

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.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Friendly and
5 Workplace Flexibility Act of 2013”.

1 **SEC. 2. COMPENSATORY TIME.**

2 Section 7 of the Fair Labor Standards Act of 1938
3 (29 U.S.C. 207) is amended by adding at the end the fol-
4 lowing:

5 “(s) COMPENSATORY TIME FOR PRIVATE EMPLOY-
6 EES.—

7 “(1) DEFINITIONS.—In this subsection—

8 “(A) the term ‘employee’ does not include
9 an employee of a public agency; and

10 “(B) the terms ‘overtime compensation’,
11 ‘compensatory time’, and ‘compensatory time
12 off’ have the meaning given the terms in sub-
13 section (o)(7).

14 “(2) GENERAL RULE.—An employee may re-
15 ceive, in accordance with this subsection and in lieu
16 of monetary overtime compensation, compensatory
17 time off at a rate not less than one and one-half
18 hours for each hour of employment for which over-
19 time compensation is required by this section.

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

23 “(A) applicable provisions of a collective
24 bargaining agreement between an employer and
25 a labor organization that has been certified or

1 recognized as the representative of the employ-
 2 ees of the employer under applicable law; or

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

8 “(i) in which the employer has offered
 9 and the employee has chosen to receive
 10 compensatory time off under this sub-
 11 section in lieu of monetary overtime com-
 12 pensation;

13 “(ii) that the employee enters into
 14 knowingly, voluntarily, and not as a condi-
 15 tion of employment; and

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

19 “(4) HOUR LIMIT.—An employee may accrue
 20 not more than 160 hours of compensatory time
 21 under this subsection, and shall receive overtime
 22 compensation for any such compensatory time in ex-
 23 cess of 160 hours.

24 “(5) UNUSED COMPENSATORY TIME.—

25 “(A) COMPENSATION PERIOD.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), not later than January
3 31 of each calendar year, the employer of
4 the employee shall provide monetary com-
5 pensation for any unused compensatory
6 time under this subsection accrued during
7 the preceding calendar year that the em-
8 ployee did not use prior to December 31 of
9 the preceding year at the rate prescribed
10 by paragraph (7)(A).

11 “(ii) ALTERNATIVE COMPENSATION
12 PERIOD.—An employer may designate and
13 communicate to an employee a 12-month
14 period other than the calendar year for de-
15 termining unused compensatory time under
16 this subsection, and the employer shall
17 provide monetary compensation not later
18 than 31 days after the end of such 12-
19 month period at the rate prescribed by
20 paragraph (7)(A).

21 “(B) EXCESS OF 80 HOURS.—An employer
22 may provide monetary compensation, at the
23 rate prescribed by paragraph (7)(A), for any
24 unused compensatory time under this sub-
25 section of an employee in excess of 80 hours at

1 any time after giving the employee not less than
2 30 days' notice.

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

9 “(6) WITHDRAWAL OF COMPENSATORY TIME
10 AGREEMENT.—

11 “(A) EMPLOYER.—Except where a collec-
12 tive bargaining agreement provides otherwise,
13 an employer that has adopted a policy of offer-
14 ing compensatory time to employees under this
15 subsection may discontinue such policy after
16 providing employees notice 30 days prior to dis-
17 continuing the policy.

18 “(B) EMPLOYEE.—

19 “(i) IN GENERAL.—An employee may
20 withdraw an agreement described in para-
21 graph (3)(B) after providing notice to the
22 employer of the employee 30 days prior to
23 the withdrawal.

24 “(ii) REQUEST FOR MONETARY COM-
25 PENSATION.—At any time, an employee

1 may request in writing monetary com-
2 pensation for any accrued and unused
3 compensatory time under this subsection.
4 The employer of such employee shall pro-
5 vide monetary compensation at the rate
6 prescribed by paragraph (7)(A) within 30
7 days of receiving the written request.

