II

113TH CONGRESS
1ST SESSION

S. 1626

To amend the Fair Labor Standards Act of 1938 to provide employees in the private sector with an opportunity for compensatory time off, similar to the opportunity offered to Federal employees, and a flexible credit hour program to help balance the demands of work and family, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2013

Mr. MCCONNELL (for himself and Ms. AYOTTE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to provide employees in the private sector with an opportunity for compensatory time off, similar to the opportunity offered to Federal employees, and a flexible credit hour program to help balance the demands of work and family, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Friendly and Workplace Flexibility Act of 2013".

SEC. 2. COMPENSATORY TIME.

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

"(s) COMPENSATORY TIME FOR PRIVATE EMPLOYEES.—

"(1) DEFINITIONS.—In this subsection—

"(A) the term 'employee' does not include an employee of a public agency; and

"(B) the terms 'overtime compensation', 'compensatory time', and 'compensatory time off' have the meaning given the terms in subsection (o)(7).

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

"(3) AGREEMENT REQUIRED.—An employer may provide compensatory time to an employee under paragraph (2) only in accordance with—

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

"(B) in the case of an employee who is not represented by a labor organization described in subparagraph (A), an agreement between the employer and employee arrived at before the performance of the work—

"(i) in which the employer has offered and the employee has chosen to receive compensatory time off under this subsection in lieu of monetary overtime compensation;

"(ii) that the employee enters into knowingly, voluntarily, and not as a condition of employment; and

"(iii) that is affirmed by a written or otherwise verifiable record maintained in accordance with section 11(c).

"(4) HOUR LIMIT.—An employee may accrue not more than 160 hours of compensatory time under this subsection, and shall receive overtime compensation for any such compensatory time in excess of 160 hours.

"(5) UNUSED COMPENSATORY TIME.—

"(A) COMPENSATION PERIOD.—

"(i) IN GENERAL.—Except as provided in clause (ii), not later than January 31 of each calendar year, the employer of the employee shall provide monetary compensation for any unused compensatory time under this subsection accrued during the preceding calendar year that the employee did not use prior to December 31 of the preceding year at the rate prescribed by paragraph (7)(A).

"(ii) ALTERNATIVE COMPENSATION PERIOD.—An employer may designate and communicate to an employee a 12-month period other than the calendar year for determining unused compensatory time under this subsection, and the employer shall provide monetary compensation not later than 31 days after the end of such 12-month period at the rate prescribed by paragraph (7)(A).

"(B) EXCESS OF 80 HOURS.—An employer may provide monetary compensation, at the rate prescribed by paragraph (7)(A), for any unused compensatory time under this subsection of an employee in excess of 80 hours at any time after giving the employee not less than 30 days' notice.

"(C) TERMINATION OF EMPLOYMENT.—Upon the voluntary or involuntary termination of an employee, the employer of such employee shall provide monetary compensation at the rate prescribed by paragraph (7)(A) for any unused compensatory time under this subsection.

"(6) WITHDRAWAL OF COMPENSATORY TIME AGREEMENT.—

"(A) EMPLOYER.—Except where a collective bargaining agreement provides otherwise, an employer that has adopted a policy of offering compensatory time to employees under this subsection may discontinue such policy after providing employees notice 30 days prior to discontinuing the policy.

"(B) EMPLOYEE.—

"(i) IN GENERAL.—An employee may withdraw an agreement described in paragraph (3)(B) after providing notice to the employer of the employee 30 days prior to the withdrawal.

"(ii) REQUEST FOR MONETARY COMPENSATION.—At any time, an employee may request in writing monetary compensation for any accrued and unused compensatory time under this subsection. The employer of such employee shall provide monetary compensation at the rate prescribed by paragraph (7)(A) within 30 days of receiving the written request.

"(7) MONETARY COMPENSATION.—

"(A) RATE OF COMPENSATION.—An employer providing monetary compensation to an employee for accrued compensatory time under this subsection shall compensate the employee at a rate not less than the greater of—

"(i) the regular rate, as defined in subsection (e), of the employee on the date the employee earned such compensatory time; or

"(ii) the final regular rate, as defined in subsection (e), received by such employee.

"(B) TREATMENT AS UNPAID OVERTIME.—Any monetary payment owed to an employee for unused compensatory time under this subsection, as calculated in accordance with subparagraph (A), shall be considered unpaid overtime compensation for the purposes of this Act.

