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Senate

The Senate met at 10 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious Father, help us to pray what we mean and mean what we pray. May our prayers never be perfunctory. We ask You to fill this Chamber with Your holy presence and glory and acknowledge that all we do and say today, as well as our attitudes and our relationships, will be observed by You. We pray for Your inspiration for the quality of life of the Senate and realize that we are accountable to You for the depth of caring we express to one another beyond party loyalties. We intercede for our Nation and You give us vision that will require united, bipartisan support of legislation to solve problems and grasp Your larger plan. We ask for strength to work creatively and energetically and You impinge on our minds waiting for our invitation for You to empower us with Your spirit. Dear God, help us to pray with expectancy. In the name of our Lord who taught us to ask, seek, and knock in prayer, knowing that with You nothing is impossible. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. ASHCROFT. I thank the Chair.

SCHEDULE

Mr. ASHCROFT. On behalf of the majority leader, I announce that this morning the Senate will turn to the consideration of S. 4, the Family Friendly Workplace Act. It is also hoped that the Senate will be able to return to S. 717, the IDEA, Individuals With Disabilities Education Act, legislation and complete action on that bill today. As always, all Members will be notified as to when to anticipate any rollcall votes on either of these two matters. In addition, the Senate may also consider any other legislative or executive items that can be cleared for action. I remind all Members that the Senate will be in recess from 12:30 to 2:15 for the weekly policy luncheons to meet.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. INHOFE). Under the previous order, leadership time is reserved.

FAMILY FRIENDLY WORKPLACE ACT

The PRESIDING OFFICER. Under the previous order, the Senate now will proceed to the consideration of S. 4, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 4) to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources, with an amendment, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 4

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 Workplace Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to assist working people in the United States;

(2) to balance the demands of workplaces with the needs of families;

(3) to provide such assistance and balance such demands by allowing employers to offer compensatory time off, which employees may voluntarily elect to receive, and to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

(4) to give private sector employees the same benefits of compensatory time off, biweekly work schedules, and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

SEC. 3. WORKPLACE FLEXIBILITY OPTIONS.

[(a) COMPENSATORY TIME OFF.—

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

[''(r) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

[''(1) GENERAL RULE.—

[''(A) COMPENSATORY TIME OFF.—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 monetary overtime compensation is required by this section.

[''(B) DEFINITION.—For purposes of this subsection, the term 'employee' does not include an employee of a public agency.

[''(2) CONDITIONS.—An employer may provide compensatory time off to employees under paragraph (1)(A) only pursuant to the following:

[''(A) Such time may be provided only in accordance with—

[''(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employees recognized as provided in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

[''(ii) in the case of employees who are not represented by a labor organization recognized as provided in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

of the work involved if such agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

[''(B) If such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

[''(C) If the employee has not accrued compensatory time off in excess of the limit applicable to the employee prescribed by paragraph (3).

[''(3) HOUR LIMIT.—

[''(A) MAXIMUM HOURS.—An employee may accrue not more than 240 hours of compensatory time off.

[''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (6). An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

[''(C) EXCESS OF 80 HOURS.—The employer may provide monetary compensation for an employee's unused compensatory time off in excess of 80 hours at any time after giving the employee at least 30 days' notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

[''(D) POLICY.—An employer that has adopted a policy offering compensatory time off to employees may discontinue such policy upon giving employees 30 days' notice.

[''(E) WRITTEN REQUEST.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time off accrued that has not yet been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

[''(4) PROHIBITION OF COERCION.—

[''(A) IN GENERAL.—An employer that provides compensatory time off under paragraph (1) to employees shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

[''(i) interfering with the rights of the employee under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours; or

[''(ii) requiring the employee to use such compensatory time off.

[''(B) DEFINITION.—As used in subparagraph (A), the term 'intimidate, threaten, or coerce' has the meaning given the term in section 13A(d)(3)(B).''.

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

[(A) in subsection (b), by striking ''(b) Any employer'' and inserting ''(b) Except as provided in subsection (f), any employer''; and

[(B) by adding at the end the following:

[''(f)(1) An employer that violates section 7(r)(4) shall be liable to the employee affected in an amount equal to—

[''(A) the product of—

[''(i) the rate of compensation (determined in accordance with section 7(r)(6)(A)); and

[''(ii)(I) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee; minus

[''(II) the number of such hours used by the employee; and

[''(B) as liquidated damages, the product of—

[''(i) such rate of compensation; and

[''(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

[''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17, including a criminal penalty under subsection (a) and a civil penalty under subsection (e).''.

[(3) CALCULATIONS AND SPECIAL RULES.—Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by paragraph (1), is amended by adding at the end the following:

[''(5) TERMINATION OF EMPLOYMENT.—An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time off in accordance with paragraph (6).

[''(6) RATE OF COMPENSATION FOR COMPENSATORY TIME OFF.—

[''(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off, such compensation shall be paid at a rate of compensation not less than—

[''(i) the regular rate received by such employee when the compensatory time off was earned; or

[''(ii) the final regular rate received by such employee,

[whichever is higher.

[''(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time off shall be considered unpaid monetary overtime compensation.

[''(7) USE OF TIME.—An employee—

[''(A) who has accrued compensatory time off authorized to be provided under paragraph (1); and

[''(B) who has requested the use of such compensatory time off,

[shall be permitted by the employer of the employee to use such time within a reasonable period after making the request if the use of the compensatory time off does not unduly disrupt the operations of the employer.

[''(8) DEFINITIONS.—The terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7).''.

[(4) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published at 29 C.F.R. 516.4, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that such notice reflects the amendments made to such Act by this subsection.

[(b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.—

[(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following new section:

[''SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

[''(a) PURPOSES.—The purposes of this section are—

[''(1) to assist working people in the United States;

[''(2) to balance the demands of workplaces with the needs of families;

[''(3) to provide such assistance and balance such demands by allowing employers to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

[''(4) to give private sector employees the same benefits of biweekly work schedules and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

[''(b) BIWEEKLY WORK PROGRAMS.—

[''(1) IN GENERAL.—Notwithstanding any other provision of law, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

[''(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

[''(B) in which more than 40 hours of the work requirement may occur in a week of the period.

[''(2) COMPUTATION OF OVERTIME.—In the case of an employee participating in such a biweekly work program, all hours worked in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by an employer, shall be overtime hours.

[''(3) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such 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 section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

[''(4) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7 or any other provision of law that relates to premium pay for overtime work, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

[''(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

[''(1) IN GENERAL.—Notwithstanding any other provision of law, an employer may establish flexible credit hour programs, under which, at the election of an employee, the employer and the employee jointly designate hours for the employee to work that are in excess of the basic work requirement of the employee so that the employee can accumulate flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

[''(2) COMPUTATION OF OVERTIME.—In the case of an employee participating in such a flexible credit hour program, all hours worked in excess of 40 hours in a week that are requested in advance by an employer, other than flexible credit hours, shall be overtime hours.

[''(3) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such 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 section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

[''(4) COMPENSATION FOR FLEXIBLE CREDIT HOURS.—Notwithstanding section 7 or any other provision of law that relates to premium pay for overtime work, an employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the employee is employed.

[''(5) ACCUMULATION AND COMPENSATION.—

[''(A) ACCUMULATION OF FLEXIBLE CREDIT HOURS.—An employee who is participating in such a flexible credit hour program can accumulate not more than 50 flexible credit hours.

[''(B) COMPENSATION FOR FLEXIBLE CREDIT HOURS OF EMPLOYEES NO LONGER SUBJECT TO PROGRAM.—Any employee who was participating in such a flexible credit hour program and who is no longer subject to such a program shall be paid at a rate not less than the regular rate at which the employee is employed on the date the employee receives such payment, for not more than 50 flexible credit hours accumulated by such employee.

[''(C) COMPENSATION FOR ANNUALLY ACCUMULATED FLEXIBLE CREDIT HOURS.—

[''(i) IN GENERAL.—Not later than January 31 of each calendar year, the employer of an employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accumulated as described in subparagraph (A) during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the employee is employed on the date the employee receives such payment.

[''(ii) DIFFERENT 12-MONTH PERIOD.—An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

[''(d) PARTICIPATION.—

[''(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

[''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists, an employee may only be required to participate in such a program in accordance with the agreement.

[''(3) PROHIBITION OF COERCION.—

[''(A) IN GENERAL.—An employer may 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 such employee under this section to elect or not to elect to work a biweekly work schedule, 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 (including working flexible credit hours in lieu of overtime hours).

[''(B) DEFINITION.—As used in subparagraph (A), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

[''(e) APPLICATION OF PROGRAMS IN THE CASE OF COLLECTIVE BARGAINING AGREEMENTS.—

[''(1) APPLICABLE REQUIREMENTS.—In the case of employees in a unit represented by an exclusive representative, any biweekly work program or flexible credit hour program described in subsection (b) or (c), respectively, and the establishment and termination of any such program, shall be subject to the provisions of this section and the terms of a collective bargaining agreement between the employer and the exclusive representative.

[''(2) INCLUSION OF EMPLOYEES.—Employees within a unit represented by an exclusive representative shall not be included within any program under this section except to the extent expressly provided under a collective bargaining agreement between the employer and the exclusive representative.

[''(3) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this section shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefits program or plan that provides lesser or greater rights to employees than the benefits established under this section.

[''(f) DEFINITIONS.—As used in this section:

[''(1) BASIC WORK REQUIREMENT.—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.

[''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the exclusive representative of employees in an appropriate unit to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

[''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

[''(4) ELECTION.—The term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

[''(5) EMPLOYEE.—The term 'employee' means an employee, as defined in section 3, except that the term shall not include an employee, as defined in section 6121(2) of title 5, United States Code.

[''(6) EMPLOYER.—The term 'employer' means an employer, as defined in section 3, except that the term shall not include any person acting in relation to an employee, as defined in section 6121(2) of title 5, United States Code.

[''(7) EXCLUSIVE REPRESENTATIVE.—The term 'exclusive representative' means any labor organization that—

[''(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to Federal law; or

[''(B) was recognized by an employer immediately before the date of enactment of this section as the exclusive representative of employees in an appropriate unit—

[''(i) on the basis of an election; or

[''(ii) on any basis other than an election;

[and continues to be so recognized.

[''(8) FLEXIBLE CREDIT HOURS.—The term 'flexible credit hours' means any hours, within a flexible credit hour program established under subsection (c), that are in excess of the basic work requirement of an employee and that, at the election of the employee, the employer and the employee jointly designate for the employee to work so as to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

[''(9) OVERTIME HOURS.—The term 'overtime hours'—

[''(A) when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer.

[''(B) when used with respect to flexible credit hour programs under subsection (c), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

[''(10) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

[(2) PROHIBITIONS.—

[(A) PURPOSES.—The purposes of this paragraph are to make violations of the biweekly work program and flexible credit hour program provisions by employers unlawful under the Fair Labor Standards Act of 1938, and to provide for appropriate remedies for such violations, including, as appropriate, fines, imprisonment, injunctive relief, and appropriate legal or equitable relief, including liquidated damages.

[(B) REMEDIES AND SANCTIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended by inserting before the semicolon the following: '', or to violate any of the provisions of section 13A''.

[(c) LIMITATIONS ON SALARY PRACTICES RELATING TO EXEMPT EMPLOYEES.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

[''(m)(1)(A) In the case of a determination of whether an employee is an exempt employee described in subsection (a)(1), the fact that the employee is subject to deductions in compensation for—

[''(i) absences of the employee from employment of less than a full workday; or

[''(ii) absences of the employee from employment of less than a full pay period,

[shall not be considered in making such determination.

[''(B) In the case of a determination described in subparagraph (A), an actual reduction in compensation of the employee may be considered in making the determination.

[''(C) For the purposes of this paragraph, the term 'actual reduction in compensation' does not include any reduction in accrued paid leave, or any other practice, that does not reduce the amount of compensation an employee receives for a pay period.

[''(2) The payment of overtime compensation or other additions to the compensation of an employee employed on a salary basis on hours worked shall not be considered in determining if the employee is an exempt employee described in subsection (a)(1).''.]

(a) COMPENSATORY TIME OFF.—

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

''(r) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

''(1) VOLUNTARY PARTICIPATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no employee may be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation. The acceptance of compensatory time off in lieu of monetary overtime compensation may not be a condition of employment.

''(B) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the representative of the employees that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)), an employee may only be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation in accordance with the agreement.

''(2) GENERAL RULE.—

''(A) COMPENSATORY TIME OFF.—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 monetary overtime compensation is required by this section.

''(B) DEFINITIONS.—In this subsection:

''(i) EMPLOYEE.—The term 'employee' does not include an employee of a public agency.

''(ii) EMPLOYER.—The term 'employer' does not include a public agency.

''(3) CONDITIONS.—An employer may provide compensatory time off to employees under paragraph (2)(A) only pursuant to the following:

''(A) The compensatory time off may be provided only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employee that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

''(ii) in the case of an employee who is not represented by a labor organization that is recognized as provided for in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) The compensatory time off may only be provided to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

''(C) An employee shall be eligible to accrue compensatory time off if such employee has not accrued compensatory time off in excess of the limit applicable to the employee prescribed by paragraph (4).

''(4) HOUR LIMIT.—

''(A) MAXIMUM HOURS.—An employee may accrue not more than 240 hours of compensatory time off.

''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employer of the employee shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (8). An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(C) EXCESS OF 80 HOURS.—The employer may provide monetary compensation for an employee's unused compensatory time off in excess of 80 hours at any time after providing the employee with at least 30 days' written notice. The compensation shall be provided at the rate prescribed by paragraph (8).

''(5) DISCONTINUANCE OF POLICY OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF POLICY.—An employer that has adopted a policy offering compensatory time off to employees may discontinue the policy for employees described in paragraph (3)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (3)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (3)(A)(ii) at any time, by submitting a written notice of withdrawal to the employer of the employee. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time off accrued that has not been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (8).

''(6) ADDITIONAL REQUIREMENTS.—

''(A) PROHIBITION OF COERCION.—

''(i) IN GENERAL.—An employer that provides compensatory time off under paragraph (2) to an employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

''(I) interfering with the rights of the employee under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours;

''(II) interfering with the rights of the employee to use accrued compensatory time off in accordance with paragraph (9); or

''(III) requiring the employee to use the compensatory time off.

''(ii) DEFINITION.—In clause (i), the term 'intimidate, threaten, or coerce' has the meaning given the term in section 13A(d)(2).

''(B) ELECTION OF OVERTIME COMPENSATION OR COMPENSATORY TIME.—An agreement or understanding that is entered into by an employee and employer under paragraph (3)(A)(ii) shall permit the employee to elect, for an applicable workweek—

''(i) the payment of monetary overtime compensation for the workweek; or

''(ii) the accrual of compensatory time off in lieu of the payment of monetary overtime compensation for the workweek.''.

(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended by adding at the end the following:

''(f)(1) In addition to any amount that an employer is liable under subsection (b) for a violation of a provision of section 7, an employer that violates section 7(r)(6)(A) shall be liable to the employee affected in an amount equal to—

''(A) the product of—

''(i) the rate of compensation (determined in accordance with section 7(r)(8)(A)); and

''(ii)(I) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee; minus

''(II) the number of such hours used by the employee; and

''(B) as liquidated damages, the product of—

''(i) such rate of compensation; and

''(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17, including a criminal penalty under subsection (a) and a civil penalty under subsection (e).''.

