119TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
119–423

FLEXIBILITY FOR WORKERS EDUCATION ACT

DECEMBER 30, 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. 2262]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Workforce, to whom was referred the bill (H.R. 2262) to amend the Fair Labor Standards Act of 1938 to exclude certain activities from hours worked, and for other purposes, 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 "Flexibility for Workers Education Act".

SEC. 2. TREATMENT OF ATTENDANCE OR PARTICIPATION IN CERTAIN ACTIVITIES.

(a) IN GENERAL.—Section 3(o) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(o)) is amended to read as follows:

"(o) HOURS WORKED.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded—

"(1) any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee; and

"(2) any time spent attending or participating in an education or training program or a similar activity (such as a lecture), regardless of whether the program or activity is offered or facilitated by the employer, provided that—

"(A) such attendance or participation occurs outside of the employee's regular working hours;

"(B) such attendance or participation is voluntary, and the employer does not take adverse action against the employee on the basis that such employee does not so attend or participate; and

"(C) the employee does not perform any work for the employer during such attendance or participation.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to hours worked on or after the date of enactment of this Act.

PURPOSE

To amend the *Fair Labor Standards Act of 1938* to exclude an employee's time spent on voluntary professional development activities outside of regular work hours from being considered as hours worked for the purposes of minimum wage and overtime compensation.

COMMITTEE ACTION

114TH CONGRESS

Second Session—Hearing

On June 9, 2016, the Committee on Education and the Workforce held a hearing titled "The Administration's Overtime Rule and its Consequences for Workers, Students, Nonprofits, and Small Businesses." Witnesses were Mr. Alexander Passantino, Partner, Seyfarth Shaw LLP, Washington, DC; Mr. Michael Rounds, Associate Vice Provost for Human Resource Management, University of Kansas, Lawrence, KS; Ms. Tina Sharby, Chief Human Resources Officers, Easter Seals New Hampshire, Inc., Manchester, NH; and Mr. Jared Bernstein, Senior Fellow, Center on Budget and Policy Priorities, Washington, DC. Witnesses discussed training opportunities and the lack of flexibility of compensable time requirements under the *Fair Labor Standards Ac*t (FLSA), among other topics.

117TH CONGRESS

Legislative Action

On April 1, 2022, Representative Ashley Hinson (R–IA) introduced H.R. 7365, the *Flexibility for Workers Education Act*, which was referred solely to the Committee on Education and Labor.

118TH CONGRESS

Legislative Action

On February 17, 2023, Representative Hinson introduced H.R. 1084, the *Flexibility for Workers Education Act*, which was referred solely to the Committee on Education and the Workforce.

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 Ms. Tammy McCutchen, Senior Affiliate, Resolution Economics, New Market, TN; Ms. Paige Boughan, Senior Vice President and Director of Human Resources, Farmers and Merchants Bank, Westminster, MD, on behalf of SHRM; Mr. Andrew Stettner, Director of Economy and Jobs, The Century Foundation, Washington,

DC; and Mr. Jonathan Wolfson, Chief Legal Officer and Policy Director, Cicero Institute, Austin, TX. Witnesses discussed H.R. 2262, the *Flexibility for Workers Education Act*, among other topics.

Legislative Action

On March 21, 2025, Representative Ashley Hinson (R–IA) introduced H.R. 2262, the *Flexibility for Workers Education Act*, with Representatives Julia Letlow (R–LA) and Mark Messmer (R–IN) as original cosponsors. The bill was referred solely to the Committee on Education and Workforce. On April 9, 2025, the Committee considered H.R. 2262 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 18–13. Representative Mary Miller (R–IL) offered an amendment in the nature of a substitute making technical changes to the bill, which was adopted by voice vote.

COMMITTEE VIEWS

Introduction

The *Fair Labor Standards Act* (FLSA) is the primary federal statute establishing standards for minimum wage, overtime pay, child labor, recordkeeping, and other wage-and-hour standards covering over 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 hours in a given workweek.