8 “(7) MONETARY COMPENSATION.—

9 “(A) RATE OF COMPENSATION.—An em-
10 ployer providing monetary compensation to an
11 employee for accrued compensatory time under
12 this subsection shall compensate the employee
13 at a rate not less than the greater of—

14 “(i) the regular rate, as defined in
15 subsection (e), of the employee on the date
16 the employee earned such compensatory
17 time; or

18 “(ii) the final regular rate, as defined
19 in subsection (e), received by such em-
20 ployee.

21 “(B) TREATMENT AS UNPAID OVER-
22 TIME.—Any monetary payment owed to an em-
23 ployee for unused compensatory time under this
24 subsection, as calculated in accordance with
25 subparagraph (A), shall be considered unpaid

1 overtime compensation for the purposes of this
2 Act.

3 “(8) USING COMPENSATORY TIME.—An em-
4 ployer shall permit an employee to take time off
5 work for compensatory time accrued under para-
6 graph (2) within a reasonable time after the em-
7 ployee makes a request for using such compensatory
8 time if the use does not unduly disrupt the oper-
9 ations of the employer.

10 “(9) PROHIBITION OF COERCION.—

11 “(A) IN GENERAL.—An employer that pro-
12 vides compensatory time under paragraph (2)
13 shall not directly or indirectly intimidate,
14 threaten, or coerce, or attempt to intimidate,
15 threaten, or coerce any employee for the pur-
16 pose of interfering with the rights of an em-
17 ployee under this subsection—

18 “(i) to use accrued compensatory time
19 in accordance with paragraph (8) in lieu of
20 receiving monetary compensation;

21 “(ii) to refrain from using accrued
22 compensatory time in accordance with
23 paragraph (8) and receive monetary com-
24 pensation; or

1 “(iii) to refrain from entering into an
 2 agreement to accrue compensatory time
 3 under this subsection.

4 “(B) DEFINITION.—In subparagraph (A),
 5 the term ‘intimidate, threaten, or coerce’ in-
 6 cludes—

7 “(i) promising to confer or conferring
 8 any benefit, such as appointment, pro-
 9 motion, or compensation; or

10 “(ii) effecting or threatening to effect
 11 any reprisal, such as deprivation of ap-
 12 pointment, promotion, or compensation.”.

13 **SEC. 3. FLEXIBLE CREDIT HOUR PROGRAM.**

14 Section 7 of the Fair Labor Standards Act of 1938
 15 (29 U.S.C. 207), as amended in section 2, is further
 16 amended by adding at the end the following:

17 “(t) FLEXIBLE CREDIT HOUR PROGRAM.—

18 “(1) DEFINITIONS.—In this subsection—

19 “(A) the term ‘at the election of’, used
 20 with respect to an employee, means at the ini-
 21 tiative of, and at the request of, the employee;

22 “(B) the term ‘basic work requirement’
 23 means the number of hours, excluding overtime
 24 hours, that an employee is required to work or

1 is required to account for by leave or otherwise
 2 within a specified period of time;

3 “(C) the term ‘employee’ does not include
 4 an employee of a public agency;

5 “(D) the term ‘flexible credit hour’ means
 6 any hour that an employee, who is participating
 7 in a flexible credit hour program, works in ex-
 8 cess of the basic work requirement; and

9 “(E) the term ‘overtime compensation’ has
 10 the meaning given the term in subsection
 11 (o)(7).

12 “(2) PROGRAM ESTABLISHMENT.—An employer
 13 may establish a flexible credit hour program for an
 14 employee to accrue flexible credit hours in accord-
 15 ance with this subsection and, in lieu of monetary
 16 compensation, reduce the number of hours the em-
 17 ployee works in a subsequent day or week at a rate
 18 of one hour for each hour of employment for which
 19 overtime compensation is required by this section.

20 “(3) AGREEMENT REQUIRED.—

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

24 “(i) applicable provisions of a collec-
 25 tive bargaining agreement between an em-

1 ployer and a labor organization that has
2 been certified or recognized as the rep-
3 resentative of the employees of the em-
4 ployer under applicable law; or

5 “(ii) in the case of an employee who
6 is not represented by a labor organization
7 described in clause (i), an agreement be-
8 tween the employer and the employee ar-
9 rived at before the performance of the
10 work that—

11 “(I) the employee enters into
12 knowingly, voluntarily, and not as a
13 condition of employment; and

14 “(II) is affirmed by a written
15 statement maintained in accordance
16 with section 11(c).