(3) CALCULATIONS AND SPECIAL RULES.—Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by paragraph (1), is amended by adding at the end the following:

''(7) TERMINATION OF EMPLOYMENT.—An employee who has accrued compensatory time off authorized to be provided under paragraph (2) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time off in accordance with paragraph (8).

''(8) RATE OF COMPENSATION FOR COMPENSATORY TIME OFF.—

''(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off, the compensation shall be paid at a rate of compensation not less than—

''(i) the regular rate received by such employee when the compensatory time off was earned; or

''(ii) the final regular rate received by such employee,

whichever is higher.

''(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time off shall be considered unpaid monetary overtime compensation.

''(9) USE OF TIME.—An employee—

''(A) who has accrued compensatory time off authorized to be provided under paragraph (2); and

''(B) who has requested the use of the accrued compensatory time off,

shall be permitted by the employer of the employee to use the accrued compensatory time off within a reasonable period after making the request if the use of the accrued compensatory time off does not unduly disrupt the operations of the employer.

''(10) DEFINITIONS.—The terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7).''.

(4) 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 to employees so that the notice reflects the amendments made to the Act by this subsection.

(b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.—

(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

''SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

''(a) VOLUNTARY PARTICIPATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists, an employee may only be required to participate in such a program in accordance with the agreement.

''(b) BIWEEKLY WORK PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

''(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

''(B) in which more than 40 hours of the work requirement may occur in a week of the period.

''(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT OR UNDERSTANDING.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employees that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

''(ii) in the case of an employee who is not represented by a labor organization that is recognized as provided for in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

''(4) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by the employer, shall be overtime hours.

''(5) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such 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 section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(6) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at the end of any 2–week period described in paragraph (1)(A), by submitting a written notice of withdrawal to the employer of the employee.

''(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish flexible credit hour programs, under which, at the election of an employee, the employer and the employee jointly designate hours for the employee to work that are in excess of the basic work requirement of the employee so that the employee can accrue flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(2) CONDITIONS.—An employer may carry out a flexible credit hour program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT OR UNDERSTANDING.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employees that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

''(ii) in the case of an employee who is not represented by a labor organization that is recognized as provided for in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(C) HOURS.—An agreement or understanding that is entered into under subparagraph (A) shall provide that, at the election of an employee, the employer and the employee will jointly designate, for an applicable workweek, flexible credit hours for the employee to work.

''(D) LIMIT.—An employee shall be eligible to accrue flexible credit hours if the employee has not accrued flexible credit hours in excess of the limit applicable to the employee prescribed by paragraph (3).

''(3) HOUR LIMIT.—

''(A) MAXIMUM HOURS.—An employee who is participating in such a flexible credit hour program may accrue not more than 50 flexible credit hours.

''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employer of an employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accrued during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the employee is employed on the date the employee receives the compensation. An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(4) COMPENSATION FOR FLEXIBLE CREDIT HOURS.—Notwithstanding section 7, in the case of an employee participating in such a flexible credit hour program, the employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the employee is employed.

''(5) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of 40 hours in a week that are requested in advance by the employer, other than flexible credit hours, shall be overtime hours.

''(6) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such 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 section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(7) USE OF TIME.—An employee—

''(A) who has accrued flexible credit hours; and

''(B) who has requested the use of the accrued flexible credit hours,

shall be permitted by the employer of the employee to use the accrued flexible credit hours within a reasonable period after making the request if the use of the accrued flexible credit hours does not unduly disrupt the operations of the employer.

''(8) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a flexible credit hour program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time, by submitting a written notice of withdrawal to the employer of the employee. An employee may also request in writing that monetary compensation be provided, at any time, for all flexible credit hours accrued that have not been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due at a rate not less than the regular rate at which the employee is employed on the date the employee receives the compensation.

''(d) PROHIBITION OF COERCION.—

''(1) 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—

''(A) interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule;

''(B) interfering with the rights of the employee under this section 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 (including working flexible credit hours in lieu of overtime hours);

''(C) interfering with the rights of the employee under this section to use accrued flexible credit hours in accordance with subsection (c)(7); or

''(D) requiring the employee to use the flexible credit hours.

''(2) DEFINITION.—In paragraph (1), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(e) DEFINITIONS.—In this section:

''(1) BASIC WORK REQUIREMENT.—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.

''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the representative of employees of the employer that is recognized as provided for in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)) to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

''(4) ELECTION.—The term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

''(5) EMPLOYEE.—The term 'employee' does not include an employee of a public agency.

''(6) EMPLOYER.—The term 'employer' does not include a public agency.

''(7) FLEXIBLE CREDIT HOURS.—The term 'flexible credit hours' means any hours, within a flexible credit hour program established under subsection (c), that are in excess of the basic work requirement of an employee and that, at the election of the employee, the employer and the employee jointly designate for the employee to work so as to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(8) OVERTIME HOURS.—The term 'overtime hours'—

''(A) when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer; or

''(B) when used with respect to flexible credit hour programs under subsection (c), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

''(9) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

(2) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(A) by inserting ''(A)'' after ''(3)'';

(B) by adding ''or'' after the semicolon; and

(C) by adding at the end the following:

''(B) to violate any of the provisions of section 13A;''.

(c) LIMITATIONS ON SALARY PRACTICES RELATING TO EXEMPT EMPLOYEES.—

(1) IN GENERAL.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(m)(1)(A) In the case of a determination of whether an employee is an exempt employee described in subsection (a)(1), the fact that the employee is subject to deductions in pay for—

''(i) absences of the employee from employment of less than a full workday; or

''(ii) absences of the employee from employment of less than a full pay period,

shall not be considered in making such determination.

''(B) In the case of a determination described in subparagraph (A), an actual reduction in pay of the employee may be considered in making the determination for that employee.

''(C) For the purposes of this paragraph, the term 'actual reduction in pay' does not include

any reduction in accrued paid leave, or any other practice, that does not reduce the amount of pay an employee receives for a pay period.

''(2) The payment of overtime compensation or other additions to the compensation of an employee employed on a salary based on hours worked shall not be considered in determining if the employee is an exempt employee described in subsection (a)(1).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply to any civil action—

(A) that involves an issue with respect to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)); and

(B) in which a final judgment has not been made prior to such date.

The PRESIDING OFFICER. The Senator from Vermont.

MODIFICATION OF COMMITTEE AMENDMENT

Mr. JEFFORDS. On behalf of the committee, I modify the committee amendment as follows, and I send the modified committee amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The modification is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family Friendly Workplace Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to assist working people in the United States;

(2) to balance the demands of workplaces with the needs of families;

(3) to provide such assistance and balance such demands by allowing employers to offer compensatory time off, which employees may voluntarily elect to receive, and to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

(4) to give private sector employees the same benefits of compensatory time off, biweekly work schedules, and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

SEC. 3. WORKPLACE FLEXIBILITY OPTIONS.

(a) COMPENSATORY TIME OFF.—

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

''(r)(1)(A) Except as provided in subparagraph (B), no employee may be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation. The acceptance of compensatory time off in lieu of monetary overtime compensation may not be a condition of employment.

''(B) In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation in accordance with the agreement.

''(2)(A) 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 monetary overtime compensation is required by this section.

''(B) In this subsection:

''(i) The term 'employee' means an individual—

''(I) who is an employee (as defined in section 3);

''(II) who is not an employee of a public agency; and

''(III) to whom subsection (a) applies.

''(ii) The term 'employer' does not include a public agency.

''(3) An employer may provide compensatory time off to employees under paragraph (2)(A) only pursuant to the following:

''(A) The compensatory time off may be provided only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees 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 or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) The compensatory time off may only be provided to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

''(C) No employee may receive, or agree to receive, the compensatory time off unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(D) An employee shall be eligible to accrue compensatory time off if such employee has not accrued compensatory time off in excess of the limit applicable to the employee prescribed by paragraph (4).

''(4)(A) An employee may accrue not more than 240 hours of compensatory time off.

''(B) Not later than January 31 of each calendar year, the employer of the employee shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (8). An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(C) The employer may provide monetary compensation for an employee's unused compensatory time off in excess of 80 hours at any time after providing the employee with at least 30 days' written notice. The compensation shall be provided at the rate prescribed by paragraph (8).

''(5)(A) An employer that has adopted a policy offering compensatory time off to employees may discontinue the policy for employees described in paragraph (3)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (3)(A)(ii).

''(B) An employee may withdraw an agreement or understanding described in paragraph (3)(A)(ii) at any time, by submitting a written notice of withdrawal to the employer of the employee. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time off accrued that has not been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (8).

''(6)(A)(i) An employer that provides compensatory time off under paragraph (2) to an employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

''(I) interfering with the rights of the employee under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours;

''(II) interfering with the rights of the employee to use accrued compensatory time off in accordance with paragraph (9); or

''(III) requiring the employee to use the compensatory time off.

''(ii) In clause (i), the term 'intimidate, threaten, or coerce' has the meaning given the term in section 13A(d)(2).

''(B) An agreement or understanding that is entered into by an employee and employer under paragraph (3)(A)(ii) shall permit the employee to elect, for an applicable workweek—

''(i) the payment of monetary overtime compensation for the workweek; or

''(ii) the accrual of compensatory time off in lieu of the payment of monetary overtime compensation for the workweek.''.

(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended by adding at the end the following:

''(f)(1) In addition to any amount that an employer is liable under subsection (b) for a violation of a provision of section 7, an employer that violates section 7(r)(6)(A) shall be liable to the employee affected in an amount equal to—

''(A) the product of—

''(i) the rate of compensation (determined in accordance with section 7(r)(8)(A)); and

''(ii)(I) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee; minus

''(II) the number of such hours used by the employee; and

''(B) as liquidated damages, the product of—

''(i) such rate of compensation; and

''(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17, including a criminal penalty under subsection (a) and a civil penalty under subsection (e).''.

(3) CALCULATIONS AND SPECIAL RULES.—Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by paragraph (1), is amended by adding at the end the following:

''(7) An employee who has accrued compensatory time off authorized to be provided under paragraph (2) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time off in accordance with paragraph (8).

''(8)(A) If compensation is to be paid to an employee for accrued compensatory time off, the compensation shall be paid at a rate of compensation not less than—

''(i) the regular rate received by such employee when the compensatory time off was earned; or

''(ii) the final regular rate received by such employee;

whichever is higher.

''(B) Any payment owed to an employee under this subsection for unused compensatory time off shall be considered unpaid monetary overtime compensation.

''(9) An employee—

''(A) who has accrued compensatory time off authorized to be provided under paragraph (2); and

''(B) who has requested the use of the accrued compensatory time off;

shall be permitted by the employer of the employee to use the accrued compensatory time off within a reasonable period after making the request if the use of the accrued compensatory time off does not unduly disrupt the operations of the employer.

''(10) The terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7).''.

(4) 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 to employees so that the notice reflects the amendments made to the Act by this subsection.

(b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.—

(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

''SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

''(a) VOLUNTARY PARTICIPATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with the agreement.

''(b) BIWEEKLY WORK PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

''(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

''(B) in which more than 40 hours of the work requirement may occur in a week of the period.

''(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT OR UNDERSTANDING.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees 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 or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(C) MINIMUM SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

''(4) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by the employer, shall be overtime hours.

''(5) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such 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 section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(6) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at the end of any 2–week period described in paragraph (1)(A), by submitting a written notice of withdrawal to the employer of the employee.

''(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish flexible credit hour programs, under which, at the election of an employee, the employer and the employee jointly designate hours for the employee to work that are in excess of the basic work requirement of the employee so that the employee can accrue flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(2) CONDITIONS.—An employer may carry out a flexible credit hour program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT OR UNDERSTANDING.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees 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 or understanding arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(C) HOURS.—An agreement or understanding that is entered into under subparagraph (A) shall provide that, at the election of an employee, the employer and the employee will jointly designate, for an applicable workweek, flexible credit hours for the employee to work.

''(D) MINIMUM SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(E) LIMIT.—An employee shall be eligible to accrue flexible credit hours if the employee has not accrued flexible credit hours in excess of the limit applicable to the employee prescribed by paragraph (3).

''(3) HOUR LIMIT.—

''(A) MAXIMUM HOURS.—An employee who is participating in such a flexible credit hour program may accrue not more than 50 flexible credit hours.

''(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employer of an employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accrued during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the employee is employed on the date the employee receives the compensation. An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case the compensation shall be provided not later than 31 days after the end of the 12-month period.

''(4) COMPENSATION FOR FLEXIBLE CREDIT HOURS.—Notwithstanding section 7, in the case of an employee participating in such a flexible credit hour program, the employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the employee is employed.

''(5) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of 40 hours in a week that are requested in advance by the employer, other than flexible credit hours, shall be overtime hours.

''(6) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such 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 section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(7) USE OF TIME.—An employee—

''(A) who has accrued flexible credit hours; and

''(B) who has requested the use of the accrued flexible credit hours;

shall be permitted by the employer of the employee to use the accrued flexible credit hours within a reasonable period after making the request if the use of the accrued flexible credit hours does not unduly disrupt the operations of the employer.

''(8) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a flexible credit hour program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time, by submitting a written notice of withdrawal

to the employer of the employee. An employee may also request in writing that monetary compensation be provided, at any time, for all flexible credit hours accrued that have not been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due at a rate not less than the regular rate at which the employee is employed on the date the employee receives the compensation.

''(9) PAYMENT ON TERMINATION OF EMPLOYMENT.—An employee who has accrued flexible credit hours under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused flexible credit hours at a rate not less than the final regular rate received by the employee.

''(d) PROHIBITION OF COERCION.—

''(1) 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—

''(A) interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule;

''(B) interfering with the rights of the employee under this section 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 (including working flexible credit hours in lieu of overtime hours);

''(C) interfering with the rights of the employee under this section to use accrued flexible credit hours in accordance with subsection (c)(7); or

''(D) requiring the employee to use the flexible credit hours.

''(2) DEFINITION.—In paragraph (1), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(e) DEFINITIONS.—In this section:

''(1) BASIC WORK REQUIREMENT.—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.

''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

''(4) ELECTION.—The term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

''(5) EMPLOYEE.—The term 'employee' means an individual—

''(A) who is an employee (as defined in section 3);

''(B) who is not an employee of a public agency; and

''(C) to whom section 7(a) applies.

''(6) EMPLOYER.—The term 'employer' does not include a public agency.

''(7) FLEXIBLE CREDIT HOURS.—The term 'flexible credit hours' means any hours, within a flexible credit hour program established under subsection (c), that are in excess of the basic work requirement of an employee and that, at the election of the employee, the employer and the employee jointly designate for the employee to work so as to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

''(8) OVERTIME HOURS.—The term 'overtime hours'—

''(A) when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer; or

''(B) when used with respect to flexible credit hour programs under subsection (c), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

''(9) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

(2) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(A) by inserting ''(A)'' after ''(3)'';

(B) by adding ''or'' after the semicolon; and

(C) by adding at the end the following:

''(B) to violate any of the provisions of section 13A;''.