Hours Worked Under the FLSA

The FLSA requires that hourly employees receive the federally mandated minimum wage and one-and-one-half times their regular rate of pay for all overtime hours worked. The FLSA defines "employee" as "any individual employed by an employer."[2] It defines "employer" as "any person acting directly or indirectly in the interest of an employer in relation to an employee."[3] "Employ" means "to suffer or permit to work."[4] Thus, compensable time is triggered whenever an employee is "suffered or permitted to work."

FLSA Section 3(o) requires that employees be paid for all "hours worked" in a workweek.[5] This includes all time an employee must be on duty or on the employer's premises or any other prescribed place of work starting with the first principal activity of the workday to the end of the last principal activity of the workday. This also includes any additional time the employee is allowed (suffered or permitted) to work, *i.e.,* the employee may choose to work addi-

[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(e)(1).
[3] *Id.* § 203(d).
[4] *Id.* § 203(g).
[5] *Id.* § 203(o).

tional hours that trigger overtime with the authorization of the employer.[6]

The FLSA provides numerous exemptions from minimum wage or overtime coverage for certain classes of employees, along with specific "duties tests" to determine whether employees fall within those classes. Employees who are covered by minimum wage and overtime are referred to as "nonexempt" employees. Those who are not covered by minimum wage and overtime requirements are referred to as "exempt" or "white collar" employees. White collar employees are those performing duties in a "bona fide executive, administrative, or professional capacity," in addition to other exempt duties.[7]

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 overhaul since its enactment 87 years ago, has failed to keep pace with the modern workforce. Witnesses also proposed legislative solutions to make the FLSA less rigid and remove employer disincentives that currently limit career growth and opportunities. Witnesses further testified that the FLSA should instead promote skills and career growth for hourly workers and remove or alter outdated and unnecessary standards which prevent employers from providing benefits to employees.

Ms. Tammy McCutchen, former U.S. Department of Labor Wage and Hour Administrator, discussed in her testimony the challenge of determining whether voluntary training time outside normal working hours is compensable: "Let's talk training time: Work or not work? Voluntary training outside normal working hours. It depends." To clarify what is compensable time, she recommended enacting the *Flexibility for Workers Education Act* to "exclude from hours worked time spent attending or participating in training programs" as "voluntary and outside an employee's regular working hours."[8]

Mr. Jonathan Wolfson, head of the policy office at the U.S. Department of Labor (DOL) during the first Trump administration, testified regarding professional development:

> The worker who would like to enhance their skills and upskill so that they can move onto additional jobs in their career should be encouraged to do so and many businesses want to train their workers to do another thing—there might be professional development opportunities for that worker. If they are an exempt worker from overtime then it's really clear that those workers are doing those activi-

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[6] U.S. DEP'T OF LAB., WAGE & HOUR DIV., FACT SHEET #22: HOURS WORKED UNDER THE FAIR LABOR STANDARDS ACT (FLSA) (revised July 2008), https://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked.

[7] *Id.,* FACT SHEET #17A: EXEMPTION FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER & OUTSIDE SALES EMPLOYEES UNDER THE FAIR LABOR STANDARDS ACT (FLSA) (revised Sept. 2019), https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime.

[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 5).

> ties and many workers want that status of being able to move up, but by requiring employers to count provision of additional training in the off-hours as hours worked or even the training cost as part of the overtime calculation, business are less inclined to offer that, which is going to further divide the exempt worker from the nonexempt worker.[9]

Mr. Wolfson also stated that "legislation is a highly preferable way to go about amending" the FLSA, while "an ultimately unclear FLSA leaves many vital decisions to the regulators."

Flexibility for Workers Education Act

On March 21, 2025, Rep. Hinson introduced H.R. 2262, the *Flexibility for Workers Education Act*. This bill would provide workers with greater access to career-advancing skills and training, help close the skills gap, improve retention and job satisfaction, and increase worker productivity.

Under current law, employer-provided upskilling and educational opportunities for workers often count toward hours worked, even if offered as a voluntary benefit outside of regular work. This often results in the benefit not being extended to nonexempt workers who could gain even more from opportunities than their exempt counterparts. Thus, certain workers are blocked from gaining new opportunities that their employers are willing to offer at no cost to the worker. This restricts upward mobility and stifles workers' career growth potential.

