

105TH CONGRESS
1ST SESSION

H. R. 1

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Received; read twice and returned to the Committee on Labor and Human
Resources

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Working Families
3 Flexibility Act of 1997”.

4 **SEC. 2. COMPENSATORY TIME.**

5 Section 7 of the Fair Labor Standards Act of 1938
6 (29 U.S.C. 207) is amended by adding at the end the fol-
7 lowing:

8 “(r) COMPENSATORY TIME OFF FOR PRIVATE EM-
9 PLOYEES.—

10 “(1) GENERAL RULE.—

11 “(A) COMPENSATORY TIME OFF.—An em-
12 ployee may receive, in accordance with this sub-
13 section and in lieu of monetary overtime com-
14 pensation, compensatory time off at a rate not
15 less than one and one-half hours for each hour
16 of employment for which overtime compensation
17 is required by this section.

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

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

25 “(A) applicable provisions of a collective
26 bargaining agreement between the employer

1 and the labor organization which has been cer-
2 tified or recognized as the representative of the
3 employees under applicable law, or

4 “(B) in the case of employees who are not
5 represented by a labor organization which has
6 been certified or recognized as the representa-
7 tive of such employees under applicable law, an
8 agreement arrived at between the employer and
9 employee before the performance of the work
10 and affirmed by a written or otherwise verifi-
11 able record maintained in accordance with sec-
12 tion 11(c)—

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

17 “(ii) entered into knowingly and vol-
18 untarily by such employees and not as a
19 condition of employment.

20 No employee may receive or agree to receive com-
21 pensatory time off under this subsection unless the
22 employee has worked at least 1000 hours for the
23 employee’s employer during a period of continuous
24 employment with the employer in the 12 month pe-

1 riod before the date of agreement or receipt of com-
2 pensatory time off.

3 “(3) HOUR LIMIT.—

4 “(A) MAXIMUM HOURS.—An employee
5 may accrue not more than 160 hours of com-
6 pensatory time.

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

20 “(C) EXCESS OF 80 HOURS.—The em-
21 ployer may provide monetary compensation for
22 an employee’s unused compensatory time in ex-
23 cess of 80 hours at any time after giving the
24 employee at least 30 days notice. Such com-

1 pensation shall be provided at the rate pre-
2 scribed by paragraph (6).

3 “(D) POLICY.—Except where a collective
4 bargaining agreement provides otherwise, an
5 employer which has adopted a policy offering
6 compensatory time to employees may dis-
7 continue such policy upon giving employees 30
8 days notice.

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

19 “(4) PRIVATE EMPLOYER ACTIONS.—An em-
20 ployer which provides compensatory time under
21 paragraph (1) to employees shall not directly or indi-
22 rectly intimidate, threaten, or coerce or attempt to
23 intimidate, threaten, or coerce any employee for the
24 purpose of—

1 “(A) interfering with such employee’s
2 rights under this subsection to request or not
3 request compensatory time off in lieu of pay-
4 ment of monetary overtime compensation for
5 overtime hours; or

6 “(B) requiring any employee to use such
7 compensatory time.

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

14 “(6) RATE OF COMPENSATION.—

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

19 “(i) the regular rate received by such
20 employee when the compensatory time was
21 earned, or

22 “(ii) the final regular rate received by
23 such employee,
24 whichever is higher.

1 “(B) CONSIDERATION OF PAYMENT.—Any
 2 payment owed to an employee under this sub-
 3 section for unused compensatory time shall be
 4 considered unpaid overtime compensation.

5 “(7) USE OF TIME.—An employee—

6 “(A) who has accrued compensatory time
 7 off authorized to be provided under paragraph
 8 (1), and

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

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

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

18 **SEC. 3. REMEDIES.**

19 Section 16 of the Fair Labor Standards Act of 1938
 20 (29 U.S.C. 216) is amended—

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

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

1 “(f) An employer which violates section 7(r)(4) shall
2 be liable to the employee affected in the amount of the
3 rate of compensation (determined in accordance with sec-
4 tion 7(r)(6)(A)) for each hour of compensatory time ac-
5 crued by the employee and in an additional equal amount
6 as liquidated damages reduced by the amount of such rate
7 of compensation for each hour of compensatory time used
8 by such employee.”.

9 **SEC. 4. NOTICE TO EMPLOYEES.**

10 Not later than 30 days after the date of the enact-
11 ment of this Act, the Secretary of Labor shall revise the
12 materials the Secretary provides, under regulations pub-
13 lished at 29 C.F.R. 516.4, to employers for purposes of
14 a notice explaining the Fair Labor Standards Act of 1938
15 to employees so that such notice reflects the amendments
16 made to such Act by this Act.

17 **SEC. 5. SUNSET.**

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

Passed the House of Representatives March 19,
1997.

Attest:

ROBIN H. CARLE,
Clerk.