(3) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216), as amended in subsection (a)(2), is further amended—

(A) in subsection (c)—

(i) in the first sentence—

(I) by inserting after ''7 of this Act'' the following: '', or of the appropriate legal or monetary equitable relief owing to any employee or employees under section 13A''; and

(II) by striking ''wages or unpaid overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and'';

(ii) in the second sentence, by striking ''wages or overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and''; and

(iii) in the third sentence—

(I) by inserting after ''first sentence of such subsection'' the following: '', or the second sentence of such subsection in the event of a violation of section 13A,''; and

(II) by striking ''wages or unpaid overtime compensation under sections 6 and 7 or'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, or'';

(B) in subsection (e)—

(i) in the second sentence, by striking ''section 6 or 7'' and inserting ''section 6, 7, or 13A''; and

(ii) in the fourth sentence, in paragraph (3), by striking ''15(a)(4) or'' and inserting ''15(a)(4), a violation of section 15(a)(3)(B), or''; and

(C) by adding at the end the following:

''(g)(1) In addition to any amount that an employer is liable under the second sentence of subsection (b) for a violation of a provision of section 13A, an employer that violates section 13A(d) shall be liable to the employee affected for an additional sum equal to that amount.

''(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17.''.

(4) 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 to employees so that the notice reflects the amendments made to the Act by this subsection.

(c) LIMITATIONS ON SALARY PRACTICES RELATING TO EXEMPT EMPLOYEES.—

(1) IN GENERAL.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(m)(1)(A) In the case of a determination of whether an employee is an exempt employee described in paragraph (1) or (17) of subsection (a), the fact that the employee is subject to deductions in pay for—

''(i) absences of the employee from employment of less than a full workday; or

''(ii) absences of the employee from employment of less than a full workweek;

shall not be considered in making such determination.

''(B)(i) Except as provided in clause (ii), in the case of a determination described in subparagraph (A), an actual reduction in pay of the employee may be considered in making the determination for that employee.

''(ii) For the purposes of this subsection, an actual reduction in pay of an employee of a public agency shall not be considered in making a determination described in subparagraph (A) if such reduction is permissible under regulations prescribed by the Secretary under section 541.5d of title 29, Code of Federal Regulations (as in effect on August 19, 1992).

''(C) For the purposes of this paragraph, the term 'absences' includes absences as a result of a disciplinary suspension of an employee from employment.

''(D) For the purposes of this paragraph, the term 'actual reduction in pay' does not include any reduction in accrued paid leave, or any other practice, that does not reduce the amount of pay an employee receives for a pay period.

''(2) The payment of overtime compensation or other additions to the compensation of an employee employed on a salary based on hours worked shall not be considered in determining if the employee is an exempt employee described in paragraph (1) or (17) of subsection (a).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply to any civil action—

(A) that involves an issue with respect to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)); and

(B) in which a final judgment has not been made prior to such date.

Mr. JEFFORDS. Mr. President, I would like to take this opportunity to once again thank everyone who has worked so hard to bring S. 4, the Family Friendly Workplace Act, to the floor. In particular, I would like to recognize the efforts and hard work of Senator MIKE DEWINE, the chairman of the Subcommittee on Employment and Training, and Senator JOHN ASHCROFT, the author and original sponsor of the bill. I am especially gratified to be working with Senators ASHCROFT and DEWINE on this important bill.

We are here today because we share the belief that S. 4 could make a world of difference in the lives of millions of Americans. During the markup of S. 4, a number of issues were brought to the committee's attention by my esteemed colleagues in the minority. At that

time, Senator DEWINE and I committed to look into several of the issues that were raised and to resolve them to the extent practicable. In the days following the markup, I have worked closely with Senator DEWINE and other Members to address these issues. I am extremely pleased with the results of this process. I believe that the changes proposed in the committee amendment will result in an even stronger piece of legislation. The Senator from Ohio will discuss the changes that have been made in the committee substitute to S. 4, the Family Friendly Workplace Act.

After spending a great deal of time working with the language of this bill and the committee amendment, I am more convinced than ever that S. 4 will assist American workers to balance work and family, and I urge all of my colleagues to join me in supporting the Family Friendly Workplace Act.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are on this legislation again today. I have a great appreciation for the leadership in attempting to try to juggle a variety of very important pieces of legislation. We have had the emergency appropriations which I think all of us would agree is the first order of business that we want to get passed. As to this legislation, we have been on again, off again. We are glad to debate these issues, but I understand some of the frustration of some of our colleagues during the course of this debate where the bill is on for an hour or two, and they try to begin to follow it, and then it is off again and we are uncertain when it will be be brought up again. That is something we have to deal with, but we will do the best that we can in attempting to deal with the on again, off again nature of this debate and respond to the questions which have been raised over this.

As we continue this debate, I want again to outline for the Members, who it is who supports this legislation because there have been a variety of different observations about the degree of support, who is supporting it, and who is opposing it. Those of us who have concerns about this legislation have enormous empathy and sympathy for families. That has been the focus over time of our Labor and Human Resources Committee, as well as others here. It is not just Members on this side of the aisle. It is many of our colleagues on the other side of the aisle who have made the cause of working families their cause.

But nonetheless, as we deal with this issue, it is important to know who is supporting it and who is against. I want to say again at the outset that we believe working families have been hard pressed over the last 25 years since about 1972 when their incomes effectively became stagnant. In the last 5 to 7 years we have seen that families are working longer and harder to make ends meet and are very hard pressed to rise every morning and deal with their family's issues as well. And so at the outset this legislation has some appeal, and if it was exactly as has been described it might have some merit. But the concern that many of us have is that it really gives the whip hand, so to speak, to the employers and it does appear to many of us that this is really a subterfuge to permit employers to avoid paying overtime.

We even had testimony from witnesses who were supporting the legislation who told the Labor and Human Resources Committee that that was the principal reason why they were supporting it. The National Federation of Independent Businesses told the Committee, ''Small businesses can't afford to pay their employees overtime. This is something they can offer in exchange that gives them a benefit.''

So we ought to understand right at the outset why many of those who do support comptime, also support the inclusion of Senator MURRAY's amendment. That amendment would have given absolute discretion to employees to take up to 24 hours a year to be able to attend a parents' meeting at school to consider the child's educational progress, or other such educational activities. Such an amendment was offered in the committee, but it was defeated along party lines.

That amendment was offered. It was supported by the President, and supported overwhelmingly by the majority of the American people. Under the amendment, the decision was the employee's. But the committee rejected that amendment along straight party lines. It was rejected. It was rejected. It was rejected.

We have also heard a great deal about the needs that families have to get some time off when they have a sick child. No employees in this country ought to have to make the choice between the job that they need and the child that they love. We passed the Family and Medical Leave Act to address those needs. That effort was achieved in a bipartisan way. But it was limited to those employers that had more than 50 employees. It has worked and worked well. And, under the Family and Medical Leave Act, if there is a medical emergency, if the need for treatment is not foreseeable, the employee has an absolute right to take time off. The employee has that right. If the medical condition is forseeable, then the employee has to make a reasonable effort to schedule the treatment at a time that does not unduly disrupt the operations of the employer. We offered an amendment in the committee to allow employees to use compensatory time under this same standard. That is, an employee has the right to use comptime at any time for reasons that would qualify under the Family and Medical Leave Act. But that amendment, too, was rejected along strict party lines.

The Family and Medical Leave Act applies to firms with 50 and more. Senator DODD offered an amendment in the committee to lower that threshold to 25 employees. That amendment, too, was rejected on party lines.

That is why the real issue regarding comptime is who is going to make the decision. If it is going to be the employee, put my name on it. Put my name on it. And I bet you would get the overwhelming majority of the Members on this side. If the employers are the ones who are going to make the decision—certainly you are not going to have my support, and you are going to be hard pressed to get the support of those who have been championing workers' rights.

That leads me to another point, and that is who are the supporters. Are these concerns just mine, or those of my good friend and colleague, Senator WELLSTONE, or Senator DODD, Senator HARKIN, Senator MOSELEY-BRAUN, and many others? No, that was a conclusion reached by the League of Women Voters, the National Women's Political Caucus, the National Women's Law Center, the Women's Legal Defense Fund.

It is very interesting why these organizations which have been the champion of women's issues and women's rights oppose this bill. It is because many of the people who are going for the overtime are women, single moms. You would think these organizations that have been fighting for women's rights and workers' rights would be out here supporting it, saying why are you battling it? Why are you battling it? These organizations that day in and day have been championing the economic rights of women universally reject the conclusions that have been drawn by some of our friends and colleagues on the other side of the aisle—that the employees are going to make all of these decisions, that it is going to benefit the single moms for employers to make the judgments about when they can be with their children.

That is not my reading of this bill, and many others agree. It is the conclusion of those organizations—not that we have to be on the side always of these organizations; they are not always correct. But it is interesting that every one of the organizations that have been championing women's economic rights and rights for children are all opposed to it. Why?

The Leadership Conference on Civil Rights:

> The legislation could reduce the income of many working families and make it more difficult for them to balance competing work and family responsibilities.

That theme runs all the way through. I will include it in the RECORD, Mr. President. The Leadership Conference on Civil Rights draws the same conclusion that I and many others have drawn, and that is after all is said and done it is the employer that is going to make the judgment about whether employees choose whether to earn comptime and when to use it if they've earned it. So these wonderful speeches

that I read over the course of the weekend in support of comptime, which were well stated and eloquently stated in many instances, beg the fundamental issue: that is, who is going to make the judgment about that sick child, about that sick relative, about the necessity for going to a teachers' conference or to a child's play. That has been the subject of debate here for more than 10 years. When we finally achieved it, in the Family and Medical Leave Act, it is the employee who has the right.

But now we have this different bill. As I mentioned, those who are opposing it not only include those women's organizations but also the Council on Senior Citizens, the NAACP, disability rights organizations, the National Council of Churches, a whole host—I will have the list of those included in the RECORD—let alone the unions, in spite of the fact that they are outside the coverage of this legislation. Unionized employees are outside. They are not affected by this legislation unless they choose to try to achieve comptime in the collective bargaining process. It is other workers, who are not unionized. But, nonetheless, these organizations understand what is happening out in the plants and factories. They supported the increase in minimum wage, as they support child care, as they supported family and medical leave and plant closing legislation—the whole range of issues that can offer some empowerment to workers dealing with a lot of challenges in the workplace. They have been, obviously, fighting for those rights, and they reached the same conclusion as well.

On the other side, those supporting this bill include the principal organizations that said ''thumbs down on the increase in the minimum wage,'' even though 65 percent of the people who were getting the minimum wage were women, a great percent of them with small children—thumbs down on that; thumbs down on family and medical leave, thumbs down on that. That is the decision that no worker ought to have to make, that decision between the child they love and the child they leave—thumbs down on that. And, as to plant closing legislation, which requires employers to give some notice to workers so they can go out and get other jobs if a business shuts down—thumbs down on that.

But these organizations that fought all of these worker protections just cannot wait to get this bill passed. They just cannot wait to get this passed. And one, I think, can reasonably assume that they are trying to get this passed for the very reason that was stated by the National Federation of Independent Businesses, because they do not want to pay overtime to workers.

I also want to describe the people who get overtime. Let us take a look at who are going to be the ones affected by this bill. To understand the real world impact of the bill, you have to look at the workers who are currently depending on overtime—that is what we are talking about, on overtime—to make ends meet. Mr. President, 44 percent of those who depend on overtime earn $16,000 a year or less—44 percent. More than 80 percent of them have annual earnings of less than $28,000 a year. These are hard-working Americans who are on the bottom steps of the economic ladder. They are the hard-working Americans who have a sense of pride, a sense of dignity—in so many instances they are the ones who clean these buildings at night, separated from their families. They are the teachers' aides, they are the health aides who work in nursing homes. They are men and women facing tough life decisions in tough economic times. Mr. President, 80 percent of them earn less than $28,000 a year. These are people who need every dollar they can earn just to make ends meet. They are men and women who are supporting families.

If this bill passes many of them will lose the overtime dollars they need so badly. Employers will give all the work to employees who agree to take the comptime. There will not be any overtime work for those who insist on being paid. Under the Ashcroft bill, discrimination in awarding overtime will be perfectly legal. Do we understand that? Discrimination against workers who refuse to sign on for the comptime provisions, the flexible credit hours or the so-called 80-hour biweekly schedule—discrimination against such workers will be perfectly legal. For example, let's take a worker in a plant who says, I am not going to go for that program. I want to play by the rules just as we have them now, a 40-hour week. I want to work overtime and get my time and a half. This bill gives the employer new powers—new powers. Time-and-a-half pay for overtime was the rule for all the workers in that place. Now, under this bill, it is different. Now the employer can go up and say, OK, so that is your position. The employer can then go to the next worker and say, What about you? Do you want to sign on for the flexible credit program that means you work overtime this week and get paid straight time without time and a half? Would you like to do that? Do you want that instead of time and a half?

Let's assume that this worker says, OK, I'll take that. I ought to be getting time and a half, which I would under the present law, but we have a new law. We have a new law called the comptime law, and it's supposedly family friendly. So if that is what I have to do, OK, I'll do it. I will work the extra time and just get paid straight time.

Now, what happens next? You come now to the third worker who says, All right, I will take the abolition of the 40-hour week. I'll work 60 or 70 hours one week and 10 in the next. So this worker is signed up.

Then, assume that the business gets a little overtime work. Do you think they are going to go back to the person who wants to get paid time and a half? Or do you think they will go to the person who takes the straight time, requiring no extra pay? Of course, the business will go to that person. That is what this bill is all about.

When we said in the Labor Committee, all right, if you are going to go this route, don't discriminate against those who participate, who want the existing law now—that amendment was rejected. Turned down, by a party line vote.

I wonder if, in the back of the minds of those who are the principal supporters, they know exactly what they are going to do. If they have this bill passed, they are not going to give any of the overtime to those people who insist on getting time and a half pay for overtime work. Instead, they'll assign the overtime work to workers who will accept flexible credit hours. Flexible credits are nothing more than saying I will do overtime but I will get paid straight time.

We must remember, again, who we are talking about. We are talking about the people who will get hurt the most. Mr. President, 56 percent of employees earning overtime have only a high school diploma or less. Do you know how hard it is to get ahead today, no matter how hard you work, without more education? We don't seem to dwell on that here on the floor of the Senate of the United States. The more you learn the more you earn. It is not always true, but it is by and large true. Yet these are the hard-working people who need the overtime pay to continue their education.

Millions of those affected by this bill rely on the overtime to make ends meet because they only earn the minimum wage. They are minimum wage earners—60 percent of them are women, a third of them are the sole breadwinner in their families. Mr. President, 2.3 million children rely on parents who earn the minimum wage, parents who hope their children do not get sick because they cannot afford a doctor. They are out there working, but they cannot afford a doctor for their children. If they make a little more money, it makes them ineligible for Medicaid, but they cannot afford the premiums for private health insurance. Children make up another group we are trying to provide some relief for, under the leadership of Senator HATCH, to try to make sure at least they are going to get some health care. I hope those on the other side of the aisle who are speaking so eloquently about the needs of these working families are going to be out there giving us a hand in trying to do something about their health care costs.

Interviews conducted by the Women's Legal Defense Fund demonstrate the sacrifice American women are making in support of corporate flexibility, such as a waitress who was involuntarily changed to a night shift despite the fact she had no child care for evening

hours. One working mother expressed the bitter frustration of many when she said, ''My life feels like I am wearing shoes that are two sizes too small.'' Millions of these low-wage workers are already working two jobs to make ends meets. They need to work every hour they can and be paid for it. Over 400,000 employees, well over half of them women, are working two jobs. They need the resources so badly they are working two jobs. But this bill is going to open up the opportunity for their exploitation.

I want to comment on what is, I believe, the fundamental issue. We now know who is really for this bill. We know that amendments to try to strengthen the bill against the possibility of exploitation were defeated in committee. I also mentioned others we offered to try to deal with other very important features of the bill.

But I also want to offer a general response to some of the points that were brought up by my friend and colleague from Missouri last Friday. After I discussed the Family and Medical Leave Act he said: I would like to ask the Senator from Massachusetts whether he believes that this abolishes the Family and Medical Leave Act.