H.R. 2262 amends FLSA Section 3(o) to allow for flexibility in what is considered compensable time under the "hours worked" provision of the law by excluding voluntary training time from being added into an employee's hours worked for a given workweek. The bill allows employers to offer voluntary growth and development opportunities that relate to the employee's job outside of work hours without counting towards hours worked, as long as an employee's working conditions are not adversely affected by choosing not to participate and the employee does not perform any work for the employer during the training. For example, a facilities associate who wants to become an appliance repair technician could participate in voluntary employer-sponsored appliance repair technician courses outside of work hours, which would make him or her more competitive for future, higher paying jobs.

Conclusion

Workers and businesses benefit from easy-to-understand wage-and-hour rules—and they suffer from impossible compliance burdens and red tape. At the March 25, 2025, hearing, former DOL Wage and Hour Administrator Tammy McCutchen stated that "we need clear and simple rules that small businesses and workers can understand without an attorney or HR professionals."[10] Allowing hourly workers to pursue educational opportunities that move them forward in their career is critical to help bring the FLSA into the 21st century.

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[9] *Id.* (testimony of Jonathan Wolfson, Chief Legal Off. & Pol'y Dir., Cicero Inst.).
[10] *Id.* (written statement of Tammy McCutchen, Senior Affiliate, Resolution Econ., at 3).

H.R. 2262 SUMMARY

H.R. 2262 amends the FLSA to exclude an employee's time spent on voluntary professional development activities outside of regular work hours from being considered as hours worked for the purposes of minimum wage and overtime compensation.

H.R. 2262 SECTION-BY-SECTION SUMMARY

Section 1—Short title

Names the bill the *Flexibility for Workers Education Act*.

Section 2—Treatment of attendance or participation in certain activities

The bill amends FLSA Section 3(o) to expand the definition of "hours worked" to include voluntary professional development opportunities, with the following restrictions:

- Attendance occurs outside of the employee's regular working hours;
- Attendance is voluntary; and
- The employee does not perform any work for the employer during such attendance.

The bill also directs this change to apply with respect to hours worked 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. 2262 is to exclude an employee's time spent on voluntary professional development activities outside of regular work hours from being considered as hours worked for the purposes of minimum wage and 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. 2262 amends the *Fair Labor Standards Act of 1938* to exclude certain activities from hours worked, and for other purposes. This amendment also applies to 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. 2262 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: 4 Bill: H.R. 2262 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: / 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. 2262, is to amend the *Fair Labor Standards Act of 1938* to exclude certain activities from hours worked, and for other purposes.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2262 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. 2262: On March 25, 2025, the Committee on Education and Workforce held a hearing titled "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. 2262. 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

* * * * * * *

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

(v) in the Library of Congress, or

(vi) the Government Printing Office;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(4)(A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(5) The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private nonprofit food banks and who receive from the food banks groceries.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Producer" means produced, manufactured, mined, handled, or in any manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of chil-

dren between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virture of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m)(1) "Wage" paid to any employee includes the reasonable cost, as determined by the Secretary of Labor, 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: *Provided,* That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further,* That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee.

(2)(A) In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

(i) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on the date of the enactment of this paragraph; and

(ii) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in clause (i) and the wage in effect under section 6(a)(1).

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(B) An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips, regardless of whether or not the employer takes a tip credit.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided,* That the sale is recognized as a bona fide retail sale in the industry.

[(o) HOURS WORKED.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.]

(o) HOURS WORKED.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded—

(1) any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee; and

(2) any time spent attending or participating in an education or training program or a similar activity (such as a lecture), regardless of whether the program or activity is offered or facilitated by the employer, provided that—

(A) such attendance or participation occurs outside of the employee's regular working hours;

(B) such attendance or participation is voluntary, and the employer does not take adverse action against the employee on the basis that such employee does not so attend or participate; and

(C) the employee does not perform any work for the employer during such attendance or participation.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r)(1) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) that

it will have the exclusive rights to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

(2) For purposes of paragraph (1), the activities performed by any person or persons—

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physicially handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(C) in connection with the activities of a public agency.

shall be deemed to be activities performed for a business purpose.

