R–IA), John Moolenaar (R–MI), and Josh Harder (D–CA) as original cosponsors. The bill was solely referred to the Committee on Education and Workforce.

Committee Passage of H.R. 2270

On April 9, 2025, the Committee considered H.R. 2270 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 18–13. Representative Messmer offered an amendment in the nature of a substitute making a technical change to the bill, which was adopted by voice vote.

COMMITTEE VIEWS

INTRODUCTION

The *Fair Labor Standards Act of 1938* (FLSA) is the primary federal statute establishing standards for minimum wage, overtime pay, child labor, recordkeeping, and other wage-and-hour standards covering more than 140 million individuals,[1] including most private and public sector employees. Under the FLSA, employers must pay covered employees no less than the federal minimum wage of $7.25 for all hours worked and overtime pay of time-and-one-half an employee's regular rate of pay for hours worked in excess of 40 in a given workweek. These requirements are triggered whenever an employee is "suffer[ed] or permit[ted] to work" directly or indirectly for the benefit of an employer.[2]

REGULAR RATE

Overtime must be paid at one-and-one-half times the employee's regular rate of pay for each hour over 40 worked in a workweek. An employee's regular rate includes all payments made by the employer to or on behalf of the employee, with some statutorily mandated exclusions.

The formula for computing the regular rate is the compensation in the workweek (except for statutory exclusions) divided by the total hours worked in the workweek. The following are exclusions from the regular rate:

- Gifts and payments in the nature of gifts on special occasions (may not be dependent on the number of hours worked);
- Payments for occasional periods when no work is performed due to vacation, holidays, illness, reimbursable business expenses, and other similar payments;
- Discretionary bonuses;
- Payments made pursuant to a profit-sharing plan or a thrift savings plan;
- Contributions to benefit plans such as life or disability insurance or other events that could cause significant financial hardship;

[1] U.S. DEP'T OF LAB., WAGE & HOUR DIV., SMALL ENTITY COMPLIANCE GUIDE TO THE FAIR LABOR STANDARDS ACT'S EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, OUTSIDE SALES, AND COMPUTER EMPLOYEES (Apr. 24, 2024), https://www.dol.gov/agencies/whd/overtime/rulemaking/small-entity-compliance-guide.

[2] 29 U.S.C. § 203(g).

- Premium pay that is triggered due to reasons other than FLSA-mandated overtime, i.e., extra compensation for working on weekends, holidays, or days of rest; and
- Certain employee stock options.[3]

FLSA MODERNIZATION

On March 25, 2025, the Subcommittee on Workforce Protections held a hearing on "The Future of Wage Laws: Assessing the FLSA's Effectiveness, Challenges, and Opportunities." Witnesses testified about how the FLSA, with no major legislative updates since its enactment 87 years ago, has failed to keep pace with the modern workforce. Witnesses also suggested legislative solutions to make the FLSA less rigid and remove employer disincentives that currently limit an hourly employee's ability to receive certain non-wage benefits. Witnesses further testified that the FLSA should alter outdated standards which prevent employers from providing benefits such as child care to employees.

At the March 25, 2025, hearing, Ms. Tammy McCutchen, former U.S. Department of Labor Wage and Hour Division Administrator, testified that the way an hourly employee's regular rate for overtime pay is calculated has not been changed legislatively in 76 years, except for a 2000 update to exclude certain stock options from the regular rate.[4] She recommended amending FLSA Section 7(e) to exclude other non-wage benefits from regular rate calculations to encourage employers to provide benefits and increase access to benefits for workers. She also testified that such a change would allow private sector employers to more easily provide child care for their employees.[5]

At the same hearing, Mr. Jonathan Wolfson, former Assistant Secretary of Labor for Policy during the first Trump Administration, highlighted the need to remove barriers that allow employees to access to child care:

> Without employer-provided assistance, many workers struggle with the high costs of child and elder care. This financial strain often forces employees—particularly women—to reduce work hours or leave the workforce entirely. By removing barriers to employer-sponsored caregiving benefits, [H.R. 2270] would encourage more businesses to provide assistance, helping workers remain in their jobs while managing caregiving responsibilities. This bill could both support families and improve workforce participation, all while benefiting the businesses that hire workers who need these benefits.[6]

In addition, Ms. Emily M. Dickens from SHRM stated regarding the *Empowering Employer Child and Elder Care Solutions Act* that

---

[3] U.S. DEP'T OF LAB., WAGE & HOUR DIV., FACT SHEET #56A: OVERVIEW OF THE REGULAR RATE OF PAY UNDER THE FAIR LABOR STANDARDS ACT (FLSA), https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate.