Let me tell my colleague why I raised the Family and Medical Leave Act. I raised it on the floor because the Republicans rejected the two amendments to expand the Family and Medical Leave Act in committee. The Senator from Missouri said Friday that the Family and Medical Leave Act and S. 4 are compatible. Obviously, his Republican colleagues in the committee did not think so. On a straight party line vote, as I mentioned earlier, Senator DODD's amendment to extend the availability of family and medical leave to workers in businesses with between 25 and 50 employees was rejected. On a similar vote they rejected Senator MURRAY's amendment to allow 24 hours of leave a year to attend parent-teacher meetings.

This debate is not about the changing demographics of the work force. We are all aware that in more than 60 percent of two-parent families with young children, both parents are now working outside the home. Working parents need more opportunity to take time off from their work to be with their children. The debate is over how best to provide that time.

Those of us who oppose S. 4 believe that it does a very poor job of providing employees with time off at those times when they need it most. S. 4 is designed to meet employer needs, not employee needs. The legislation purports to let employees make the choice between overtime pay and comptime, but it does not contain the protections necessary to ensure that employees are free to choose without fear of reprisal. It is the employer, not the employee, who decides what forms of comptime and flextime will be available at the workplace. There is no freedom of choice for workers.

This is really a Hobson's choice. It says: We are going to change today's existing protections for what is really a pig in a poke. So if the employee signs on, he or she is going to have a series of choices. But they are all going to be bad choices. They are all going to be bad choices, that are not in the employee's interest. Under this bill, employees will indeed have some choices, but they are all going to be the bad choices. Let me explain.

The worker goes to work in the plant. The employer comes up and says, This is a voluntary program. You can either play by the rules as we do at the present time or, as I mentioned, you can sign on for the comptime provisions. Or you can do the flexible credit hours, and we can abolish the 40-hour week. Which one of these, or all of them, do you want? You would like all of them? If the employee agrees, that agreement does not even have to be a written statement. It can be an oral statement. It has to be written if employees are trying to get out of one of these programs, but it can be oral for employees to get in. Very interesting; I wonder why. Why do they not treat the employer and employee the same way? If employees believe somehow they are in the program, they have to write a written statement to get out. But an oral statement is enough to get you in.

Again, that doesn't apply to the Federal employees, which we hear so much about; again, that is a decision made purely by the employee.

Imagine a situation where employees say, Look, I really need that money. I like time and a half. That's what I get now. But I need this money so badly in order to provide for my kids, getting their teeth fixed, I will work the extra hours just for straight time.

The employer will respond, Fine. You are on. You are on. Look, it's voluntary. You are on. You wanted to do that, you are stating that, OK, you are on.

Now imagine that the employer needs a little overtime work. Do you think he is going back to the person who wants time and a half? Of course not. Of course not. Of course not.

They are going to go to this part that says, Look, you can work me 60 hours a week. So that employer is going to say, I'm going to take those that go for the flex credit and those that will go for the 60- or 70-hour week, then I don't have to pay the overtime.

Mr. President, that is what this bill provides. We can hear this is voluntary. Sure, it is voluntary for this person to get in or out. It is voluntary for that person that effectively is going to have to need those resources so much that they will sign on for a lesser compensation, but it is not voluntary for the employer. He or she can make that judgment as to which one of those they will use and do it in a way which effectively undermines these provisions.

I want to just mention what the current situation is, and then I will come back to the analysis.

Currently, if employers generally want to provide family friendly arrangements, they can do so under the current law. The key is the 40-hour week. Normally, employees work five 8-hour days a week, but more flexible arrangements are possible. Employers can schedule workers for four 10-hour days a week, with the fifth day off, paid at the regular rate for each hour. No overtime is required. They have that flexibility today.

We hear, What if you want Friday off? Well, you can have Friday off on this if the employers want to do that to benefit their employees. We heard so much the last time that employers care so much about the employees that they are really going to take care of them. They can do that today under the existing law. They can give them a half day off on Fridays. A number of companies do that, but they do not have it mandated. And no overtime is required. Or they can arrange a work schedule for four 9-hour days plus a 4-hour day on the fifth day, again without paying a dime of overtime.

Under current law, employers can also arrange a work schedule for four 9-hour days plus 4 hours on the fifth day without paying the overtime.

Under the current law, some employees can even vary their hours enough to have a 3-day weekend every other week. They can offer genuine flextime. This allows employers to schedule an 8-hour day around core hours of 10 to 3 and let employees decide whether they want to work 7 a.m. to 3 p.m. or 10 a.m. to 6 p.m. This, too, costs employers not a penny more.

But only a tiny fraction of the employers use these or the many other flexible arrangements available under current law. The Bureau of Labor Statistics found in 1991, only 10 percent of hourly employees use the flexible schedules. The current law offers a host of family friendly flexible schedules today, yet virtually few employers provide them.

This bill, Mr. President, has to lead us to a different conclusion. If they have the flexibility, they can do it, and they are not doing it, I think it is fair to reach a different conclusion, which is cut workers wages, and employer groups unanimously support it. That is the record. All the employer groups unanimously support it. Obviously, it is not just small businesses which wish to cut the pay and substitute some less expensive benefit instead.

As I was just mentioning about the comments that were made last week, we have the situation where the employer has those choices over those employees. Those of us who oppose S. 4 believe it does a very poor job of providing employees the time off at the times they need it.

S. 4 is designed to meet the employer needs, not the employee needs. I mentioned last week about the change in the decisionmaking from the employee to the employer that is made with Federal workers. We heard so much about

the Federal employees: We are just doing here for the private sector what the Government has already done for Government employees. We heard that for a long time, until someone picked up the book and said, ''In the Federal Government, the employees make the decision.'' But not here, Mr. President.

The way this is designed, which I went into in some detail last Friday, demonstrates that the employer will make the ultimate decision about whether he or she has been given reasonable time and whether it will unduly disrupt. Even if the employer is arbitrary in basically denying this kind of reasonable request, do you think that there is any enforcement mechanism there? Do you think there are any penalties in this area there? Absolutely none. What do you think that says to the employers? That gives them the whole enchilada. They make the decision on whether the request is reasonable, they make the decision whether it will unduly disrupt, and if they make it wrong, there is nothing that will happen to them. Come on, Mr. President, that gives the authority and the power to those employers.

An employer can lawfully deny all overtime work to those employees who want to be paid and give overtime exclusively to workers who will accept the comptime in lieu of pay. There is no freedom of choice for workers.

A working mother may want a particular day off so that she can accompany her child to a school event or a doctor's appointment. Nothing in this legislation requires the employer to give her the day off she requests. The employer decides when it is convenient for her to use her accrued comptime. There is no freedom of choice for workers.

The employee witnesses cited in the Republican majority report, Christine Korzendorfer and Sandie Moneypenny, emphasized the importance of employee choice in their testimony. Ms. Korzendorfer, who the Senator from Missouri focused on in his remarks, told the Employment and Training Subcommittee: ''What makes this idea appealing is that I would be able to choose which option best suits my situation.'' But those who brought Ms. Korzendorfer to testify did not tell her who controlled that decision. Under S. 4, it is the employer alone who determines what flexibility is available in her schedule.

Ms. Moneypenny testified, ''If I could bank my overtime, I wouldn't have to worry about missing work if my child gets sick on a Monday or Tuesday.'' The problem is that the Republican bill doesn't give her that opportunity. Her employer has no obligation to let her use the accrued comptime on the days her child needs to see a doctor. There is no provision, there is no guarantee in here, absolutely none.

The Senator from Missouri went to great lengths to rebut my contention that on crucial issues, S. 4 gives the choice to the employer, not the employee. His defense of the legislation is that the employee can choose not to participate in the first place and can choose to withdraw from the program later. He refers to this as ''the choice to change his or her mind'' if the program is not working fairly. Contrary to the Senator from Missouri, I do not consider that to be much of a choice at all.

If they are out, if they say, ''I am not for this, I have worked these flex credit hours until I am blue in the face and I'm not getting the overtime, I want out of it,'' does anybody think that that individual is ever, ever going to be able to get overtime as one who is not participating in this?

This is so far beyond the possible understanding about what is happening in the work force, where last year, 170,000 cases came before the NLRB and over $100 million was returned to workers because of the failure to pay overtime. That is what is happening.

And where is it happening? Among these various workers. That is today. That is happening just as we are here. The idea that this is all being done in this wonderful atmosphere of consideration of the bill defies what is happening in the work force of America among this economic group: over 80 percent, $28,000. We know where they are working. We know about the failure to give them overtime. We know what those working conditions are. How many studies, how many reviews, how many inspections have to be done? We know what will happen to that employee when that employee says, ''Well, I'm out of it now, I want to get out of it.''

If we are truly concerned about the employee's need for families, we should design a program that really works. I do not consider it to be an appropriate response to say, in essence, if the employees don't like what we give them, they can reject it and get no time off at all. I think we have a greater obligation to draft legislation which genuinely addresses the real needs of workers.

The Senator from Missouri denied this bill will result in a pay cut. As presented, S. 4 would allow an employer to deny overtime work from employees who insisted on receiving overtime pay. All the overtime work could go to the employees who agreed to take comptime. Those who wanted overtime pay would no longer receive any of the extra work. Their paychecks would be reduced, and, in plain English, that is a cut in pay.

Furthermore, under the biweekly work schedule and the flexible credit hour provisions, employees who work more than 40 hours a week will no longer receive time and a half in their wages or time off. That is, Mr. President, if the person said, ''Look, I really need to get that time for my child on Monday, give me the time off my comptime,'' they say, ''OK, you get it,'' but the interesting thing is, the words that are left out are when they come back to work, they can be forced to work on Friday because it does not use the words ''hours paid,'' to equivalency in hours paid which gives the protection.

So mom or dad gets the child on Monday but loses them on Saturday. These are the kinds of things in this bill. Do you think we got support? We tried to make those adjustments in the legislation. No, no.

As the Senator from Missouri directly noted, that loss of pay creates undue stress. We should not permit it to happen, but it will happen if S. 4 is enacted.

All of the problems with S. 4 I have described this morning —the failure to ensure employees the right to use comptime when they choose; the failure to prevent employers from discriminating in allocating overtime work; the failure to preserve the principle of the 40-hour workweek; and the failure to treat comptime hours used as hours worked could easily be corrected. In the Labor Committee, the Democratic members offered amendments to correct these flaws. Each was rejected. Each was rejected. Each one of those would have given greater power to the employees. All of them were turned down.

The refusal of the Republican majority to make these changes —to present legislation that would truly empower workers to make real choices—speaks for itself. The real intent of S. 4 is to create choices for employers, not employees. We can do better. Let's enact a bill that gives those choices to working men and women so they are free to do what is best for their families.

Mr. President, I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, last Friday, we had the privilege of beginning our discussion of the Family Friendly Workplace Act. During that debate, the Senator from Massachusetts asked an important question of the sponsors of S. 4. He put the question this way: Who's side are you on?

I want to answer that question very clearly: We are on the side of the workers of this great nation. We are on the side of giving American workers the capacity to be better fathers and mothers, sons and daughters. We are on the side of providing a framework so workers can adequately balance the competing demands of work and family. We are on the side of giving the 59.2 million private sector hourly workers the ability to work flexible work schedules that already are enjoyed by the 66 million American workers who enjoy flexible working arrangements.

Who's for flextime? I think it is an important question that has been asked. A Penn and Schoen survey reports that 75 percent of the public supports the choice of comptime; 64 percent of the public prefers time off to more pay, given the choice. They want to have the choice to take time off instead of receiving more pay.

Federal workers now have the same flextime arrangements that are offered in this legislation; 74 percent say that it boosts their morale; 72 percent have more time with their families.

It is time to provide this same benefit we provide in Government to people in the private sector. Working Woman and Working Mother magazines both endorse this particular proposal of flextime, because they believe that it is essential that we have more capacity to accommodate the competing demands of flexible working arrangements and our families. We are on the side of working women who have said that flexibility is what they need to meet the competing demands of work and family. We are for women who, in the Department of Labor's working women count report to the President stated that, ''The No. 1 issue women want to bring to the attention of the President is the difficulty of balancing work and family obligations.''

As I mentioned, Working Mother magazine says it supports this legislation. Working Woman magazine also supports this legislation—in its approval of this bill—the editors said that we should give women what they want and not what Congress thinks they need.

Why should we want to give flexible work arrangements to these workers? What does it mean for their families? What does it mean for their lives? The workers enjoying the benefits can tell you. The executives in the boardroom can tell you how important it is to be able to accommodate their family needs through flexible scheduling. The salaried workers of America—supervisors, managers, stockbrokers, bankers, and lawyers can tell you how flexible working arrangements give them opportunities to leave work early when needed to watch their child play in a ball game or go talk to a parent-teacher conference, or take care of personal business that cannot be done on the weekend.

Of course, Federal workers, and many State and local government workers, who have comptime can tell you what the benefit of being able to go home to be with their sick child instead of worrying about that child. Congress recognized the benefit of flexible work arrangements and passed the Federal Employees Flexible and Compressed Work Schedules Act almost 20 years ago. This act allowed Federal Government employees to enjoy flexible work schedules, which still are illegal for the rest of America's private sector hourly workers. That disparity between what we have provided as an opportunity for Federal workers and which we make illegal for people in the private sector is a disparity which the people of America are uncomfortable with, and they expect us to change.

The Federal Employees Flexible and Compressed Work Schedules Act allows hourly workers to work an extra hour one week in order to work 1 hour less the following week, something that is illegal now. It allows Federal Government employees paid by the hour to work on biweekly schedules, at their option. This allows a worker to work 5 days one week, 4 days the next, and have every other Friday off.

When surveyed about the program among the workers who have it in the Federal Government, it is interesting that Federal workers, on a 10-to-1 basis—actually, better than 10-to-1 basis—stated they like the program and they wanted it to continue. No wonder. Today, almost 20 years after giving this benefit to workers in the Federal Government, it is still illegal for private sector employers to cooperate with their employees in the same respect.

As far back as 1945, the Congress of the United States recognized that some times, when employees work overtime, they would rather have some extra time off rather than the money. Congress recognized that no matter how much money you get for overtime, you cannot replace the time you need with your family, so they amended the Federal Employees Pay Act to allow Federal Government employees the choice between being compensated for overtime work and being able to take time off with pay. In 1985, Congress gave the same choice to State and local government employees, in terms of comptime opportunities. These workers can take time off with pay at a later date, instead of being paid cash for time-and-a-half overtime.

Congress acknowledged that sometimes time is more valuable than money and that Congress is not in a place to make that decision for every worker. However, right now Congress is making that decision for private sector hourly workers. Congress is making that decision because there is no option, under the law, for employees to choose to take time off later over monetary compensation.

Now, the squeeze on people for time has never been more dramatic than it is at this time. Yet some Members of Congress continue to fight giving the same option of flexible scheduling to private sector employees that we have given to Federal government employees. They fight giving compensatory time off options to private sector workers even though they supported such measures for State and local government employees just 12 short years ago.

The Family Friendly Workplace Act would give all hourly workers this same opportunity to make such choices.

Now, President Clinton recognized the benefits of flexible work schedules himself when he directed the use of flexible work arrangements for executive branch employees. On July 11, 1994, he said:

> Broad use of flexible working arrangements to enable Federal employees to better balance their work and family responsibilities can increase employee effectiveness and job satisfaction while decreasing turnover rates and absenteeism.