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

* * * * * * *

MINORITY VIEWS

INTRODUCTION

H.R. 2262, the *Flexibility for Workers Education Act*, would carve out time spent participating in education or training related to employment from the calculation of a worker's compensable time for the purposes of minimum wage and overtime. The bill would enable employers to schedule training essential to the job and get away with not paying their employees for the time.

BACKGROUND

Underlying Law

The *Fair Labor Standards Act of 1938* (FLSA) is the core federal workplace standards law governing the minimum wage, overtime, oppressive child labor, and other fundamental workplace standards.[1] FLSA includes many exemptions[2] and special provisions for particular workplaces.[3] For convenience, this discussion will use the term "employee" to mean non-exempt employees and will focus on the typical case of hourly workers in typical private-sector jobs.

Compensable Time

Both the minimum wage and overtime provisions of FLSA operate on the basis of compensable time. The minimum wage is set at an hourly rate of $7.25 per hour. The overtime premium of "time and a half" applies to each hour worked beyond 40 hours in a workweek.

FLSA does not define compensable time.[4] The Wage and Hour Division (WHD) of the Department of Labor (DOL), which administers FLSA, and federal courts have typically resorted to the first principles of FLSA's definition of "employ"[5] and the general remedial purposes of the law:

> [The FLSA is] remedial and humanitarian in purpose. We are not here dealing with mere chattels or articles of trade but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the

[1] Pub. L. No. 75–718, 52 Stat. 1060 (1938) (codified at 29 U.S.C. § 201 *et seq.*).

[2] *See, e.g., id.* §§ 13(a)(1) (minimum wage and overtime exemption for bona fide executive, administrative, and professional employees), 13(b) (overtime exemption for interstate transportation workers).

[3] *See, e.g., id.* §§ 7(j) (permitting hospital and care facilities to apply overtime on a 14-day rather than seven-day work period), 14(c) (authorizing subminimum wages for workers with disabilities in sheltered workshops).

[4] Herman A. Wecht, *The Federal Wage and Hour Law*, 57 DICKINSON L. REV. 198, 205 (1953).

[5] *See, e.g.*, Wage & Hr. Div., *Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)*, U.S. DEP'T OF LAB. (July 2008), https://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked ("By statutory definition the term 'employ' includes 'to suffer or permit to work . . .' Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.") [hereinafter *Fact Sheet #22*].

> use and profit of others. Those are the rights that Congress has specially legislated to protect. Such a statute must not be interpreted or applied in a narrow, grudging manner. Accordingly, we view [FLSA] as necessarily indicative of a Congressional intention to guarantee either regular or overtime compensation for all actual work or employment. To hold that an employer may validly compensate his employees for only a fraction of the time consumed in actual labor would be inconsistent with the very purpose and structure of those sections of the Act . . . And, in the absence of a contrary legislative expression, we cannot assume that Congress here was referring to work or employment other than as those words are commonly used—as meaning physical or mental exertion . . . controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.[6]

WHD has applied this general principle in guidance documents over the years on matters such as waiting time, on-call periods, rest and meal periods, travel, and (particularly important to this bill) training.[7]

1940s Carve-Outs

In the 1940s, disputes over which portions of a worker's time should be considered compensable reached the Supreme Court. In a trio of cases prior to 1947, the Supreme Court interpreted FLSA to cover some periods of time spent after arrival at the workplace but before the commencement of what employers deemed productive work, including travel over significant distances from the workplace entrance to the actual duty station and necessary preliminary activities such as gathering equipment and supplies.[8]

To give employers "a legal stop gap" from the subsequent "flood of lawsuits demanding 'portal to portal' pay,"[9] Congress enacted two laws: the *Portal-to-Portal Act of 1947* (Portal-to-Portal)[10] and the *Fair Labor Standards Act Amendments of 1949* (1949 Amendments).[11]

Portal-to-Portal shut down most such lawsuits based on claims arising before its enactment, except where the portions of the work-

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[6] Tenn. Coal Co. v. Muscoda, 321 U.S. 590, 597–98 (1944).

[7] *Fact Sheet #22, supra* note 5.