[4] *The Future of Wage Laws: Assessing the FLSA's Effectiveness, Challenges, and Opportunities: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Workforce*, 119th Cong. (2025) (written statement of Tammy McCutchen, Senior Affiliate, Resolution Econ., at 3).

[5] *Id.* (testimony of Tammy McCutchen, Senior Affiliate, Resolution Econ.) ("would free employers to provide child care").

[6] *Id.* (written statement of Jonathan Wolfson, Chief Legal Off. & Pol'y Dir., Cicero Inst., at 7).

"H.R. 2270 represents meaningful progress by encouraging employers to offer onsite or subsidized dependent care benefits through statutory recognition that such benefits are excluded from the 'regular rate' calculation under the FLSA." [7]

EMPOWERING EMPLOYER CHILD AND ELDER CARE SOLUTIONS ACT

On March 21, Representatives Mark Messmer (R–IN) and Josh Harder (D–CA) introduced H.R. 2270, the *Empowering Employer Child and Elder Care Solutions Act*, which was referred solely to the Committee on Education and Workforce. This bill amends FLSA Section 7(e) to exclude the value of employer-funded child or dependent care from the calculation of an eligible employee's overtime pay. Under current law, overtime hours must be paid at time-and-one-half of an employee's regular rate of pay. The regular rate is an average hourly rate that must include certain types of compensation, such as commissions, incentive pay, and certain non-cash payments. The bill specifies that an employer can provide or pay for child or dependent care services without the value of these services being included in this calculation.

CONCLUSION

Workers and businesses benefit from easy-to-understand wage-and-hour rules—and they struggle with impossible compliance burdens and red tape. Former Wage and Hour Administrator Tammy McCutchen stated at the March 25, 2025, Workforce Protections Subcommittee hearing: "we need clear and simple rules that small businesses and workers can understand without an attorney or HR professionals." [8] Excluding child and dependent care from regular rate calculations is an important step toward modernizing the FLSA and making it work better for 21st century workers and families.

H.R. 2270 SUMMARY

H.R. 2270 amends the FLSA to exclude any child or dependent care services provided by the employer from regular rate calculations.

H.R. 2270 SECTION-BY-SECTION SUMMARY

Section 1—Short title

Names the bill the *Empowering Employer Child and Elder Care Solutions Act*.

Section 2—Exclusion of child and dependent care in computing overtime compensation

Section 2 amends FLSA Section 7(e) to expand the definition of "regular rate" to exclude payments or reimbursements for child or dependent care services or the value of any child or dependent care

[7] Letter from Emily M. Dickens, Chief of Staff, Head of Gov't Pol'y, & Corp. Sec'y, SHRM, to Chairman Tim Walberg & Ranking Member Bobby Scott, Comm. on Educ. & Workforce (Apr. 8, 2025) (on file with Comm.).

[8] *The Future of Wage Laws: Assessing the FLSA's Effectiveness, Challenges, and Opportunities: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Workforce*, 119th Cong. (2025) (written statement of Tammy McCutchen, Senior Affiliate, Resolution Econ., at 3).

services provided by the employer. It also directs this change to apply to overtime compensation paid for workweeks beginning on or after the date of the bill's enactment.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 2270 is to exclude child and dependent care services and payments from the rate used to compute overtime compensation under the *Fair Labor Standards Act of 1938*.

EXPLANATION OF AMENDMENTS

The amendment in the nature of a substitute is explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 2270 amends the *Fair Labor Standards Act of 1938* to exclude child and dependent care services and payments from the rate used to compute overtime compensation for employees, including eligible employees of the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93–344 (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4), the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the Congressional Budget and Impoundment Control Act of 1974.

EARMARK STATEMENT

H.R. 2270 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House rule XXI.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 4/9/25

COMMITTEE ON EDUCATION AND WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call:5 Bill: H.R. 2270 Amendment Number: N/A

Disposition: Adopted by a Full Committee Roll Call Vote (18y-13n)