17 “(B) HOURS DESIGNATED.—An agreement
18 that is entered into under subparagraph (A)
19 shall provide that, at the election of the em-
20 ployee, the employer and the employee will
21 jointly designate flexible credit hours for the
22 employee to work within an applicable period of
23 time.

24 “(4) HOUR LIMIT.—An employee participating
25 in a flexible credit hour program may not accrue

1 more than 50 flexible credit hours, and shall receive
2 overtime compensation for flexible credit hours in
3 excess of 50 hours.

4 “(5) UNUSED FLEXIBLE CREDIT HOURS.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), not later than January 31 of
7 each calendar year, the employer of an em-
8 ployee who is participating in a flexible credit
9 hour program shall provide monetary com-
10 pensation for any flexible credit hour accrued
11 during the preceding calendar year that the em-
12 ployee did not use prior to December 31 of the
13 preceding calendar year at a rate prescribed by
14 paragraph (7)(A)(i).

15 “(B) ALTERNATIVE COMPENSATION PE-
16 RIOD.—An employer may designate and com-
17 municate to the employees of the employer a
18 12-month period other than the calendar year
19 for determining unused flexible credit hours,
20 and the employer shall provide monetary com-
21 pensation, at a rate prescribed by paragraph
22 (7)(A)(i), not later than 31 days after the end
23 of the 12-month period.

24 “(6) PROGRAM DISCONTINUANCE AND WITH-
25 DRAWAL.—

1 “(A) EMPLOYER.—An employer that has
2 established a flexible credit hour program under
3 paragraph (2) may discontinue a flexible credit
4 hour program for employees described in para-
5 graph (3)(A)(ii) after providing notice to such
6 employees 30 days before discontinuing such
7 program.

8 “(B) EMPLOYEE.—

9 “(i) IN GENERAL.—An employee may
10 withdraw an agreement described in para-
11 graph (3)(A)(ii) at any time by submitting
12 written notice of withdrawal to the em-
13 ployer of the employee 30 days prior to the
14 withdrawal.

15 “(ii) REQUEST FOR MONETARY COM-
16 PENSATION.—An employee may request in
17 writing, at any time, that the employer of
18 such employee provide monetary compensa-
19 tion for all accrued and unused flexible
20 credit hours. Within 30 days after receiv-
21 ing such written request, the employer
22 shall provide the employee monetary com-
23 pensation for such unused flexible credit
24 hours at a rate prescribed by paragraph
25 (7)(A)(i).

1 “(7) MONETARY COMPENSATION.—

2 “(A) FLEXIBLE CREDIT HOURS.—

3 “(i) RATE OF COMPENSATION.—An
 4 employer providing monetary compensation
 5 to an employee for accrued flexible credit
 6 hours shall compensate such employee at a
 7 rate not less than the regular rate, as de-
 8 fined in subsection (e), of the employee on
 9 the date the employee receives the mone-
 10 tary compensation.

11 “(ii) TREATMENT AS UNPAID OVER-
 12 TIME.—Any monetary payment owed to an
 13 employee for unused flexible credit hours
 14 under this subsection, as calculated in ac-
 15 cordance with clause (i), shall be consid-
 16 ered unpaid overtime compensation for the
 17 purposes of this Act.

18 “(B) OVERTIME HOURS.—

19 “(i) IN GENERAL.—Any hour that an
 20 employee works in excess of 40 hours in a
 21 workweek that is requested in advance by
 22 the employer, other than a flexible credit
 23 hour, shall be an ‘overtime hour’.

24 “(ii) RATE OF COMPENSATION.—The
 25 employee shall be compensated for each

1 overtime hour at a rate not less than one
2 and one-half times the regular rate at
3 which the employee is employed, in accord-
4 ance with subsection (a)(1), or receive
5 compensatory time off in accordance with
6 subsection (s), for each such overtime
7 hour.