[8] Twice the Court ruled that miners' activities undertaken prior to arriving at the working faces of the mine—such as retrieving lamps from a lamp house at the main portal, riding man trips underground, checking in at the underground man trip station, collecting tools and explosives, and finally journeying to the working face—are compulsory activities performed for the benefit of the mine operators, on the operators' property, and under the control of the operators, and thus constituted employment for which the time spent must be considered compensable time. Jewell Ridge Coal Corp. v. United Mine Workers, 325 U.S. 161 (1945); *Tenn. Coal*, 321 U.S. at 598. The Court applied similar logic in a case involving workers at an industrial plant spread over eight acres who were routinely docked as much as an hour each day to exclude time spent walking from the time clock at the plant entrance to their duty stations, however far from the entrance they may be, and time spent on necessary preliminary activities "such as putting on aprons and overalls, removing shirts, taping or greasing arms, putting on finger cots, preparing the equipment for productive work, turning on switches for lights and machinery, opening windows, and assembling and sharpening tools." Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692–93 (1946).

[9] Wecht, *supr*a note 4, at 206.

[10] Pub. L. No. 80–49 (1947).

[11] Pub. L. No. 81–393, 63 Stat. 910 (1949).

day deemed compensable were governed by custom or contract.[12] It also narrowed the applicability of FLSA wage and hour provisions going forward to exclude "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform" and "activities which are preliminary to or postliminary to said principal activity or activities."[13]

The 1949 Amendments whittled away at FLSA coverage again by adding the new section 3(o), excluding from wage and hour coverage "any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time . . . by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee."[14] The Supreme Court clarified in *Sandifer v. U.S. Steel Corp.* that "clothes" may include personal protective equipment (PPE) to the extent that the PPE is considered an article of dress and is used to cover the body (for example, flame-retardant jackets, hardhats, work gloves, and metatarsal boots, but not safety glasses or earplugs).[15]

Integral and Indispensable

The Supreme Court interpreted both Portal-to-Portal and the 1949 Amendments in *Steiner v. Mitchell*, in which the owner of a battery manufacturing plant challenged the compensability of the time spent by employees changing clothes before and after shifts and showering at the end of the shift.[16] The analysis at every stage of the litigation focused on the caustic and toxic materials used on the job, the workers' need as a result to change clothes and shower at the end of the shift,[17] and the relationship between the activities of changing clothes and showering and the principal activities of the business:

> The trial court held that these activities "are made necessary by the nature of the work performed"; that they fulfill "mutual obligations" between petitioners and their employees; that they "directly benefit" petitioners in the operation of their business, and that they "are so closely related to other duties performed by [petitioners"] employees as to be an integral part thereof and are, therefore, included among the principal activities of said employees." It concluded that the time thereby consumed is not excluded from coverage by Section 4 of [Portal-to-Portal], but constitutes time worked within the meaning of the [FLSA]. The Court of Appeals affirmed, likewise holding that the term "principal activity or activities" in Section 4 embraces all activities which are "an integral and indispensable part of the principal activities," and that the activities in question fall within this category.[18]

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[12] Portal to Portal §§2–3.
[13] *Id.* §4(a).
[14] 1949 Amendments §3(d).
[15] Sandifer v. U.S. Steel Corp., 571 U.S. 220 (2014).
[16] 350 U.S. 247 (1956).
[17] *Id.* at 248.
[18] *Id.* at 252–53.

The Court agreed with the lower courts and noted further that FLSA § 3(o), as established by the 1949 Amendments, was narrow in scope, providing merely that donning, doffing, and washing activities "which are otherwise a part of the principal activity may be expressly excluded from coverage by [collective bargaining]." [19]

After reflecting on the intended breadth of FLSA and the limited scope of Portal-to-Portal and the 1949 Amendments, the *Steiner* Court emphasized that the key test for determining the compensability of an activity is whether it is "an integral and indispensable part of the principal activities for which covered workmen are employed." [20]

The *Steiner* test is limited by a nexus to the "principal activities" of the business. For example, in a case involving workers who spent significant amounts of uncompensated time at the end of a warehouse shift waiting to go through anti-theft security screenings, the Court stressed that the security process, while required by the employer, was not integral or indispensable to warehouse work *per se* and thus was a postliminary activity rendered non-compensable by Portal-to-Portal.[21] By contrast, the Court ruled in favor of the compensability of the time meatpacking employees spent sharpening their knives before the principal activity of meat processing because dull knives would "slow down production" on the assembly line, "affect the appearance of the meat as well as the quality of the hides," "cause waste," and lead to "accidents," making the work of sharpening knives integral and indispensable to the principal activity of the business.[22]