Sponsor/Amendment: Motion to Report bill; as amended

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. WALBERG (MI) (Chairman)	X			Mr. SCOTT (VA) (Ranking)		X	
Mr. WILSON (SC)	X			Mr. COURTNEY (CT))		X	
Mrs. FOXX (NC)	X			Ms. WILSON (FL)		X	
Mr. THOMPSON (PA)	X			Ms. BONAMICI (OR)		X	
Mr. GROTHMAN (WI)	X			Mr. TAKANO (CA))		X	
Ms. STEFANIK (NY)			X	Ms. ADAMS (NC)		X	
Mr. ALLEN (GA)	X			Mr. DESAULNIER (CA)		X	
Mr. COMER (KY)			X	Mr. NORCROSS (NJ)			X
Mr. OWENS (UT)	X			Ms. MCBATH (GA)			X
Ms. MCCLAIN (MI)			X	Ms. HAYES (CT)		X	
Mrs. MILLER (IL)	X			Ms. OMAR (MN)		X	
Ms. LETLOW (LA)	X			Ms. STEVENS (MI)		X	
Mr. KILEY (CA)	X			Mr. CASAR (TX)		X	
Mr. RULLI (OH)	X			Ms. LEE (PA)		X	
Mr. MOYLAN (GU)	X			Mr. MANNION (NY)		X	
Mr. ONDER (MO)	X						
Mr. MACKENZIE (PA)	X						
Mr. BAUMGARTNER (WA)	X						
Mr. HARRIS (NC)	X						
Mr. MESSMER (IN)	X						
Mr. FINE (FL)	X						

TOTALS: Ayes: 18 Nos: 13 Not Voting: 5

Total: 36 / Quorum: 31 / Report: 18y-13n

(21 R - 16 D)

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House rule XIII, the goal of H.R. 2270, is to amend the *Fair Labor Standards Act of 1938* to exclude child and dependent care services and payments from the rate used to compute overtime compensation.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2270 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee's oversight findings and recommendations are reflected in the body of this report.

REQUIRED COMMITTEE HEARING

In compliance with clause 3(c)(6) of rule XIII the following hearing held during the 119th Congress was used to develop or consider H.R. 2270: On March 25, 2025, the Committee on Education and Workforce Subcommittee on Workforce Protections held a hearing on "The Future of Wage Laws: Assessing the FLSA's Effectiveness, Challenges, and Opportunities."

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee adopts as its own the cost estimate for the bill prepared by the Director of the Congressional Budget Office.

At a Glance

Fair Labor Standards Act Legislation

As ordered reported by the House Committee on Education and the Workforce on April 9, 2025

On April 9, 2025, the House Committee on Education and the Workforce ordered reported four bills and one joint resolution. This document provides estimates for two bills amending the Fair Labor Standards Act (FLSA). Details of the estimated costs of each are discussed in the text.

CBO estimates that enacting H.R. 2262 and H.R. 2270 would not significantly affect direct spending or revenue.

CBO estimates that enacting H.R. 2262 and H.R. 2270 would not significantly increase net direct spending or deficits in any of the four consecutive 10-year periods beginning in 2036.

Bill	Net Increase in the Deficit Over the 2025-2035 Period (Millions of Dollars)	Changes in Spending Subject to Appropriation Over the 2025-2030 Period (Outlays, Millions of Dollars)	Mandate Effects?
H.R. 2262	*	0	No
H.R. 2270	*	0	No

* = between zero and $500,000.

Summary of legislation: On April 9, 2025, the House Committee on Education and the Workforce ordered reported four bills and one joint resolution. This document provides estimates for two of those bills, H.R. 2262 and H.R. 2270. Both bills would amend the Fair Labor Standards Act (FLSA), which establishes minimum wage, overtime pay, and other standards affecting most private and public-sector employees.

- H.R. 2262, the Flexibility for Workers Education Act, would exclude time spent on certain activities from counting as work time under the FLSA. Under current law, attendance at activities such as lectures and training programs do not need to be counted as work time if attendance is voluntary and outside of employee's working hours, the activity is unrelated to the employee's job, and the employee did not perform any productive work. H.R. 2262 would remove the criteria that the activity be unrelated to the employee's job.
- H.R. 2270, the Empowering Employer Child and Elder Care Solutions Act, would exclude payments or reimbursements for child and dependent care services from the computation of overtime compensation under the FLSA.

Estimated Federal cost: The costs of the legislation fall within budget function 500 (education, training, employment, and social services).

Basis of estimate: For this estimate, CBO assumes that the bills will be enacted before the end of fiscal year 2025. This estimate does not include any effects of interactions among the bills. If both bills were combined and enacted as a single piece of legislation, the estimated costs would be different, but the total increase in the deficit would still be less than $500,000 over the 2025–2035 period.

Both H.R. 2262 and H.R. 2270 amend the FLSA. That law authorizes the Department of Labor (DOL) to impose and collect civil monetary penalties from employers that violate it. Such penalties are recorded in the federal budget as revenues, and a portion can be spent without further appropriation. DOL typically collects less than $10 million per year in civil monetary penalties for FLSA violations.

Enacting each of the bills would result in fewer entities being subject to those penalties. CBO estimates that the reduction in amounts collected would be small and that the decrease in revenues and direct spending, and the resulting net increase in the deficit would be less than $500,000 over the 2025–2035 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that enacting each of the bills would decrease direct spending and revenues by less than $500,000 over the 2025–2035 period.