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

15 “(9) PROHIBITION OF COERCION.—

16 “(A) IN GENERAL.—An employer shall not
17 directly or indirectly intimidate, threaten, or co-
18 erce, or attempt to intimidate, threaten, or co-
19 erce, any employee for the purpose of inter-
20 fering with the rights of the employee under
21 this subsection—

22 “(i) to elect or not to elect to partici-
23 pate in a flexible credit hour program, or
24 to elect or not to elect to work flexible
25 credit hours; or

1 “(ii) to use or refrain from using ac-
 2 crued flexible credit hours in accordance
 3 with paragraph (8).

4 “(B) DEFINITION.—In subparagraph (A),
 5 the term ‘intimidate, threaten, or coerce’ has
 6 the meaning given the term in subsection
 7 (s)(9).”.

8 **SEC. 4. REMEDIES.**

9 Section 16 of the Fair Labor Standards Act of 1938
 10 (29 U.S.C. 216) is amended—

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

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

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

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

23 “(2) liquidated damages equal to the amount
 24 determined in paragraph (1).”.

1 **SEC. 5. NOTICE TO EMPLOYEES.**

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

10 **SEC. 6. PROTECTIONS FOR CLAIMS RELATING TO COMPEN-**
 11 **SATORY TIME OFF AND FLEXIBLE CREDIT**
 12 **HOURS IN BANKRUPTCY PROCEEDING.**

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

15 (1) by striking “and”; and

16 (2) by inserting “, the value of unused, accrued
 17 compensatory time off under section 7(s) of the Fair
 18 Labor Standards Act of 1938 (29 U.S.C. 207(s)), all
 19 of which shall be deemed to have been earned within
 20 180 days before the date of the filing of the petition
 21 or the date of the cessation of the debtor’s business,
 22 whichever occurs first, at a rate of compensation not
 23 less than the final regular rate received by such indi-
 24 vidual, and the value of unused, accrued flexible
 25 credit hours under section 7(t) of the Fair Labor
 26 Standards Act of 1938 (29 U.S.C. 207(t)), all of

1 which shall be deemed to have been earned within
 2 180 days before the date of the filing of the petition
 3 or the date of the cessation of the debtor’s business,
 4 whichever occurs first, at a rate of compensation de-
 5 scribed in paragraph (7)(A)(i) of such section 7(t)”
 6 after “sick leave pay”.

7 **SEC. 7. GAO REPORT.**

8 Beginning 2 years after the date of enactment of this
 9 Act and each of the 3 years thereafter, the Comptroller
 10 General of the United States shall submit a report to Con-
 11 gress providing, with respect to the reporting period imme-
 12 diately prior to each such report—

13 (1) data concerning the extent to which employ-
 14 ers provide compensatory time and flexible credit
 15 hours under subsections (s) and (t) of section 7 of
 16 the Fair Labor Standards Act of 1938 (29 U.S.C.
 17 207), as added by this Act, and the extent to which
 18 employees opt to receive compensatory time under
 19 subsection (s) and flexible credit hours under sub-
 20 section (t);

21 (2) the number of complaints alleging a viola-
 22 tion of subsection (s)(9) or (t)(9) of such section
 23 filed by any employee with the Secretary of Labor,
 24 and the disposition or status of such complaints;

1 (3) the number of enforcement actions com-
2 menced by the Secretary or commenced by the Sec-
3 retary on behalf of any employee for alleged viola-
4 tions of subsection (s)(9) or (t)(9) of such section,
5 and the disposition or status of such actions; and

6 (4) an account of any unpaid wages, damages,
7 penalties, injunctive relief, or other remedies ob-
8 tained or sought by the Secretary in connection with
9 such actions described in paragraph (3).

10 **SEC. 8. SUNSET.**

11 This Act and the amendments made by this Act shall
12 expire on the date that is 5 years after the date of enact-
13 ment of this Act.

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