"(8) USING COMPENSATORY TIME.—An employer shall permit an employee to take time off work for compensatory time accrued under paragraph (2) within a reasonable time after the employee makes a request for using such compensatory time if the use does not unduly disrupt the operations of the employer.

"(9) PROHIBITION OF COERCION.—

"(A) IN GENERAL.—An employer that provides compensatory time under paragraph (2) shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any employee for the purpose of interfering with the rights of an employee under this subsection—

"(i) to use accrued compensatory time in accordance with paragraph (8) in lieu of receiving monetary compensation;

"(ii) to refrain from using accrued compensatory time in accordance with paragraph (8) and receive monetary compensation; or "(iii) to refrain from entering into an agreement to accrue compensatory time under this subsection.

"(B) DEFINITION.—In subparagraph (A), the term 'intimidate, threaten, or coerce' includes—

"(i) promising to confer or conferring any benefit, such as appointment, promotion, or compensation; or

"(ii) effecting or threatening to effect any reprisal, such as deprivation of appointment, promotion, or compensation.".

SEC. 3. FLEXIBLE CREDIT HOUR PROGRAM.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207), as amended in section 2, is further amended by adding at the end the following:

"(t) FLEXIBLE CREDIT HOUR PROGRAM.—

"(1) DEFINITIONS.—In this subsection—

"(A) the term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee;

"(B) the term 'basic work requirement' means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise within a specified period of time;

"(C) the term 'employee' does not include an employee of a public agency;

"(D) the term 'flexible credit hour' means any hour that an employee, who is participating in a flexible credit hour program, works in excess of the basic work requirement; and

"(E) the term 'overtime compensation' has the meaning given the term in subsection (o)(7).

"(2) PROGRAM ESTABLISHMENT.—An employer may establish a flexible credit hour program for an employee to accrue flexible credit hours in accordance with this subsection and, in lieu of monetary compensation, reduce the number of hours the employee works in a subsequent day or week at a rate of one hour for each hour of employment for which overtime compensation is required by this section.

"(3) AGREEMENT REQUIRED.—

"(A) IN GENERAL.—An employer may carry out a flexible credit hour program under paragraph (2) only in accordance with—

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

"(ii) in the case of an employee who is not represented by a labor organization described in clause (i), an agreement between the employer and the employee arrived at before the performance of the work that—

"(I) the employee enters into knowingly, voluntarily, and not as a condition of employment; and

"(II) is affirmed by a written statement maintained in accordance with section 11(c).

"(B) HOURS DESIGNATED.—An agreement that is entered into under subparagraph (A) shall provide that, at the election of the employee, the employer and the employee will jointly designate flexible credit hours for the employee to work within an applicable period of time.

"(4) HOUR LIMIT.—An employee participating in a flexible credit hour program may not accrue more than 50 flexible credit hours, and shall receive overtime compensation for flexible credit hours in excess of 50 hours.

"(5) UNUSED FLEXIBLE CREDIT HOURS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), not later than January 31 of each calendar year, the employer of an employee who is participating in a flexible credit hour program shall provide monetary compensation for any flexible credit hour accrued during the preceding calendar year that the employee did not use prior to December 31 of the preceding calendar year at a rate prescribed by paragraph (7)(A)(i).

"(B) ALTERNATIVE COMPENSATION PERIOD.—An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year for determining unused flexible credit hours, and the employer shall provide monetary compensation, at a rate prescribed by paragraph (7)(A)(i), not later than 31 days after the end of the 12-month period.

"(6) PROGRAM DISCONTINUANCE AND WITHDRAWAL.—

"(A) EMPLOYER.—An employer that has established a flexible credit hour program under paragraph (2) may discontinue a flexible credit hour program for employees described in paragraph (3)(A)(ii) after providing notice to such employees 30 days before discontinuing such program.

"(B) EMPLOYEE.—

"(i) IN GENERAL.—An employee may withdraw an agreement described in paragraph (3)(A)(ii) at any time by submitting written notice of withdrawal to the employer of the employee 30 days prior to the withdrawal.