Increase in long-term net direct spending and deficits: CBO estimates that enacting H.R. 2262 and H.R. 2270 would not significantly increase net direct spending in any of the four consecutive 10-year periods beginning in 2036.

CBO estimates that enacting H.R. 2262 and H.R. 2270 would not significantly increase on-budget deficits in any of the four consecutive 10-year periods beginning in 2036.

Mandates: Neither bill contains an intergovernmental or private-sector mandate as defined in the Unfunded Mandates Reform Act.

Estimate prepared by: Federal costs: Meredith Decker; Revenues: Joshua Shakin; Mandates: Erich Dvorak.

Estimate reviewed by: Elizabeth Cove Delisle, Chief, Income Security Cost Estimates Unit; Joshua Shakin, Chief, Revenue Projections Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; Christina Hawley Anthony, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2270. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the Committee adopts as its own the cost estimate for the bill prepared by the Director of the Congressional Budget Office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

FAIR LABOR STANDARDS ACT OF 1938

* * * * * * *

MAXIMUM HOURS

SEC. 7. (a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce,

or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks, or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes.

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale;

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(e) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimburseable by the employer; *payments or reimbursements for child or dependent care services;* and other similar payments to any employee which are not made as compensation for his hours of employment;

(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulations which he shall issue, having due regard among other relevant facts, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such

employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a)), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; **[**or**]**

(8) any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs (1) through (7) if—

(A) grants are made pursuant to a program, the terms and conditions of which are communicated to participating employees either at the beginning of the employee's participation in the program or at the time of the grant;

(B) in the case of stock options and stock appreciation rights, the grant or right cannot be exercisable for a period of at least 6 months after the time of grant (except that grants or rights may become exercisable because of an employee's death, disability, retirement, or a change in corporate ownership, or other circumstances permitted by regulation), and the exercise price is at least 85 percent of the fair market value of the stock at the time of grant;

(C) exercise of any grant or right is voluntary; and

(D) any determinations regarding the award of, and the amount of, employer-provided grants or rights that are based on performance are—

(i) made based upon meeting previously established performance criteria (which may include hours of work, efficiency, or productivity) of any business unit consisting of at least 10 employees or of a facility, except that, any determinations may be based on length of service or minimum schedule of hours or days of work; or

(ii) made based upon the past performance (which may include any criteria) of one or more employees in a given period so long as the determination is in the sole discretion of the employer and not pursuant to any prior contract**[**.**]***; or*

(9) the value of any child or dependent care services provided by an employer.

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided,* That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h)(1) Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) shall not be creditable toward wages required under section 6 or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one

and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate of not less than one and one-half times the regular rate at which he is employed.

(k) No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days;

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(l) No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a).

(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Ag-

riculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

(n) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

(o)(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or

understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee,

whichever is higher

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(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 public agency.

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) if—

(A) such employee is paid at a per-page rate which is not less than—

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court re-

porting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection—

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p)(1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(q) Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

* * * * * * *

MINORITY VIEWS

INTRODUCTION

H.R. 2270, the *Empowering Employer Child and Elder Care Solutions Act*, would allow employers to pay their workers less overtime than they are owed by excluding child and dependent care services and payments from the rate used to compute overtime compensation. It would contradict the basic premise, going back to 1938, that employers should be disincentivized from requiring employees to work overtime hours. As a result, it would—in the name of incentivizing child and elder subsidies—actually drive up workers' child and elder costs.

BACKGROUND

Underlying Law

The *Fair Labor Standards Act of 1938* (FLSA) is the core federal workplace standards law governing minimum wage, overtime, oppressive child labor, and other fundamental workplace standards.[1] FLSA is enforced by both the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) as well as private litigants.[2]

Section 7 of FLSA establishes maximum work week provisions at 40 hours per week.[3] Any employer who requires employees to work in excess of 40 hours per week is required to pay an overtime premium of 1.5 times the employees' regular rate of pay.[4] FLSA includes many exemptions[5] and special provisions for particular workplaces.[6] For convenience, this discussion will use the term "employee" to mean non-exempt employees and will focus on the paradigmatic case of hourly workers in typical private-sector jobs.