It sounds like the President was endorsing the concept. I agree with his statement. I urge him to be on the side of the rest of the workers, not just the Government workers of America. I urge him to join us in saying that all hourly paid workers in America should have this opportunity to cooperate with their employers to work for comptime off instead of paid overtime when they prefer comptime off.

It is important to note that this legislation would impose taking time off on no one, and anyone, even if they made a choice to take time off, could later convert that to paid time merely by saying so. The bill provides that second choice.

I think it is important for us to say whose side are we on. I think we are on the side of the private sector, hourly workers in this country. Everyone agrees that flexible work arrangements have been good for Federal employees, for salaried workers, for State and local workers in terms of comptime provisions. Every study that has ever been done on the subject concludes that these arrangements are beneficial to workers.

So why is that group of hard-working Americans, the laborers of this Nation who work on an hourly basis—the store clerks, the mechanics, the factory workers, the clerical workers, baggage handlers, gas station attendants—why are they denied the opportunities for this benefit? Could it be that the Congress has the arrogance to decide that no worker could make such a choice for himself, that these workers are incapable?

I believe that is outrageous. We should no longer say, ''You cannot make this decision, we must make it for you.'' We should say to these workers, you have the same capacity and right to cooperate with your employer to make decisions about time off and about flexible working arrangements and about scheduling as do the Federal workers and workers at State and local governmental entities.

That is whose side we are on. Everyone in the culture, other than hourly workers, now has a real shot at flexible working arrangements and compensatory time. The boardroom has it. When the boss goes to play golf on Friday afternoons, he knows of the value of flextime. It is high time, if the boss is capable of doing that, he should at least be able to cooperate with employees who need to spend time with their family to provide such opportunities for hourly workers, as well.

So I ask the opponents of this legislation, whose side are you on? Are you on the side of working women who sit at their desk worrying about a sick child because they cannot afford to take time off from work without pay, while their salaried coworkers leave for their sons' soccer games? Are you on the side of working men who pack their lunch every day and go to work only to go

home to look at pictures of their child's award assembly, pictures which show that the business executives were proudly at the side of their children while his child accepts the award?

Are you on the side of Christine Kordendorfer who wanted the option of occasionally taking her overtime compensation in the form of time off rather than pay to care for her growing family and take care of her health in the last stages of her pregnancy? Are you on the side of Arlyce Robinson who came in to testify that she wants to take some time off as a result of flextime, so she can participate in her four grandchildren's extracurricular activities? Or are you on the side of the special interests? Are you on the side of the organizations designed to represent the interests of America's workers, who just this Sunday began running ads opposed to this legislation?

Let me just say I was stunned when those organizations, which purport to be helping American workers, began running television ads against this legislation. The television ads were replete with misrepresentation. Here is the text of the ad: ''Big business is moving to gut a law protecting our right to overtime pay. If they win, employers could pay workers with time off instead of money.'' That is simply false, that the employer would have a unilateral right. As a matter of fact, it takes a request by the employee in order for that to happen. They say that the choice will be up to employers. They say that there are no real safeguards to keep employers from pressuring workers to accept time off or to telling them when to take the time off.

The fact of the matter is the bill itself contains safeguards that are substantial. The bill provides that there can be no coercion, either direct coercion or indirect coercion. I will read from the bill, line 14 on page 15: ''An employer that provides compensatory time off under paragraph 2 to an employee shall not directly or indirectly intimidate, threaten, coerce or attempt to intimidate, threaten or coerce any employee for the purpose of,'' and then it goes on, ''including interfering with the rights of the employee to use accrued compensatory time off in accordance with this law, or requiring, threatening or coercing them in terms of requiring the employee to use compensatory time off.'' When you go to the definition provided in the law about intimidation and coercion, either direct or indirect, you find out that relates to conferring a benefit or denying a benefit.

Now the Senator from Massachusetts has repeatedly said employers would be free to offer benefits like overtime work and extra pay, which he categorizes as a benefit to those who would choose one form or another of compensation. The bill itself unmistakably challenges the charges levied in the AFL–CIO spots against this matter.

This ad says, ''You could work up to 40 additional hours in a week before qualifying for overtime.'' Up to 40 additional hours in a week before qualifying for overtime, suggesting that an employer could make an employee work an 80-hour week. That is a total falsehood. To do that, to say that, knowing this bill does not provide that, is to lie.

It is important for us to know that the real provisions of this bill outlaw specifically direct and indirect coercion. They outlaw intimidation. They outlaw the promise of a benefit, or the conference of a benefit to an individual to shape or to otherwise distort the decisionmaking that is voluntary, and it is supposed to be voluntary and guaranteed to be voluntary under this bill.

I think it is shameful that the AFL–CIO would seek to impair the ability of hourly workers in this country to have the benefit. It is the same kind of flexibility that workers at the salaried level, at the boardroom, at the management level, at the supervisory level, have long had. It is sad—twisted, that these ads began running on Mother's Day. Frankly, the best Mother's Day present we could have given to the United States of America would have been flexible working arrangements that would have made possible mothers spending more time with their families, fathers spending more time with their families, fathers and mothers spending more time with each other and their children. On the day set aside to recognize the valuable contributions that mothers make in our society, the labor lobby was beginning a campaign opposing this bill rather than embracing a change that would enhance the lives of mothers across this great land.

Rather than supporting public policy to make workers' lives easier, the labor lobby found out that the Members on the other side of the aisle recognize how important it is to give American workers these options. The labor lobby realized that Congress is going to work together to ensure America's families a brighter future, so the labor lobby interests in Washington took money, paid out of the pockets of hard-working Americans—it is from the very workers who would benefit from these scheduling options—yet they are spending the worker's money on ads opposing this legislation. These ads are a lie. These ads were strategically targeted to those Members on the other side of the aisle who have expressed an interest in working with us on this issue.

When I first introduced this legislation back in 1995, the labor lobby ran similar ads in my State. However, the ads backfired as their lies were exposed. As concerned constituents called my office, they found out the truth about the legislation. Many of them told me not to listen to the voice of the opposition coming from the labor lobby. They told me that, as workers, they were interested in this kind of flexibility. They told me that these scheduling options would enhance their lives. They recognized the fact that the labor lobby should be leading this fight, leading the charge to help get workers more scheduling options. In fact, these constituents resented the fact that the labor lobby in Washington had abandoned their traditional promoting of workers' interests.

Knowing that some of this body's strongest opponents of this bill supported these flexible scheduling options for Federal Government workers makes me wonder whose side they are on. Knowing that just 12 years ago these same opponents not only supported comptime options for State and local government employees, but cosponsored the legislation, I wonder whose drum they are marching to now. Is it the drumbeat of the American worker who needs to have the opportunity for flexible scheduling? Or is it the cadence that is being called by the labor union leaders in Washington? I wonder whose side they are on when there are much greater protections in this bill than the bills they have supported in the past.

This bill is replete with protections for workers that are not included in the bill that is providing the same framework of options for Federal employees. Under the legislation giving State and local government workers comptime options, cosponsored by the opponents, comptime can be made a condition of employment. It can't be a condition of employment here. There is no protection of a worker against coercion. Under this legislation coercion or even attempted coercion would be a violation of the law. We have rules against coercion and intimidation. State and local government agencies can force the employee to use their comptime when it is convenient for the agency, even though that practice has been successfully challenged in some courts. That is the provision they allowed in the bill they passed for State and local governments. We have protections against that happening in this bill.

Last but not least, in the bill that they sponsored and passed for State and local government authorities, there were absolutely no cash-out provisions for the workers. The bill that is before us allows a worker who has said, ''I will take my time in comptime,'' any time prior to taking the time off with pay, later on, can say, ''No, I would like the money, the time and a half overtime. I will be working to gain additional hours later.'' So the worker has a choice in the first instance to say, yes, I would like to have some comptime or not and work time and a half—that is the worker's choice. It can't be imposed on him, by the terms of the legislation, with a stiff penalty.

A second choice is an option of the worker. At any time prior to taking the time off, the worker can say, ''I changed my mind. I would like to have the money.'' That is not an option under legislation cosponsored by opponents of this bill. That is not a protection that was included by those who sponsored the measure for State and

local governments. They didn't have that protection there. We have it here. Further, there is another protection. At the end of every year, these hours have to be cashed out if they are not taken in this bill. Were those protections in the items sponsored by those who oppose this bill for State and local workers? Not on your life. They are demanding a much higher standard here because they are marching to the beat of a different drum.

I submit to you that it is important to know whose side we are on in this legislation. I say it is time that we be on the side of American workers and their families. For a long enough time we have been on the side of those individuals whose effort is made in Government. For the last 20 years, we have had these kinds of flexible arrangements. Federal Government workers enjoy using them at a 10-to-1 rate. They say these schedules improve their morale and give workers more time to spend with their families. Last week, they interviewed working mothers in the United States of America, and 81 percent of them said flexible working arrangements would be very important. Yes, that is whose side are we on?

Now, those who oppose this call this a ''paycheck reduction act.'' I don't know how they can call this the paycheck reduction act with a straight face, because there answer it to create more unpaid leave. They say we should not do this, we should expand family and medical leave. Family and medical leave is nothing more than the right to take time off without pay. Here we have a flexible working arrangement proposal which would give people the right to take time off with pay. I think the American people want to have time off with pay. So who's side are we on?

Let's go to the statistics from the Family and Medical Leave Commission report. The Family and Medical Leave Commission report says what happens when people take time off without pay—which is really the way you reduce your paycheck, by taking time off without pay. Here is what happens: Twenty-eight percent of all the people who took time off had to make ends meet by borrowing money. This is from the report of the Commission on Family and Medical Leave. Senator DODD chaired this Commission. The Commission reported that 28.1 percent had to borrow money; 10.4 percent of the people who took time off under family and medical leave went on welfare in order to accommodate the reduction in pay; 41.9 percent said they had to put off paying bills. The opponents of this legislation are just offering more additional leave without pay, so that another 40, 41, or 42 percent of the people have to go without paying their bills, or another 10.5 percent will have to go on welfare, or close to 30 percent will have to go out and borrow money.

Whose side are we on? How can you call this the paycheck reduction act, which would provide individuals the opportunity to take time off without taking the pay cut? They could use comptime or take time off by using flextime. It just is beyond me to think that we would reject this opportunity for Americans to spend time with their families. It is beyond me that we would reject this opportunity to give Americans time to accommodate their needs outside the workplace by taking comptime off or using flextime and still get paid for it only to have the other side allege that this is a paycheck reduction act. I cannot believe that after calling this bill the paycheck reduction act, that they can claim the real solution to this problem is to put more people in the position where, according to the Family and Medical Leave Commission, 28.1 percent of them had to borrow money, 10.4 percent had to go on welfare, and 41.9 percent had to say to creditors, ''I am not going to be able to pay you.'' This isn't what Americans want. No wonder 75 out of 100 people in this culture say we really want more flexible working arrangements.

Now, I just add that nothing in this measure impairs the ability of anyone to take time off under family and medical leave. That time is still available. This doesn't abolish family and medical leave. Every single hour of family and medical leave that exists—if a person prefers to take time off with a pay cut, they will be able to use that and there will be times when they may have to. This is a different set of options.

This bill doesn't say we will no longer have family and medical leave. It is not incompatible with it. It doesn't outlaw it. People will be able to, if they need or want to, say, ''Because I meet the conditions of the Family and Medical Leave Act, I am going to take time off.'' That is appropriate. We want workers to have that choice and to add to workers another range of choices. It doesn't in any way impair their ability to choose time off under family and medical leave. That is still there. This is merely a way to say to them, if you don't find that comfortable, if you are tired of having to go on welfare and put off bills or borrow money in order to take time off under family and medical leave—you might want to try another way of doing it. Instead of being paid time and a half sometime when you have overtime to work, you would put it in a comp time bank, so later on, when you needed time off to be with a sick child or to go get your car license renewed and stand in that silly line at the department of motor vehicles during working hours when you normally can't do that, you could do it and you don't have to take a pay cut.

The truth of the matter is, this is not the paycheck reduction act at all. This is the way to take time off with pay. The American people believe, I think, a lot of things and, given the amount of misinformation, I guess that is expected. But they will not believe that compensatory time off is taking a pay cut. If you earn time and a half as a result of working some overtime and you are going to take time off the next week and still get paid for it, that means you get time off without a pay cut, not that you get time off with a pay cut. So I think it is important for us to understand that.

The Senator from Massachusetts thinks that there are tremendous opportunities for abuse, in the event we would average the work week over 80 hours instead of 40 hours and only at the option of the worker—only with the approval of the worker. He talks about the potential abuse of an employer choosing one person as opposed to another person for overtime. Yet, he lauds the current system. I guess his point is that if they want somebody to work overtime on Monday, they can say, ''Who will work it tonight and take a couple hours off on Friday afternoon?'' He thinks that is OK as long as it is done within 1 week. But over a 2-week period it is somehow a great threat. Employers would be abusive in a 2-week stretch, but not in a 40-hour stretch.

Get serious. The truth of the matter is that we ought to understand that, where there are abuses, we ought to have strict, tough enforcement, and I think we can agree on that. We have doubled the penalty for abuses under this law. But to make it illegal for an individual to take an hour off on Friday and make it up the next Monday is inappropriate and should be changed. For the life of me, I can't believe that we should persist in that respect. We have seen how this works. We have watched it work in State and local government and in the Federal Government. We haven't been overrun by a series of complaints. We certainly haven't been inundated by a demand to change the bill. It has been in place for 19 years now and is working very well. You would think if this is the kind of thing that was abusive, we would at least have some people talking about it.

I should emphasize, and I want to make very clear to those who would be watching, that nothing in this law mandates any worker to take time off instead of being paid time and a half for overtime. Everything in this law provides penalties for an employer who would coerce a worker into doing so. Nothing in this law provides any mandate that a worker would have to build up a bank of flextime hours. A lot of workers might like to do that. In the event they needed time off, they would not have to take a pay cut in order to get it.

Flexible working arrangements are enjoyed by the managers, by those in the boardroom, by supervisors, Presidents, CEO's, and corporate treasurers. As a matter of fact, 66 million workers have flexible working arrangements. Only 59 million hourly paid individuals don't. It is time for us to accord to these individuals the same option of working together with their employers

so they can accommodate the needs of their families and work at their jobs. It should be unnecessary to take a pay cut to be a good mom or dad in America. Flexible working arrangements would make it possible for people to meet the needs of their families without taking a pay cut.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Minnesota.

Mr. HARKIN addressed the Chair.

Mr. WELLSTONE. Mr. President, I yield 10 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Chair advises the Senator from Minnesota that there is no time control.

The Senator from Iowa is recognized.

Mr. HARKIN. I thank the Senator. I should not take more than 15 minutes. Mr. President, listening to my friend from Missouri expound on the wonders and benefits of this bill, once again, reminds me of what I have often said about the U.S. Senate and the 100 Members that comprise this body. There are no bad people in the U.S. Senate. I can honestly say that I like each and every individual here in the Senate. There are no bad people here.

There are just a lot of bad ideas. Listening to this explanation of this bill reminds me once again of that truth. The Senator from Missouri is a friend, and he is a good guy, but this happens to be a very bad idea. I think it is terribly mistaken—what this bill would do in the force and effect of this bill. I am going to get into some of those in my remarks, especially on whether or not this really is a paycheck reduction act, because it really is. Of the three options that people have, it actually would reduce their paychecks.

Mr. President, as our workplace has changed the number of two-parent families has increased. Workers deserve relief to meet the demands of everyday life. That is why, for example, I support, like a number of people here, the Family and Medical Leave Act to allow workers to take time off to care for newborn children, or ailing relatives, without fear of losing their jobs.