Applicability to Off-the-Clock Training Offerings

Current WHD interpretative rules on education and training determine when attendance at such events does not constitute an integral and indispensable part of an employee's principal activities and are therefore not compensable. Under these rules, such events "need not be counted as working time" if four criteria are met:

> (a) Attendance is outside of the employee's regular working hours;
>
> (b) Attendance is in fact voluntary;
>
> (c) The course, lecture, or meeting is not directly related to the employee's job; and
>
> (d) The employee does not perform any productive work during such attendance.[23]

The rules explain further that what is framed as "voluntary" must actually be voluntary:

> Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is *given to understand or led to believe* that his present

[19] Id. at 254–255.
[20] *Id.* at 256.
[21] Integrity Staffing Solutions, Inc. v. Busk, 574 U.S. 27 (2014).
[22] Mitchell v. King Packing Co., 350 U.S. 260, 262 (1956).
[23] 29 C.F.R. § 785.27. Additionally, employees may pursue their own course of study on their own initiative on their own time, which would likewise not be compensable no matter how related to their current employment. *Id.*

> working conditions or the continuance of his employment would be adversely affected by nonattendance.[24]

For purposes of assessing whether training is "directly related to the employee's job," the rules distinguish between training intended to make an employee more effective at handling the current job as opposed to training for a new job or a new skill. Training "instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill [and] not intended to make the employee more efficient in his present job" is not "directly related," even if it has the incidental consequence of actually improving the employee's current performance.[25]

SHORTCOMINGS OF THE LEGISLATION

H.R. 2262 would strike and replace FLSA § 3(o). The new section 3(o) would replicate, without any substantive change, the original section 3(o) exclusion of some donning and doffing time, where governed by contract terms or customs under a collective bargaining agreement. It would be amended by insertion of a new paragraph excluding from compensability some time spent on education and training activities.

Open Door to Stealing Workers' Time

H.R. 2262 would render attendance in "lectures, education or training programs" non-compensable if (1) the participation takes place outside of regular working hours; (2) participation is voluntary, and non-participation would not result in firing or other adverse employment action; and (3) the worker does not perform productive work for the employer during the training.

These three qualifiers are pulled directly from existing rules,[26] but there are important differences:

(1) The bill drops the criterion of voluntariness *in fact*.

(2) The bill omits the "directly related" criterion.

The first omission essentially encourages the theft of workers' time. Existing rules instruct WHD to look beneath the label of "voluntary" and examine whether an employer has insinuated, hinted, or otherwise encouraged an employee to believe that there would be adverse consequences tied to non-attendance.[27] Eliminating the criterion of voluntariness in fact means that, with just a wink and a nudge, the boss can easily compel workers to give more of their time without FLSA's wage and hour protections.

The absence of the "directly related" qualifier means that an employer could organize or facilitate a training that is directly related to an employee's job, after the employee's shift, call it voluntary, and do so off the clock or outside of minimum wage or overtime calculations. This would undermine the longstanding principle that any activity that is "integral and indispensable" to the principal activity of the employee's job is work performed for the benefit of the employer that must be fairly compensated in accordance with FLSA's minimum wage and overtime provisions.

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[24] *Id.* § 785.28 (emphasis added).
[25] Id. § 785.29.
[26] *See supra* text accompanying note 23.
[27] *See supra* text accompanying notes 23–24.

The bill makes it very easy for an employer to benefit from workers' time without paying for it. Suppose, for example, that an employer opens a Thai restaurant in a community where the local workforce is trained in the recipes and techniques of French and other non-Thai cuisines. Under this bill, the employer could hire line cooks whose jobs require making curry pastes and sauces from scratch, offer them an after-hours, off-the-clock training in Thai curry pastes and sauces, and—provided simply that the employer does not explicitly call the training "required"—get away with not paying the line cooks at all for that time at all, even though the employees would reasonably conclude that the training was, in fact, mandatory.