Regular Rate

Pursuant to FLSA, the overtime premium of "time and a half" is not merely 1.5 times the hourly wage but, instead, 1.5 times the "regular rate at which [the employee] is employed."[7] The regular rate "include[s] all remuneration for employment," other than eight exceptions specified in section 7(e), including Christmas bonuses,

---

[1] Pub. L. No. 75–718, 52 Stat. 1060 (1938) (codified at 29 U.S.C. § 201 *et seq*.).
[2] *Id*. § 16.
[3] *Id.* § 7(a)(1).
[4] *Id.*
[5] *See, e.g., id.* §§ 13(a)(1) (bona fide executive, administrative, and professional employees), 13(a)(5) (aquaculture and fishing employees), 13(a)(6) (many kinds of agricultural and livestock workers), 13(b) (interstate transportation workers).
[6] *See, e.g., id.* § 7(j) (permitting hospital and care facilities to apply overtime on a 14-day rather than seven-day work period), 7(k) (special rules for public-sector employees in fire protection and policing), 7(m) (seasonal exemption for tobacco-related workers), 7(o) (special compensatory time option for public employers).
[7] *Id.* § 7(a)(1). Additionally, the term "wage" is itself broad, defined as "includ[ing] the reasonable cost, as determined by the [WHD] Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees," subject to some exclusions. *Id.* § 3(m).

paid time off, profit-sharing payouts, insurance or retirement benefits, Sunday or holiday work premiums, and stock options.[8]

Within this list of exceptions, section 7(e)(2) specifies several payments paid to or on behalf of the employee that are excluded from the calculation of the regular rate.[9] It includes occasional periods where the employee does not work due to vacation, holiday, sickness, the employer's failure to provide sufficient work, or other similar causes; reasonable payments for travel expenses the employee incurs for business travel; and other "similar payments to an employee which are not made as compensation for [their] hours of employment." [10]

The entire universe of rules, read together, can seem daunting, but the complexity reflects the varieties of forms of employment, payment practices, and industry and occupational customs in the nation's economy. The overtime pay calculation boils down elegantly nonetheless:

> Total compensation in the workweek (except for statutory exclusions) ÷ Total hours worked in the workweek = Regular Rate for the workweek.[11]

Some "perks" may be excluded by law, but a general principle applies: "When a payment is a wage supplement, even if not directly related to employee performance or hours worked, it is still compensation for 'hours of employment' and must be included in the regular rate." [12]

How Child and Dependent Care Benefits Are Considered in Regular Rate

During the Reagan Administration, a WHD Opinion Letter explained that child care benefits, whether provided onsite or by a subsidy payment to the employee, are included in the regular rate. Presented with the scenario of an employer contracting for child care services and employees who receive the service paying for it by way of a paycheck deduction and/or receiving an employer subsidy, WHD concluded that such services should be incorporated into the regular rate of pay for purposes of overtime calculations. That a third-party contractor might be involved was irrelevant; as WHD explained, "where an employer is directed by an employee to pay a sum for the benefit of the employee to a third party, such payment will be considered the same as payment to the employee, if the employer does not directly or indirectly derive any profit or benefit from the transaction." [13]

More recently, in the text accompanying a 2020 final rule on regular rate calculations, the Trump Administration distinguished between occasional, irregular, or emergency child care benefits and regularly provided benefits. In the explanatory matter, WHD considered the latter under FLSA § 7(e)(2), which excludes from reg-

---

[8] *Id.* § 7(e).
[9] Id. § 7(e)(2).
[10] *Id.*
[11] Wage & Hr. Div., *Fact Sheet #56A: Overview of the Regular Rate of Pay Under the Fair Labor Standards Act (FLSA)*, U.S. DEP'T OF LAB. (Dec. 2019), https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate.
[12] *Id.*
[13] Wage & Hr. Div., U.S. Dep't of Lab., Op. Ltr. No. FLSA–642 (Jan. 23, 1983), https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/legacy/ol_1983-01-23_a.pdf.

ular rate calculations the value of work travel reimbursements, payments made for occasional periods of nonwork such sick days, and "other similar payments . . . not made as compensation for . . . hours of employment":

> Several commenters [representing employer groups] asked [DOL] to clarify that childcare services or subsidies are excludable from the regular rate. . . . [DOL] has taken a broad view of what is considered to be a "wage" under 3(m) of the FLSA and as such, some payments for childcare services or subsidies may be considered a wage. Payments for childcare services or subsidies are excludable from the regular rate . . . to the extent such payments are not wages under section 3(m). For instance, routinely-provided childcare qualifies as an in-kind reimbursement for "expenses normally incurred by the employee for his own benefit," which are wages that must be included in the regular rate. However, emergency childcare services provided by employers as an important component of their work-life support packages do not meet this test and may be excluded from the regular rate, if such services are not provided as compensation for hours of employment. Emergency care is provided in the case of unforeseen circumstances, such as when schools or daycares are closed for bad weather or when a child is sick. If these payments are not tied to the quality or quantity of work performed, they are properly excluded from the regular rate under section 7(e)(2)'s "other similar payments" clause.[14]

The Majority has not offered any explanation for diverging from the fundamental premise of the overtime provisions as they were written in 1938, interpreted with clarity in 1983, and persuasively explained as recently as 2020.