"(ii) REQUEST FOR MONETARY COMPENSATION.—An employee may request in writing, at any time, that the employer of such employee provide monetary compensation for all accrued and unused flexible credit hours. Within 30 days after receiving such written request, the employer shall provide the employee monetary compensation for such unused flexible credit hours at a rate prescribed by paragraph (7)(A)(i).

"(7) MONETARY COMPENSATION.—

"(A) FLEXIBLE CREDIT HOURS.—

"(i) RATE OF COMPENSATION.—An employer providing monetary compensation to an employee for accrued flexible credit hours shall compensate such employee at a rate not less than the regular rate, as defined in subsection (e), of the employee on the date the employee receives the monetary compensation.

"(ii) TREATMENT AS UNPAID OVERTIME.—Any monetary payment owed to an employee for unused flexible credit hours under this subsection, as calculated in accordance with clause (i), shall be considered unpaid overtime compensation for the purposes of this Act.

"(B) OVERTIME HOURS.—

"(i) IN GENERAL.—Any hour that an employee works in excess of 40 hours in a workweek that is requested in advance by the employer, other than a flexible credit hour, shall be an 'overtime hour'.

"(ii) RATE OF COMPENSATION.—The employee shall be compensated for each overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with subsection (a)(1), or receive compensatory time off in accordance with subsection (s), for each such overtime hour.

"(8) USE OF FLEXIBLE CREDIT HOURS.—An employer shall permit an employee to use accrued flexible credit hours to take time off work, in accordance with the rate prescribed by paragraph (2), within a reasonable time after the employee makes a request for such use if the use does not unduly disrupt the operations of the employer.

"(9) PROHIBITION OF COERCION.—

"(A) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of the employee under this subsection—

"(i) to elect or not to elect to participate in a flexible credit hour program, or to elect or not to elect to work flexible credit hours; or "(ii) to use or refrain from using accrued flexible credit hours in accordance with paragraph (8).

"(B) DEFINITION.—In subparagraph (A), the term 'intimidate, threaten, or coerce' has the meaning given the term in subsection (s)(9).".

SEC. 4. REMEDIES.

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

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

(2) by adding at the end the following:

"(f) An employer that violates subsection (s)(9) or (t)(9) of section 7 shall be liable to the affected employee in the amount of—

"(1) the rate of compensation, determined in accordance with subsection (s)(7)(A) or (t)(7)(A)(i) of section 7, for each hour of unused compensatory time or for each unused flexible credit hour accrued by the employee; and

"(2) liquidated damages equal to the amount determined in paragraph (1).".

SEC. 5. NOTICE TO EMPLOYEES.

Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to employees so that the notice reflects the amendments made to such Act by this Act.

SEC. 6. PROTECTIONS FOR CLAIMS RELATING TO COMPENSATORY TIME OFF AND FLEXIBLE CREDIT HOURS IN BANKRUPTCY PROCEEDING.

Section 507(a)(4)(A) of title 11, United States Code, is amended—

(1) by striking ‘‘and’’; and

(2) by inserting ‘‘, the value of unused, accrued compensatory time off under section 7(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(s)), all of which shall be deemed to have been earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, at a rate of compensation not less than the final regular rate received by such individual, and the value of unused, accrued flexible credit hours under section 7(t) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(t)), all of

which shall be deemed to have been earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, at a rate of compensation described in paragraph (7)(A)(i) of such section 7(t)'' after ''sick leave pay''.

SEC. 7. GAO REPORT.

Beginning 2 years after the date of enactment of this Act and each of the 3 years thereafter, the Comptroller General of the United States shall submit a report to Congress providing, with respect to the reporting period immediately prior to each such report—

(1) data concerning the extent to which employers provide compensatory time and flexible credit hours under subsections (s) and (t) of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207), as added by this Act, and the extent to which employees opt to receive compensatory time under subsection (s) and flexible credit hours under subsection (t);

(2) the number of complaints alleging a violation of subsection (s)(9) or (t)(9) of such section filed by any employee with the Secretary of Labor, and the disposition or status of such complaints;

(3) the number of enforcement actions commenced by the Secretary or commenced by the Secretary on behalf of any employee for alleged violations of subsection (s)(9) or (t)(9) of such section, and the disposition or status of such actions; and

(4) an account of any unpaid wages, damages, penalties, injunctive relief, or other remedies obtained or sought by the Secretary in connection with such actions described in paragraph (3).

SEC. 8. SUNSET.

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

○