Mr. President, millions of Americans have been helped by this landmark law. Now I believe it is time that we expand this profamily protection to provide parents with a little time off from work to attend a parent-teacher conference, or a doctor's appointment for their child.

I have worked my entire career in the House and the Senate to try to improve the lives of working families, and that includes comptime. I support giving families more flexibility to balance their work and family lives, and I am hopeful that we can pass such a bill. However, this bill before us, designated S. 4, is truly a wolf in sheep's clothing. It is a sham. This bill offers the appearance of employee choice but it is not the reality. The appearance but not the reality. In the Labor Committee markup of this bill several amendments were offered to improve this bill to provide real choice and protection for workers. All were rejected on party-line votes. I am going to go through some of them.

I am deeply concerned that this legislation will actually take families in the wrong direction. It gives the employers more flexibility to get out of their overtime obligations rather than giving employees more flexibility to spend time with their families. It will leave workers with less money, not more flexibility, and should be really titled ''Paycheck Reduction Act.'' A genuine comptime bill must provide employees with choice, protection, and flexibility. It has to be commonsense and profamily, and S. 4 falls short on all of those counts.

Supporters claim that S. 4 allows employees to make the choice between overtime pay and comptime, but it doesn't contain the protections that are necessary to ensure that employees have free choice and are free from reprisal. Under this legislation, the employer holds all the cards. The employer chooses what options to provide the flexible work options to, and when the employees can exercise the options. It is also seriously lacking in other important employee protection measures which would ensure flexibility and not a reduction in benefits.

S. 4 outlines three flexible work options, the employer—not the employee—gets to pick what flexible options to provide. An employer could either offer comptime in lieu of overtime pay; second, a biweekly work schedule; third, flexible credit hours. Two of these three options would effectively relieve an employer of their overtime obligations, and result in an actual paycheck reduction for the employee. In effect, S. 4 would eliminate the guarantee of pay for overtime work for over 64 million workers.

Again, when I think about it, what rational employer would not want to maximize profits and savings with their company? The employer has to answer to the shareholders, to the stockholders. They want to maximize that. I understand that dynamic. But on the other side of that equation there must be provisions to protect the employee so that you can have a balance in those scales. This bill does not provide that kind of balance. All of the help goes to the employer and not to the employee.

Again, I understand that employers want to maximize profits. That is their business. They want to ensure that their shareholders get the best return. That is their business. Our business ought to be to ensure that the workers have their rights protected to even out that balance to provide the kind of support for the workers so that this time and their work and their schedules are not totally determined by the employer. That is what this bill does. This bill gives it all to the employer. For example, under the biweekly work schedule, the employer could choose to abandon the 40-hour work week altogether. An employer would not be obligated to pay overtime until an employee works over 80 hours during a 2-week period. So in effect an employee could work 60 hours one week, 20 hours the next week, and receive no overtime pay, or even comptime. Under this scheme an employer could rig it so that overtime hours are never approved and, therefore, the employer has no overtime obligations. That is factual. I challenge anyone to dispute what I just said right there. It is not in the bill. That is what an employer could do. So not only would this result in less income than the employee would receive under current law for working those same hours and no comptime for those who want that time instead of pay but, I submit to you, Mr. President and others, that a 60-hour workweek isn't very family friendly. Under the biweekly schedule it would be extremely difficult for those workers to arrange for child care, or to plan time with their families if their employer could constantly change their work schedule. That is exactly what could happen: 60 hours one week, 20 the next, 50 the next, 30 the next, 60 one week and 20 the next. How could any employee and their family arrange for child care, or to reasonably plan their schedule? That is one of the options under this bill. So we can see that it really is not very family friendly, and it would take away overtime pay and even comptime.

Under the flexible credit hours provision, an employer could offer the employee an option to work the extra hours but receive only 1 hour of overtime for each extra hour worked. Under existing law an employee would be paid time and a half for extra hours worked. Even with comptime, the employee would at least receive 1½ hours of overtime for every extra hour worked. It is hard to believe that any employee would choose this, unless he or she wasn't given any other choice.

In addition, under S. 4, the flexible work hour arrangements would not have to be made available to all employees. The employer picks who gets to participate. The employer could legally discriminate against workers who need and who want overtime pay instead of comptime, and there are no remedies available to the employee to protect it. Again, let me repeat that. The employer could legally discriminate against workers who need and want overtime pay instead of comptime, and there are no remedies available to the employee which might prevent this.

Instead of having a choice, workers may have it chosen for them, or suffer the consequences. For example, the Senator from Missouri cited parts of the bill which say that the employer could not directly or indirectly intimidate, threaten, coerce, et cetera, or anything like that. OK. But what if the employer did this? He could lawfully stop offering overtime to employees who do not participate in flexible options, or they could give promotions

and raises only to those employees who participate. There is nothing in the bill that prohibits that. That sends a strong signal to the employees that they had better participate in what the employer has decided, or they will not get offered overtime, or they don't get the right to promotion, or they don't get the right to raises. There is nothing in this bill that prevents that. So it may be a good deal for the employer but it is a raw deal for the worker who usually receives overtime pay.

This fundamental flaw was outlined clearly during the Labor Committee markup. Senator KENNEDY offered an amendment that would have expressly made it unlawful for an employer to discriminate in awarding overtime, or in awarding overtime based on an employee's willingness to accept comptime instead of overtime pay. It was defeated on a straight party-line vote. Supporters of S. 4 say it prohibits coercion. The bill does not account for the mild but effective pressure employees feel to accommodate their employer. Hourly workers have little leverage in the workplace and are least likely to challenge the employer when it could mean their job, or loss of a promotion, or raise. The workers who rely most heavily on overtime pay are the most vulnerable employees. Consider the following Department of Labor statistics: One-fourth of workers who depend on overtime earn under $12,000 per year. Sixty-one percent earn $20,000, or less. More than 80 percent of overtime recipients earn less than $28,000 a year. When you are making that kind of money, you can't afford to offend your employer.

Supporters of S. 4 often point out that there are remedies when an employer coerces an employee to participate, again a very hollow right. Without more resources for Department of Labor enforcement this is a sham, hollow promise. Employers violate current overtime provisions at an alarming rate. One-third, or 13,687, of the investigations by the Department of Labor in 1996 disclosed overtime violations. The Department ordered over $100 million in back pay for 170,000 workers who were victims of those overtime violations. In addition, there was a backlog of 16,000 unexamined complaints pending at the Department of Labor at the end of 1996. That backlog accounts for about 40 percent of the annual number of complaints. In committee markup, Senator WELLSTONE offered an amendment that would delay the implementation of this bill until the backlog could be reduced to 10 percent. Again, it was defeated on a party-line vote.

You say the employee has a right. They can go to the Department of Labor. They can file a complaint. But look at the odds against you. Look at the odds that you will ever be seen, at the odds that you will ever be compensated if 40 percent of them are still backlogged cases. Plus the fact many of these are low-income workers. They do not know about filing complaints. They don't have an attorney. They are mainly scraping by week to week to take care of their families. If they get in trouble on something like this, they talk about filing a complaint and the employer says, ''You know something. I don't like the way you are performing your job.'' Out the door, fired. They are going to say, ''Boy, I am going to take my time and I am going to file this complaint with the Department of Labor, and I am going to hire me an attorney, and I am going to get what is due me''? No. You know what they are going to do? They are out the door looking for a job. They don't have the time and wherewithal to do that. They are out on the streets. They have some kids to feed, and the rent to pay. So when you say that there are remedies, believe me those are very hollow remedies when you look at these statistics.

Again, despite the statistics that demonstrate overtime violations are just the cost of doing business for some industries, S. 4 doesn't make any attempt to exempt such industries from coverage under this bill. For example, even though the Department of Labor has found that half the garment shops in the United States unlawfully pay less than the minimum wage, fail to pay overtime, or use child labor, S. 4 provides this industry a lawful way to get out of their overtime obligations. Think about that. The Department of Labor found that half of the garment shops pay less than the minimum wage, fail to pay overtime, or use child labor. S. 4 would effectively say to this industry you are exempt. This is the way to get out from underneath that. Again, workers in these industries are the most vulnerable to employee coercion, and the least likely to file any complaints.

During the committee markup, Senator WELLSTONE offered an amendment to exclude from coverage workers who would be particularly vulnerable to exploitation should comptime be offered at their worksites. The Wellstone amendment would have excluded employees in the garment industry as well as part-time seasonal and temporary employees, the most vulnerable in our society. Again, the amendment was defeated on a party-line vote.

Under this bill the employer has the last word when an employee can use their comptime. The employer could lawfully deny comptime for any reason and the employee has no recourse. Let me repeat that. The employee has no recourse if the employer denies comptime for any reason. This bill, S. 4, provides that an employee who requests the use of comptime off shall be permitted to use the comptime ''within a reasonable period,'' if it ''does not unduly disrupt the operations of the employer.'' But nowhere in the bill are the terms ''reasonable period'' and ''unduly disrupt'' defined. They are not defined. So an employee might give an employer 2 weeks' notice of his or her intent to use comptime to take a child to the doctor and have that request denied on the grounds of insufficient notice or the employer could claim that the time off might unduly disrupt business.

There is no definition in the bill of these terms. Employees work hard to earn their comptime. They should be able to use it within a reasonable time unless it substantially interferes with the employer's operations. No one would want to change that.

Now, again, Senator WELLSTONE offered an amendment to ensure that an employee could actually use the earned comptime when he or she needed to, but, again, the amendment was rejected on a straight party-line vote. Supporters claim they want to offer employees more flexibility, but if the employee has little control over when they can use comptime, where, I ask you, is the flexibility? There is none.

And as if giving the employer all the flexibility was not enough, S. 4 does not even provide for the protection of an employee's comptime. Accumulated comptime is an earned benefit that is accepted instead of overtime pay. S. 4 does not contain sufficient protection to ensure that workers whose employers go bankrupt will have some claim on their unpaid comptime. Let us be straight about this. Comptime is what an employee chooses in lieu of overtime pay. I think that is pretty well accepted by everyone on both sides of the aisle. But what happens when an employer goes bankrupt? Do you have a claim on that? No. In 1994, 845,300 businesses filed for bankruptcy. The rate of failure in the garment industry was 146 per 10,000 firms, twice the national average. In construction the rate of business failure was 91 per 10,000 firms. So comptime should be treated as unpaid wages during a bankruptcy.

In addition, comptime should be calculated as hours worked for the purpose of calculating an employee's entitlement to overtime and certain benefits tied to the number of hours worked. No such protection is found in this bill. No such protection. For example, a worker decides to use 8 hours of banked comptime in order to take a 3-day weekend by taking a Monday off. There is no provision in this bill that would prevent an employer from requiring that employee to work 10 hours Tuesday through Friday without paying overtime because only 40 hours would have been counted as worked.

So you bank the comptime. You take a Monday off for a 3-day weekend. Your kid has a day off from school. There is a teacher conference or something like that. Your kid gets a day off from school on Monday. You say we are going to spend some family time this weekend. So I have got my banked comptime. I want to take Monday off. I come back to work on Tuesday and the employer says, OK, you are working 10 hours every day this week and no overtime. No overtime. Why? Because there would only be 40 hours a week. Talk about a disincentive to take comptime.

So, again, businesses go bankrupt. You have overtime pay that is due you. You have a claim in that bankruptcy court. But if you have banked comptime, you are out of luck. Well, it ought to provide that if you have banked comptime and it goes bankrupt, you ought to have a claim, just as if you had banked overtime pay due you.

Also, there is another interesting little feature about this bill I do not think has been pointed out adequately enough. In many industries, contributions to pensions are made for each hour that the employee works. Overtime hours are considered hours worked for purposes of making contributions to these plans. But under this proposal, workers taking comptime not only will lose overtime pay, but they will suffer a reduction in pension benefits as well.

Imagine that. Imagine that. Now we have said, OK, guess what, employee. We are going to make this flexible, as they say in this bill. As I just pointed out, there isn't really much flexibility for the employee. You can now take comptime in lieu of overtime. But what happens if you have a defined benefit plan, a pension benefit plan. Hours worked including overtime hours would mean that you could also make contributions to that benefit plan. Well, if you take comptime, first of all, you lose the overtime pay. You say, OK, that's fine. I am willing to lose the overtime pay for my comptime. OK, fine, but then you suffer a reduction in your pension benefits as well. Another little twist in this bill that makes it harder for employees to take comptime in lieu of overtime pay.

Now, again, in markup, Senator WELLSTONE offered an amendment to count comptime as hours worked for this very purpose of making contributions to their pension programs. Again, it was defeated on a party line vote.

Now, my friend from Missouri talked a lot about he just wants for people in the private sector to have what Federal employees have because Federal employees have this comptime, so he wants private sector people to have the same thing. Well, all right, first of all, I do not believe that Federal employees should enjoy more rights than private sector employees. I supported the Congressional Accountability Act when we passed it in the last Congress. However, the public and private sector operate under very different circumstances. For one, Government agencies do not go in and out of business like thinly capitalized enterprises in the private sector often do. So when a public sector employee accrues comptime, they can count on eventually receiving the benefits.

But as I just pointed out, in the garment industry or construction, where they have high rates of bankruptcies and failures, you may bank the comptime. They go out of business. You are out of luck. Not so if you work for the Government. You are going to get it.

Also, private sector employers are driven by the profit motive. That is as it should be. And as such they are more likely to press their employees to take comptime rather than to pay overtime. Obviously, as I said, what manager does not want, what employer does not want to maximize their profits to make a higher rate of return for their shareholders? That is their business. So, driven by the profit motive, they would want an employee to take comptime rather than overtime pay.

In addition, aside from having a higher rate of unionized workplaces compared to the private sector, most public workplace employees are under the protection of civil service laws. That means if they are, in fact, singled out because of the choices they have made on the job, there is a set body of law that provides for both substantive remedies and a meaningful procedure in order to enforce their rights. Civil service laws.

For example, in the private sector, an employee can be fired for any reason at the will of the employer. In the public sector, employees can only be fired for good cause. They are entitled to a hearing to determine this. So in the private sector, an employee could be fired for not taking comptime, but not in the public sector—a big difference.

Also, Federal employees are entitled by law to paid sick leave, paid vacation, health and retirement benefits. If we could amend this bill to provide private sector employees with all of that, maybe I could support this bill. So I would challenge those on the other side, especially my friend from Missouri, amend the bill, provide the same kind of legal protections to employees in the private sector as employees have in the public sector working for the Federal Government. Maybe you could make a case for this bill. But I daresay they are not going to want to do that.

Lastly, I would like to point out that much of the flexibility the supporters of this legislation claim to want to offer is available right now. It is available now under existing law. So one has to wonder that if employers can do these things now but they are not, what is the real motivation, what is really behind their desire to get rid of the 40-hour workweek? Is it really to provide the comptime on the employer's side, or is it a way of saying, hey, this is a way I can improve my bottom line, increase my profit margin, pay a little bit more to the shareholders.

We got a real hint of this, Mr. President, at the Employment and Training Subcommittee hearing on February 13 of this year. A representative of the National Federation of Independent Businesses said:

> Real small businesses. . . our members cannot afford to pay their employees overtime. This (comptime) bill is something they can offer in exchange that gives them a benefit.

Gives the employer some benefit.

Well, if S. 4 is supposed to be family friendly, employee driven, giving flexibility to the employee as the supporters suggest, why are we looking for ways to give the employer more benefits? But that is what the NFIB representative said, I think in a moment of unguarded candor, if I might so state.