SHORTCOMINGS OF THE LEGISLATION

Encouraging Excessive Work

The enactment of FLSA's overtime provision in 1938 was the culmination of a decades-long effort to reduce overwork in the pre-1938 economy, particularly in the industrial sectors, where 10- to 12-hour shifts were once routine.[15] Labor movements rallying for limiting working hours and days were given a boost in their efforts due to labor shortages during World War I that gave workers more leverage to demand fewer hours and shorter work weeks, even leading to a brief "golden age" for American workers that included widespread adoption of the 8-hour work day.[16] Post-World War I, industrialists attempted to roll back these gains and increase workers' hours but were met with fierce opposition from workers.[17] Among the most commonly stated rationales for finally securing the 40-hour work week in FLSA were: (1) guaranteeing work/life

---

[14] Regular Rate Under the Fair Labor Standards Act, 84 Fed. Reg. 68,736, 68,751 (Dec. 16, 2019).
[16] *Id.*
[17] *Id.*
[18] Gillian Brockell, *That Time America Almost Had a 30-Hour Workweek*, WASH. POST (Sept. 6, 2021), https://www.washingtonpost.com/history/2021/09/06/40-hour-work-week-fdr/.

balance—"[e]ight hours for work, eight hours for rest, eight hours for what you will;" and (2) addressing the unemployment crisis of the Great Depression by incentivizing employers to hire additional workers to fill the gap left by shrinking shifts from 10 or 12 hours to eight.[18]

The overriding purpose of FLSA's overtime provisions is not to reward excessive work but, instead, to discourage employers from demanding it. Any bill that exempts forms of compensation from the regular rate chips away at the disincentive that makes the 40-hour work week the rule rather than the exception.

Perverse Incentives

Although it is framed in terms of encouraging employers to offer more child and elder care support benefits, H.R. 2270 would ultimately make it easier for employers to pay out less in overtime to workers precisely when—because the work week has stretched beyond 40 hours—workers are driven to need more, and more expensive, care. For these workers, care costs are likely to increase substantially.[19]

That's assuming that care services are even available at all. As of 2018, 51 percent of Americans were living in child care deserts, defined as areas with little to no licensed child care capacity.[20] For those who do have access, only eight percent of child care centers are open early (before 7:00 a.m.) or late (after 6:00 p.m.).[21] Although regulated family child care homes (a small and declining share of the child care industry) "tend to have more flexible hours than centers, two-thirds do not serve families during these hours."[22] Workers pushed into overtime hours may, as a result, turn to informal and unlicensed care options, but such options are not eligible for public child care assistance funds on which low-wage workers rely.[23] Unlicensed child care options also come with safety risks to the child.[24]

As the costs of care increase and become more unaffordable for more families, the burden of providing care services will fall dis-

---

[15] Dave Roos, *The Origins of the Five-Day Work Week in America*, HISTORY (Jan. 29, 2025), https://www.history.com/articles/five-day-work-week-labor-movement.

[19] *Who Provides Child Care During Nontraditional Hours?*, CHILD CARE AWARE OF AMERICA, https://info.childcareaware.org/hubfs/Who%20provides%20child%20care%20during%20nontraditional%20hours.pdf (last visited Apr. 17, 2025).

[20] Rasheed Malik, Katie Hamm & Leila Schochet, *America's Child Care Deserts in 2018*, CTR. FOR AM. PROGRESS (Dec. 6, 2018), https://www.americanprogress.org/article/americas-child-care-deserts-2018/.

[21] Gina Adams *et al., To Make the Child Care System More Equitable, Expand Options for Parents Working Nontraditional Hours*, URBAN INST. (Jan. 14, 2021), https://www.urban.org/urban-wire/make-child-care-system-more-equitable-expand-options-parents-working-nontraditional-hour.