This bill would undercut the longstanding principle that FLSA requires minimum wage and overtime protections for all time that employees spend working for the benefit of the employer. Training that is essential for a job should be conducted on the clock, and employees should be paid for that time. This bill is a bizarre deviation from decades of precedent and the core remedial and humanitarian principles of FLSA. It cheapens workers' most precious commodity—their time.

Forcing Taxpayers to Pay for On-the-Job Training in WIOA and Apprenticeships

Because this bill would make it easier for employers not to compensate employees for training time spent outside of regular work hours, it would have a negative impact for on-the-job training opportunities under the *Workforce Innovation and Opportunity Act*[28] (WIOA) and apprenticeships. These methods of training often require related or supplementary instruction that cannot be learned at the worksite. Under WIOA, the definition of "on-the-job training" means "training by an employer that is provided to a paid participant while engaged in productive work in a job that provides knowledge or skills essential to the full and adequate performance of the job."[29] This form of training is organized through a contract between an employer and a local workforce board, in which up to 50% of the cost of the training is subsidized by WIOA.[30]

While there is no requirement under WIOA itself that related instruction be compensated, a local board could require an employer to compensate the trainee for any related instruction pursuant to current FLSA rules on the compensability of training time.[31] H.R. 2262's removal of the "directly related" criterion, however, would enable employers to argue that they now have no legal obligation to compensate the trainee for related instruction. The resulting effect would be that either such time would have to be 100% compensated by WIOA funds, and thus funded by U.S. taxpayers, or else WIOA participants simply would not complete their training programs because they could not afford to attend. This is the opposite of an "earn and learn" model of training that on-the-job training was originally intended to be. The benefit of an "earn and

[28] Workforce Innovation and Opportunity Act, Pub. L. No. 113–128, 128 Stat. 1425 (codified at 29 U.S.C. § 3101 *et seq.*).
[29] 29 U.S.C. § 3102(44).
[30] *Id.*
[31] 29 C.F.R. § 785.27.

learn" model is that trainees would become skilled-up for a specific job without the financial burden or barriers common with training because they are compensated by the employer during such training.

Creating Confusion for the Workforce System

Because the bill lacks any direction or clarification for workforce development activities like on-the-job training, there currently appears to be confusion among stakeholders about its potential effects. A not-for-profit organization surveyed a small sample of local workforce board directors about the bill and found some expressed concerns that it would require the employer to compensate apprentices for related instruction time, a change that would lead employers to abandon their training programs due to the high cost, such as the following excerpted comments:

> I . . . think this requires the employer to *actually* . . . pay the hourly wage. I don't see how an employer could do this under an OJT agreement and avoid paying the hourly wage for education or training hours under the claim the participation was voluntary.
>
> I think that it is possible the bill might discourage employees from taking additional training if employers previously offered compensation for the education or training but don't know one way or the other or whether the bill would incentivize more employers to furnish this voluntary education or training . . . .[32]

Conversely, other board directors thought the bill would exempt employers from compensating related instruction time, leading to yet another barrier for low-income participants in on-the-job training:

> Personally, I think codifying this would lead to far fewer training opportunities for our workforce, particularly for low-income workers . . . . How can any of us expect to prepare a 21st century workforce with scarce resources and less dollars flowing into the public workforce system, especially if legislation like this would jeopardize the eligibility of those utilizing the underfunded programs we have at our disposal? Low-income workers might avoid training opportunities altogether if they are unpaid, as they cannot afford to forgo wages during instructional time. This undermines workforce development efforts aimed at increasing access to education and skills.[33]
>
> This would almost certainly cause problems for apprenticeship programs given RTI is still paid by the employer (that is, it's a common practice for employers to pay wages while they're receiving classroom-based instruction). Given OJT contracts can and often are less prescriptive, I think this could pose an issue there, too.[34]

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[32] E-mail from a not-for-profit organization to Comm. on Educ. & Workforce Democratic Staff (Apr. 6, 2025, 11:51 PM EDT) (on file with author).
[33] *Id.*
[34] *Id.*

The confusion by board directors on how this bill would affect on-the-job training demonstrates how little thought went into its drafting and impact on employer-based workforce development.

CONCLUSION

For the reasons stated above, Committee Democrats unanimously opposed H.R. 2262 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.

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