So the bottom line is this. When considering altering overtime protections in current law, the rights of employees must be of paramount importance to any proposal affecting their time and compensation. This proposal before us appears to be neither worker friendly nor family friendly, and the result of its enactment would require employees to work longer hours for less pay.

Lastly, the Senator from Missouri went on at great lengths to say that the special interests are ganging up to defeat this. Special interests? Let me just read a few of the groups opposed to this bill: the League of Women Voters, American Association of University Women, National Council of Senior Citizens, the NAACP, the National Council of La Raza, the Disability Rights Education and Defense Fund, the Union of American Hebrew Congregations, the Southern Christian Leadership Conference, the National Council of Churches, on and on and on. Special interests?

The fact remains, Mr. President, that every group that represents low-income workers is opposed to this bill. Every group that represents low-income workers is opposed to this bill. That is a fact. Special interests? Not at all. Special interests, not opposed to this bill. But those who understand what real life is about and who understand what these low-income workers have to go through, they are opposed to this bill.

Mr. KENNEDY. Will the Senator yield just for a brief question?

Mr. HARKIN. I will yield to the Senator.

Mr. KENNEDY. I know there are others who want to speak. I see my friend, Senator WELLSTONE, in the Chamber. I commend Senator HARKIN for making an excellent presentation. I hope the Senator will perhaps mention the coalition Members that are in support of this bill. The National Association of Manufacturers, the National Federation of Independent Businesses, the National Restaurant Association—they are not shrinking violets in terms of special interest groups. But the bottom line is, as I understand the Senator from Iowa and the Senator from Minnesota, we oppose comptime where employees cannot make the decisions, as they can under the Family and Medical Leave Act and as Federal employees can. The situation might be different if the employee could genuinely make the choice, but, under this bill, there is no choice for the employee. Therefore, we oppose the bill. We draw the line where we say this is basically stacked against the employees. I tried to spell that out earlier. But I just welcome getting the Senator's reaction on that issue.

We are for trying to get those kinds of protections. We were for it in the committee, as the Senator knows, when we tried to get the Murray amendment to give the 24 hours with the decision to be made by the employees. It was voted down by the Republicans unanimously. In terms of the Dodd amendment, it was voted down by them again—where the employee has it. When we get to the bottom line, is that not really the basic issue which is at stake?

Mr. HARKIN. I think the Senator is correct. That is the bottom line at stake. Are we really going to give the employee—are we going to empower the employee to make those decisions? This bill does not do that. This bill actually just gives more power to the employer. It gives more power to the employer to take away from the employee the benefits they have right now for overtime pay and the benefits they would have from, really, accruing comptime.

As I said earlier, again, this is another one of the very bad ideas that periodically come up through the Senate. It sounds good. What's it called? The Family Friendly Workplace Act? Ridiculous. I don't know who thinks up all these titles and these names. Nothing could be farther from the truth.

This is a bill—the intent may be good. I do not question the intent or motivation of my friend from Missouri at all. I just think it is going in the wrong direction. There are ways we can improve this bill. We offered these amendments to the committee. Senator WELLSTONE, Senator KENNEDY, and Senator MURRAY offered amendments to really make this more like what Federal employees have now. The Senator from Missouri is right. Federal employees do have this—with good protection, good comptime. As I point out in my statement, there is a lot of difference between the private sector employer and the public sector. If the Senator from Missouri wants to amend this bill to give private sector employees the same protections as civil service laws give Federal employees, maybe he can make a case for this bill. But that is not the case right now. So you cannot compare Federal employees with employees in the private sector.

This is just an example of good intentions gone awry. Good intentions, I think, messed up by other special interest groups that have come in, as Senator KENNEDY pointed out. Who is for the bill? As I pointed out, every group representing low-income workers is opposed to this bill. If this was such a good bill, they would be for it. I think that is the proof of what this bill is all about. It is a bad bill. It ought to be defeated. I am sure we will have some amendments, and I am sure the Senate in its wisdom will defeat this bill and put it back in the files where it belongs. I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, Federal employees have enjoyed flexible work schedules since 1978. It is time to give private sector employees the same options. Today's work rules are too inflexible, and this legislation changes that to meet the needs of today's working families.

The bill provides employees with several options in determining their work schedules.

First, workers would have the option of paid flexible leave. An employee might choose to work 35 hours one week and 45 hours the next, and still receive a full paycheck.

Second, an employee could set 2-week schedules totaling 80 hours in any combination. This would not change the 40-hour work week, as some have said. The Family Friendly Workplace Act simply adds a section to the Fair Labor Standards Act to create options for employees who want flexible work schedules. In addition, this cannot be forced upon an employee. It must be agreed to by the employee and the employer.

Third, employees could choose to take time and a half off instead of overtime. Up to 240 hours of comptime could be banked. Employees would also have the option of cashing out accrued hours for overtime pay at a later date.

No employee would be required to participate in any of these programs, and coercion or intimidation by the employer with respect to participation is prohibited. Strict penalties in this bill ensure that these arrangements will be voluntary. Let me reiterate that all of these options are 100 percent voluntary for workers. Nothing would change for employees who want to work a standard schedule. Employers would still have to pay time and a half for any overtime hours put in by an employee in any week, if that is what the employee wants.

According to the Bureau of Labor Statistics, in 1960 just 39 percent of women who had children between the ages of 6 and 17 were in the work force. Today, 76 percent of mothers with school-age children are working. This increase of working families is not compatible with the one-size-fits-all workplace laws enacted in the 1930's.

I urge my colleagues to support giving working families the opportunity to balance their work and family obligations by supporting this legislation.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, there are a number of Senators on the floor. We are undoubtedly going to be back on this bill with plenty of opportunity for amendments and work on it, so I am going to try to be very brief in deference to a number of colleagues. I know my colleague from Texas has to leave very soon, and I see a colleague from Maine here.

My disappointment is that the version of S. 4 that we see right now on the floor is a harsh version. It is not going to pass. It is going to go nowhere.

I would really like to see us do some work together. We had several subcommittee hearings that I thought were productive. I thank my colleague, Senator DEWINE from Ohio, for his leadership. We had a respectful markup. There was discussion in the markup, where amendments were voted down on a straight party vote, in which some of our colleagues appeared interested in modifications and ways of making this a better bill, changes that could bring people together—fixing the bill. That just has not happened. I know there is a managers' amendment. But a lot of concerns that have been raised just have not been spoken to.

The House bill, remember, passed narrowly. That bill was a much more moderate version than this Senate bill. It did not have the 80-hour biweekly work period framework. It did not have the so-called flextime. It was a straight comptime bill. In my view, anything that essentially takes the Fair Labor Standards Act and turns it on its head is not going to go anywhere. That is what the 80-hour framework does. And flextime, which offers little to the employee, does the same thing. I don't believe that anything that is hour for hour as opposed to time and a half is going to go anywhere either.

So I find it surprising and discouraging that we are discussing this particular version of this bill. It is not going to be enacted into law. I really wonder why we are debating it in its present form.

I believe there is some work we can do on the bill. Maybe we can do it through amendments and come out of here with a piece of legislation that we can all get behind. But whatever the bill's press materials promise about it, the fact of the matter is that in its current form the bill turns the clock back half a century. It is simply not going to work. My colleague, for example, came to the floor and was angry about ads that have been run. This is the first time I heard what those ads have to say. But reading from the script of one of the ads, a portion of the voiceover says:

> Big business is moving to gut a law protecting our right to overtime pay. If they win, employers could pay workers with time off instead of money.

That is true. That is absolutely true.

In theory, you could say employees have a right to choose. But the reality of the pattern of power between employees and employers is that quite often employees do not have that power to choose.

Then the ad says:

> They say the choice will be up to us. But there are no real safeguards to keep employers from pressuring workers to accept time off, or telling them when to take it.

That also is true. I pointed out in subcommittee and in committee examples of ways in which overtime law is being violated right now. There is a backlog of complaints at the Department of Labor. Regardless of the theory of the bill, it could very well happen that coercion will take place.

Finally, and I know my colleague from Missouri, whom I enjoy as a

friend, was very worked up about this portion:

You could work up to 40 additional hours a week before qualifying for overtime pay.

That provision is not in the House version of comptime. But in theory, that is true of this Senate version. I don't think it would happen, but the fact of the matter is, when you go from a 40-hour week to an 80-hour biweekly timeframe, that is exactly what could happen. Somebody could work 80 hours one week and not work the next week at all, but for the 80 hours they worked for that first week, there would be no overtime pay for the hours worked over 40 hours. That could happen. That is true. I don't think it would happen. But there is a real danger here, if you don't limit the bill to comptime, of employers being in a situation—and they really do have the power most of the time—where they basically can say to employees: We are interested in the flextime option. We are interested in your working overtime 1 week and taking more time off the next week. But we are not interested in time and a half, premium compensation, which you would earn with comptime.

Employers are in the driver's seat. The real problem is that the bill does not provide the flexibility that it purports to provide. That is a huge problem.

There are two principles, and I am skipping over a lot of what I wanted to say. There are two basic principles at a minimum, I say to my colleague from Missouri, that will be required to make comptime work for employees and give them real flexibility. These should be the basis for the work we do together.

First, it has to be truly voluntary. There has to be some language that puts more teeth into the voluntariness. Frankly, there is not right now.

Second, employees must really get to use their accumulated comptime when they want and need to use it. That was the why of one of the amendments I introduced, which said we have the Family and Medical Leave Act. FMLA makes clear in which cases we let families take some time off, even though millions of people are not covered right now. In any case, this bill would be an opportunity to say to somebody with banked comptime: It's your time. You have earned it. If you have that time and now you need to take time off because you need to go to a PTA meeting or have an illnes in the family, or for that matter you are having problems at home and have been battered, where there are problems of domestic abuse and you need to take time off, you should be able to take that time off. There should not be any question about it. You have earned it as compensation for hours worked. It should not be up to the employer to decide whether you can use it if FMLA reasons exist.

So I just want to make it clear that at the moment I do not see this as a Family Friendly Workplace Act. I do not see it as a Mother's Day present. It is not truly voluntary. We cannot change a piece of legislation that people have given their sweat, blood and tears for, which is what we are talking about when we talk about the Fair Labor Standards Act, unless you keep the integrity of it. We are not doing that here.

So there are some huge problems. The bill is not truly voluntary, No. 1. It moves away from a 40-hour week. It sets up a 2-week, 80-hour framework. That is not in the House bill. I think that has to be out of the bill. It has a flextime option which is just hour for hour. In my view, if we want to get something passed here, we should be making it comptime and we should then say to people, look, we want to give you real choice and the flexibility of using that time when you want and need to use it.

But I say to my colleagues that at this point in time, I don't know what the majority leader's intentions were, but I think it is fine to debate, it is fine to talk. It is not pointless, but this legislation is not going anywhere, not in its present form.

I believe Senator DEWINE is very committed to working out a compromise, and I believe my colleague from Missouri is also committed to a compromise. Maybe the strategy is to stake out an extreme position, with the idea that it helps for negotiating purposes. I don't mean to incur my colleagues' wrath—but I say to them, this is not a Mother's Day present, not in its present form. It is not a Family Friendly Workplace Act, not in its present form. However you package it, and however you try to market it, and however you try to advertise it, the fact of the matter is, you don't have the flexibility for the employee; you take the Fair Labor Standards Act and you turn it on its head. You go to an 80-hour framework and you should not. Then on comptime, you don't really make sure employees truly will have the choice, which is what I thought it was about.

We had some amendments that lost on a straight party-line vote. So let's get rid of the extreme provisions of this legislation, let's talk about the comptime part. Let's talk about how a family, a woman or a man can have this choice between time and a half for overtime pay or time-and-a-half overtime for time needed to be with family. Let's make sure that employees have the flexibility to truly be able to make this choice, that it is not one sided and just for employers. Let's make sure that we really establish a kind of cooperative arrangement. But that is not what this bill does.

I say with some disappointment to a good friend, I oppose it. I think that we will have a strong vote against it. I have to say, it is one of these situations—I promise my colleague from Texas, I will be done in 1 minute now, I know she wants to speak—but really Florence Reese wrote the song, ''Which Side Are You On?'' I heard my colleague from Missouri cite that lyric. I know it by heart because my wife is from Harlan County, KY. It is a great song. It was written during all the coal mining strikes. Of course, you know it's a strong union song.

The fact of the matter is, when I look at the lineup of who is opposed to this bill, and I see all these unions and all these organizations that have fought for civil rights and human rights and for women over the years, I guess I do know who's side I am on. I am on the side of working people.

This piece of legislation could be for working people, but in its present form, it is going nowhere. There are going to be Senators, and I certainly count myself as one of them, who will oppose this with everything we have, and I think we can stop it. I hope we get to the point of having some amendments, figuring out ways we can come together and pass a piece of legislation, but not in this form. I yield the floor.

Mr. WELLSTONE. Mr. President, it is somewhat surprising, and not very encouraging, that we are considering such a harsh version of S. 4 today. The bill before us is essentially the version which was reported out of the Labor Committee on a straight party-line vote. That vote followed rejection by a majority on the committee of a number of amendments which would have improved the bill considerably. All those amendments were defeated on a straight party-line vote.

This version of S. 4 makes almost no changes which directly address the serious and substantive problems in the bill during committee consideration. The managers' amendment has just been made available this morning, so we have not been able to examine it in detail. But it does not appear to be much of an effort to make the bill more acceptable to those who have made a real effort to improve the bill so far.

It is surprising and discouraging that we are considering this particular version of S. 4 for two reasons.

First, many of our colleagues are aware that a comptime bill has passed the House of Representatives. That bill is considerably milder than this bill in its undermining of basic, long-respected labor protections. The House-passed bill does not directly undercut the 40-hour workweek. It does not give employers the option of offering only hour-for-hour compensatory time off in exchange for overtime work—so-called flextime.

Still, the House bill passed narrowly, and it passed under the threat of a likely veto by the President. The President has said he would like to sign a comptime bill. But the Department of Labor has signaled that the President would likely veto a bill like the House bill. In my opinion, a veto of the House-passed bill would clearly be warranted because that bill does not meet the standards of anyone who is serious about trying to help employees cope with the competing demands of work and families.

The House has narrowly passed a bill which likely would, and certainly should, be vetoed. So what is the Senate doing today? Here in the Senate we are considering a bill that is a far blunter and a far more dangerous attack on workers with families, a bill which we all know cannot be enacted in its present form. We know an 80-hour biweekly work period will not become law. Why are we debating it? Do we think the public is fooled by a bill which does away with the 40-hour workweek simply because the measure's proponents say it is voluntary?

It is somewhat absurd. If a Member came and offered a bill doing away with the minimum wage—but on a voluntary basis—we would not take it seriously. If a bill offered employees the voluntary choice of working regularly in conditions which threaten life and limb, we would not take it seriously. A bill doing away with the 40-hour workweek cannot be enacted as drafted, and it should not even be taking our time here today.

The second reason I find it surprising and discouraging that we are discussing this particular version of comptime is that I sat through two hearings on this topic in the Labor Subcommittee on Employment and Training, where I serve as ranking minority member. I heard a great deal of illuminating testimony during the subcommittee hearings. I also engaged, as did others in the Labor Committee, in a respectably rigorous markup of this bill in the full committee.