[22] *Id.*

[23] *Id.*

[24] Danielle DaRos, *I–Team: The Risks of Unregulated Childcare*, CBS 12 NEWS (Sept. 17, 2024), https://cbs12.com/news/local/i-team-the-risks-of-unregulated-childcare-palm-beach-county-riviera-beach-health-department-daycare-tuesday-september-17-2024; *Unlicensed Daycare Operator Charged with Aggravated Battery to a Child: Crystal Lake Police*, NBC CHICAGO (Apr. 19, 2024), https://www.nbcchicago.com/news/local/unlicensed-daycare-operator-charged-with-aggravated-battery-to-a-child-crystal-lake-police/3415880/; Tony Sloan, *Nashville Woman Charged in Death of 6-Month-Old Left in Her Unlicensed Daycare*, NEWS CHANNEL 5 NASHVILLE (Mar. 27, 2025), https://www.newschannel5.com/news/nashville-woman-charged-in-death-of-6-month-old-left-in-her-unlicensed-daycare.

proportionately on women.[25] The early days of the COVID–19 pandemic are a cautionary tale: when school closures and the collapse of child care infrastructure increased families' child care burdens, more women than men were forced to leave the labor force,[26] and many of these working mothers never returned to the workforce full-time.[27] The impact has been disproportionately felt in industries traditionally powered by women, including health care, education, and child care.[28] For the child care industry in particular, the existing crisis triggered by the COVID–19 pandemic has devolved into a vicious cycle—absent accessible child care, mothers cannot return to work even if they want to, and the child care workforce will shrink further, making child care even less accessible.[29]

A Mirage of Benefits

To the extent that the bill actually incentivizes employers to provide child and dependent care subsidies or services, it is not clear that employers would make a meaningful investment. Nothing in the bill requires employers to provide care benefits commensurate to the actual cost of such care. A worker might accept a meager care subsidy as better than nothing even if it falls significantly short of the cost of care. The employer, meanwhile, would be able to enjoy 1.5 times as much in avoided overtime pay expenses.

Any talk of child care or elder care in relation to this bill is just a mirage. This bill does not address the cost of dependent care and has no mechanism to bring that cost down.

Better Solutions

If the Majority is serious about tackling child and elder care costs for working families, better solutions are available. The Majority could start by looking at existing law, which already sets up modest incentives for child and dependent care. Employers who provide child care services directly can deduct fringe benefits as an ordinary cost of doing business, and there are additional tax preferences for these child and dependent care benefits.[30] Simply expanding these tax code incentives could make a meaningful difference without encouraging overwork.

But there is clearly a need to do more. *The Child Care for Working Families Act*, slated to be reintroduced again this Congress, would ensure families across America can find and afford the child care they need, dramatically expand access to high-quality preschool programs, and boost wages for early childhood workers.[31]

---

[25] Nathan M. Stall *et al., Unpaid Family Caregiving—The Next Frontier of Gender Equity in a Postpandemic Future*, JAMA HEALTH FORUM (June 9, 2023), https://jamanetwork.com/journals/jama-health-forum/fullarticle/2805890.

[26] Christine Michel Carter, *Five Years Later, Working Mothers Continue to Leave the Workforce*, FORBES (Mar. 29, 2025), https://www.forbes.com/sites/christinecarter/2025/03/29/five-years-later-working-mothers-continue-to-leave-the-workforce/.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] INTERNAL REV. SVC., PUB. 503, CHILD AND DEPENDENT CARE EXPENSES (2024), https://www.irs.gov/publications/p503; LINDA SMITH ET AL., BIPARTISAN POL. CTR., THE EMPLOYER-PROVIDED CHILD TAX CREDIT (45F) (Nov. 2022), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/11/WEB_BPC_ECI-45F-Explainer_R01.pdf; GOV'T ACCOUNTABILITY OFF., GAO–22–105264, EMPLOYER-PROVIDED CHILD CARE CREDIT: ESTIMATED CLAIMS AND FACTORS LIMITING WIDER USE (Feb. 2022), https://www.gao.gov/assets/gao-22-105264.pdf.

[31] *See, e.g.*, H.R. 2976, 118th Cong. (2023).

Under the legislation, which Ranking Member Scott and Sen. Patty Murray (D–WA) have introduced every Congress since 2017, the typical family in America will pay no more than $10 a day for child care—with many families paying nothing at all—and no eligible family will pay more than 7% of the family's income on child care.

Republican Attacks on Working Families

Although likely to be sold as demonstrating the softer side of the Republican Majority, this bill is a fig leaf barely covering the Republicans' naked assault on working families.

Head Start and other early child education programs on which many working families rely are under attack. On April 1, 2025, five of 12 regional offices for the Office of Head Start, within the Department of Health and Human Services (HHS), were abruptly closed.[32] The offices play a critical role, assisting grantees with grant management, compliance with health and safety regulations, and fiscal planning.[33] In the wake of the abrupt office closures, with grantees left wondering whom to contact regarding grant renewals, the National Head Start Association voiced its "deep[ ] concern[ ] about the potential disruption to vital services for eligible children and families across the country." [34]

This comes after mass layoffs at the Administration for Children and Families (ACF), also within HHS, which have reduced staff by as much as 38 percent in recent weeks.[35] ACF's Office of Child Care administers the Child Care Development Fund (CCDF), which provided child care subsidies for 1.8 million children in fiscal year 2021 (the most recent year for which data is available).[36] CCDF subsidies play a crucial role in defining health and safety requirements for child care providers across states, ensuring parents have transparent information about the child care choices available to them, and helping eligible families make ends meet.[37] Attacks on CCDF and the ability of Head Start to administer services constrain already limited capacity for oversight and risk leaving children less safe and affordable child care out of reach for families in need.

The layoffs presage complete elimination of these programs. The news media recently published a leaked document that appears to be the Office of Management and Budget's "passback" instructions to the Department for Health and Human Services as it prepares

---

[32] Moriah Balingit, *Mass Layoffs Rattle Head Start Leaders Already on Edge Over Funding Problems*, AP (Apr. 2, 2025), https://apnews.com/article/head-start-office-closures-hhs-trump-00b1a6b33ef918cb66e59b7ffb07ac1.

[33] *NHSA Expresses Deep Concern Over Administration Shuttering Regional Offices*, NAT'L HEAD START ASSOC'N (Apr. 1, 2025), https://nhsa.org/press_release/nhsa-expresses-deep-concern-over-administration-shuttering-regional-offices/.

[34] *Id.*

[35] Jonathan Cohn, *Trump's Next Target: Poverty-Stricken Kids*, THE BULWARK (Apr. 6, 2025), https://www.thebulwark.com/p/trump-next-target-poverty-stricken-kids-hhs-head-start-early-childhood-child-care-education-programs-federal-cuts.

[36] *Id.*; Nina Chen, Off. of the Assistant Sec'y for Plan. & Evaluation, Off. of Hum. Servs. Pol'y, *Estimates of Child Care Subsidy Eligibility & Receipt for Fiscal Year 2021* (Sep. 11, 2024), https://aspe.hhs.gov/reports/child-care-eligibility-fy2021.

[37] *Office of Child Care*, ADMIN. FOR CHILDREN & FAMS. (Mar. 7, 2024), https://acf.gov/office-child-care.

its components of the President's annual budget submission.[38] In it, Head Start is proposed to be completely eliminated, along with many other valuable programs supporting working families.

Medicaid also has a target on its back. The budget resolution passed by both the House and the Senate—supported by nearly the entire House Republican Conference[39]—directs the House Energy and Commerce Committee to cut $880 billion over ten years, which is expected to primarily come from cuts to Medicaid.[40] Medicaid is a vital source of health coverage in the United States—including for workers—covering 1 in 5 people and 41 percent of births nationally.[41] Medicaid cuts will negatively impact people across the country, with disproportionate impacts for poorer states as well as individuals in rural areas and Black, Latino, and Indigenous people.[42] Moreover, Medicaid is the largest payer for long-term care services for seniors.[43] At the same time that Republicans are purporting to care about access to elder care, they are threatening the very program that pays for this care, only to extend tax cuts for the top 1 percent.[44]

CONCLUSION

For the reasons stated above, Committee Democrats unanimously opposed H.R. 2270 when the Committee on Education and Workforce considered it on April 9, 2025. We urge the House of Representatives to do the same.

ROBERT C. "BOBBY" SCOTT,
Ranking Member.
JOE COURTNEY,
SUZANNE BONAMICI,
MARK TAKANO,
MARK DESAULNIER,
SUMMER LEE,
JOHN MANNION,
YASSAMIN ANSARI,
Members of Congress.

○

[38] *See* Jeremy Faust, *Scoop: Leaked PDF Outlines Major HHS Restructuring Proposal (Authenticity Now Confirmed). "The Safety Nets Are Being Blown Up Right and Left."*, INSIDE MED. (Apr. 16, 2025), https://insidemedicine.substack.com/p/scoop-leaked-pdf-outlines-major-hhs.

[39] H. Con. Res. 14, 119th Cong. (2025).

[40] Sharon Parrott, *House Republican Budget Would Mean Higher Costs, Less Help for Families, More Tax Windfalls for Wealthy*, CTR. ON BUDGET & POL'Y PRIORITIES, at 2 (Feb. 12, 2025), https://www.cbpp.org/sites/default/files/2-12-25bud-stmt.pdf.

[41] Alice Burns *et al., 10 Things to Know About Medicaid*, KFF (Feb. 18, 2025), https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid/.

[42] *See* Parrott, *supra* note 40.

[43] *See* Burns, *supra* note 41.

[44] *See* Parrott, *supra* note 40.