During these subcommittee and committee meetings we heard a number of expressions of sympathy and concern from Republican colleagues regarding criticisms of S. 4 raised by myself and others. These expressions of concern might have been slightly more persuasive if even one Republican could have found a way to vote for even one Democratic amendment in the committee. Nonetheless, I thought I detected a desire to make this a workable bill. There were suggestions that ways might be found to fix problems in the bill.

Some of us thought that there would be an effort to address the more serious of our concerns between committee and the floor. But the minor changes in the managers' amendment, with one exception do not begin to do that. I will come back to the managers' amendment and our detailed criticisms of this bill's comptime provisions later.

But what we have before us today is hardly an effort at accommodation. The bill in its current form is little more than an affront. Not only have the most offensive provisions for employees—the 80-hour biweekly work period and so-called flextime—not been pulled from the bill. But the comptime provisions which could be the basis of discussion and agreement remain largely unchanged.

Mr. President, many of us on the minority side would like nothing better than to help provide genuine flexibility to working Americans with families. That is what this bill's press materials promise it would do. That is what some of us set out to do 4 years ago when we pushed hard to win eventual passage of the Family Medical Leave Act. Some of today's proponents of S. 4 issued dire warnings back then that the FMLA would harm businesses and the economy. It hasn't. The FMLA has worked well.

That is why our side offered two amendments to S. 4 in committee which would have expanded the FMLA. Millions of workers do not currently enjoy the benefits of the FMLA. Millions who do are able to use it only for medical reasons, not for other times of true family need and importance, such as parent-teacher conferences. This bill purports to provide greater flexibility to employees, so we sought to expand the ability to take unpaid leave in exceptional family circumstances. Unfortunately, both amendments to that effect were defeated.

Many of us on the minority side also would like nothing better than to allow working Americans with families to get more control over their work schedules. What could be more important than to help people juggle work and family by getting more control over their work schedules?

That was the motivation behind an amendment I offered in committee which would have ensured that employees who accumulate comptime as envisioned by this bill would actually get to use it when they want and need to use it. That seemed simple enough.

If the idea of the bill is to help employees get control of their work schedules, if the idea is to be family friendly, then people who accumulate comptime under this bill, which is compensation that has already been earned at some prior date, not vacation or some other benefit conferred by the employer, but previously earned compensation, should be able to use it when they want and need to use it.

My amendment included very reasonable restrictions to avoid harm to employers. It was an honest amendment. It sought to take this bill at its word. At least it sought to take the bill at the word of its own advertising. It sought to provide employees who have families just a little more control over their work schedules by allowing them to choose when it is that they use their earned comptime.

In the case of this bill, however, its advertising and its content are not the same thing at all. Undoubtedly, many workers who may have heard this bill described by it proponents, who may even have heard it described as a Mother's Day gift to working mothers, probably have assumed that if the bill passes and they earn comptime, then they will be able, within reason, to choose when to use that comptime. Sadly, they would be wrong. This bill does not provide for that. My amendment sought to repair this fairly obvious, fairly egregious flaw. But it was defeated.

Many of us on the minority side even find the idea of a truly voluntary choice between cash overtime on one hand, and paid time off at a premium rate on the other—in other words, between cash overtime and comptime—to be an attractive idea on its face. We think comptime might be able to work to the benefit of both employers and employees if it is drafted properly.

Therefore, in the committee we offered a number of additional amendments whose purpose was to take seriously the idea that comptime is indeed meant to deliver on what the title of S. 4 promises. The bill is called the Family Friendly Workplace Act. All those amendments were defeated.

Comptime will not be an easy idea to make work in a way that is truly voluntary. A lot of care must go into drafting such a bill. It is worth remembering that the Fair Labor Standards Act has served both employers and employees well since its initial passage in 1938. We should amend it with care. Nonetheless, the whole law is not sacred. Democrats and working people are not stuck in the past. If we can move forward, and not turn back the clock, it might be possible and desirable to change the Fair Labor Standards Act. But not in the way this bill suggests—not in a way that attempts to turn back the clock when it comes to basic workplace protections.

After the two hearings we held in the Labor Committee's Subcommittee on Employment and Training, I was frankly skeptical about whether comptime could be made truly voluntary and beneficial for employees. It was the testimony of some of the majority witnesses which made me even more skeptical than I was before the hearings. Looking at the version of the bill which has now been brought to the floor, my skepticism appears to have been justified. But still I think comptime could be attractive for many working people if it is drafted properly.

There are two basic principles which at a minimum are required to make comptime attractive for employees: First, it must be truly voluntary; second, employees must really get to use their accumulated comptime when they want and need to use it.

A number of additional protections would be necessary as details to make comptime work. But these two principles are fundamental.

As currently drafted, S. 4 fails both tests. It has additional problems, but above all S. 4 as drafted barely even pretends to be about providing flexibility for working people. It is flexibility for employers. It is flexibility for employers, combined with ways to cut pay for employees. It disfigures what could be a decent idea, comptime, and it adds provisions that even leaders in the House of Representatives did not attempt, which would directly cut workers' pay.

Mr. President, we all understand the game of staking out an extreme position in the hope that you can get more

of what you want through creating the illusion of compromise from a drastic proposal. I hope we will not spend our time on that game. But it appears that is the game we are playing with this bill.

Let us just drop the 80-hour biweekly work period from the bill. It is not a real proposal. It is an insult to working people with families. Many workers face enough indignities without Congress adding to them. Let us drop this frontal attack on the principle of the 40-hour work week.

Second, let us drop the flex hours provision from this bill. That is the provision which would ask workers to work overtime with no premium compensation, only hour-for-hour paid time off.

These are provisions which not even the House of Representatives included in their bill. No one can argue with a straight face that these are not pay-cut provisions. Their purpose is to cut pay. The President will not sign a bill with such provisions. The 80-hour and the flextime provisions simply detract and distract from the debate we should have about comptime.

Mr. President, I would like to conclude with some remarks about working families.

S. 4 is called the Family Friendly Workplace Act. I believe the friendliest thing we could probably do for most working people who have families in America would be to increase their pay. We did that for millions of American workers last year. Perhaps the minimum wage bill which was so fiercely resisted by a number of colleagues on the majority side and by a number of groups who are supporting S. 4 should have been called the Family Friendly Workplace Act.

But whether that is true or not, I believe it is safe to say that any objective person who reads this bill, S. 4, carefully, a person with some familiarity with modern workplaces, might wonder whether its title is actually a grim attempt at humor. They might wonder whether the title, ''Family Friendly Workplace Act,'' is really a mean-spirited and sarcastic message to working Americans. That is because no one who reads this bill carefully, in its current form, could reasonably describe it as family friendly.

S. 4 as written is family-unfriendly. It is a thinly disguised effort to reduce pay and to help employers avoid paying overtime. That is not just rhetoric. That is the bill. I wonder how many families will consider this bill to represent a friendly gesture when we strip it of its happy-face packaging and expose it for what it is: an effort to reduce pay and to help employers avoid paying overtime?

Plenty of employers do try to avoid paying overtime already under current law. And far too many succeed, as we will see later during our debate. We don't need to provide encouragement to cut more pay and avoid paying more overtime.

We will continue to debate S. 4. I look forward to a debate over a number of amendments. I hope to offer one or more myself. I hope that debate can focus on how to construct a truly voluntary and beneficial comptime bill.

But a bill which features two pay-cutting options out of a total of three options for employers and employees is not family friendly.

Mr. President, I would also like to add a brief remark concerning the Managers' amendment. I appreciate the Senator from Ohio's description of it. While we are only seeing it now for the first time, I think we can say that it doesn't go very far toward addressing the deep, substantive concerns many of us have raised against S. 4.

We had some discussion during the committee markup. There was some hope that we could actually work together to make this bill acceptable. But this amendment, as I understand it, makes fairly minor changes—with one exception.

My understanding of the managers' amendment is that it changes the bill's definition of who would be considered a covered employee. That is a substantive step. The change takes a step toward addressing a criticism we raised in committee. It ensures that many part-time and temporary workers would not be covered by the bill's provisions. I don't believe the change goes nearly far enough in exempting vulnerable workers. But it is a move in the correct direction.

The additional changes, again, as I understand them, we are just now seeing them, are minor. One change which we discussed, and which I had hoped we would have agreement on, concerned bankruptcy. I was prepared to offer an amendment in committee to ensure that workers with accumulated comptime would be able to collect on that earned compensation in case of employer bankruptcy. The Senator from Ohio [Mr. DEWINE] indicated that he hoped to address the problem. It is my understanding now that the majority does intend to fix that portion of the bill, although the problem is not addressed by the managers' amendment. I hope we can correct that flaw.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Texas.

Mrs. HUTCHISON. Mr. President, if I were just a person sitting out there watching this debate, I think my first question would be, ''Well, why can't an employee go to his or her employer and say, 'I'd like to take time off at 3 o'clock on Friday, and could I work extra next week?'''' I am sure people are scratching their heads and saying, ''What would prevent them from doing that?''

The law prevents them from doing that if they are hourly employees. The great Big Brother Federal Government says ''No, no, Mrs. Smith, you cannot go to your employer and ask for time off at 3 o'clock to attend John's soccer game on Friday afternoon and suggest making it up next week. You can't do it if you are an hourly employee,'' because the Fair Labor Standards Act, which was passed in 1938 when fewer than 10 percent of families had both spouses in the workplace, prohibits Dorothy Smith from being able to go in and say, ''I'd like to go to John's soccer game on Friday afternoon, and could I work an extra hour on Monday and Tuesday?''

So now Dorothy, who is one of two-thirds of the working women in America who have school-age children, is being subject to a law that was passed in 1938 that does not even relate to the workplace today.

Mr. President, with the Family Friendly Workplace Act we are trying to bring our labor laws into the 21st century to reflect the changing face of working America and to meet the growing demands of work and family. We realize that two-thirds of the working women in this country have school-age children, and that what they need most is a little relief from the stress caused by being both the provider at work and the caretaker at home. When their child comes up to them and says, ''Mommy, can't you come to my tennis game,'' ''Can't you come to my baseball game this afternoon,'' mommy will no longer have to say, ''No, I'm sorry, there is just no way because Federal law won't allow me to do it.

I have to say, Senator ASHCROFT has provided great leadership on this issue, because until he proposed this bill, I was not fully aware of the restrictions the Fair Labor Standards Act was placing on the hourly working men and women of this country. I, like most Americans, thought it common sense that an hourly employee would have the ability to work a few extra hours 1 week in order to take a few hours off in another week. In fact, as the need for this bill demonstrates, the hourly employee in America has fewer hours than virtually every other class of workers. A salaried employee can work out flexible work arrangements with his or her employer. A Federal employee at any level can do this, but not an hourly employee in the private sector.

Mr. President, I don't see the logic. In fact, when the bill was passed in 1978 to allow hourly Federal workers to have this right, this very important flextime/comptime right, Senator KENNEDY, who is now opposing comptime/flextime for private sector workers, cosponsored that very legislation.

I heard the distinguished Senator from Massachusetts say that our legislation could allow coercion of employers into taking or not taking time off in lieu of overtime pay. In fact, the bill that he cosponsored to extend comptime and flextime to Federal workers allows Federal agencies to make acceptance of comptime in lieu of overtime a condition of employment.

Mr. President, I suggest it is the legislation that the Senator from Massachusetts supported, not the present

bill, that allows for coercion. Far from allowing employers to make comptime or flextime a condition of employment, S. 4 gives employees the absolute right to refuse any of these new options, and provides for severe penalties for employers who might pressure employees one way or the other.

In fact, neither the employee or the employer has the ability to dictate whether the other chooses to participate in a comptime or flextime option. Either side can say, ''No thank you.'' If the employer says on Friday, ''I need you to work 2 extra hours today,'' the employee then has the right to say, ''That's fine, and I will take that in overtime pay,'' or ''That's fine, and I would like to bank that at a time-and-a-half rate to take later on as free time.'' Likewise, if an employee goes to the employer and says, ''I would like to work 2 overtime hours this Friday and take those off with pay next Monday,'' the employer has the right to say, ''I'm sorry, but it doesn't work into the schedule this week.''

But Mr. President, let me make one point clear. Once an employee has accrued either comptime or flextime, the employee would have the legal right to take that time, with pay, with reasonable notice to the employer, so long as taking the time does not unduly disrupt the operations of the business. If the standard were otherwise, Mr. President, scant few employers would even want to offer comptime or flextime, for fear that it might shut down their business if too many employees left at some critical time. A florist simply could not afford to lose his or her employees around Valentine's or Mother's Day, for example. For my colleagues on the other side of the aisle to argue that employees should have the absolute, unfettered right to take time off whenever they choose for other than serious health or family needs is disingenuous. They know that doing so is unreasonable and would prevent workers from having any flexibility because most employers would not be able to offer a comptime or flextime program.

In fact, in the bill that was sponsored by Senators KENNEDY, DODD and others that extended comptime and flextime to Federal workers recognized this. The bill they supported also allows Federal workers to take comptime only within a reasonable period after the employee makes the request and only if the use does not unduly disrupt the operations of the Government agency. That is exactly the same standard in our bill today. By the way, Mr. President, it is also the exact same standard that provides for non-emergency leave under the Family and Medical Leave Act, again supported by my many if not most of my colleagues who now oppose this bill.

But Mr. President, I think the essence of this bill is not whether the employer or the employee have the upper hand legally speaking, because this bill puts them on an even playing field. Rather, it is a matter of the employee and the employer coming together. The only reason an employee would want to take comptime or flextime is so that they can restore some measure of control and sanity to their workweek. The only reason an employer would want to offer comptime or flextime is so that his or her employees will be more engaged, fulfilled, and ultimately more productive at their jobs. This bill truly will create millions of win-win arrangements throughout this country, where both employer and employee walk away happy.

The employer might say, ''Gosh, we've got a big order that has to go out on Friday. Could we, instead, have you work overtime Friday rather than Monday,'' assuming that wasn't the time the employee asked for time off, say it was Thursday. So, of course, the employer can say, ''Well, could you do it at this time?'' I think reasonable people will be able to work this out.

I thought it was very interesting that the distinguished Senator from Iowa, Senator HARKIN said, ''Gosh, what if you have biweekly schedules and a person works 60 hours in 1 week and 20 hours the next week? That may make it harder to find child care.'' What if the person is having a hard time finding child care in the Monday and Tuesday of the following week and would like to go to her employer and say, ''I would like to work extra hours this week when I have child care and take off 2 days next week when I don't have child care?''

The point, Mr. President, is that we are trying to give more options to the hourly employee of this country. I ask the labor unions, what are you afraid of? Why wouldn't you want hourly employees to have this right, because, in fact, you know we have protected labor union contracts in this bill. If employees are under a labor union contract, then this law simply does not apply. If the labor union doesn't allow them to, this bill would not extend to them the right to take comptime or flextime. Labor contracts will not in any way be violated. So why is labor so afraid of this bill? Why would they not allow the hourly employees of our country who don't have labor contracts to have the right to have some added flexibility and manageability in their schedules.

Mr. President, I think it is very important for us to put in perspective that we are adding another option for the hourly employees of this country, because we know that what moms need most if they are working is relief from stress. They need the option of time. This doesn't say they have to take comptime instead of overtime; but it gives them the option.

Recent polls show that these are options that working Americans are overwhelmingly demanding. More and more people in the workplace are saying, ''I'd rather have the time. I would rather have the ability to go home and spend more time with my children, without losing any money in my paycheck.''

A recent Money magazine survey found 64 percent of the public and 68 percent of women would choose time off over cash for overtime work. So, why would we not give the option to those working women to get that time—without wrecking their budgets, I might add?

The Family and Medical Leave Act, as some have called for expanding, gives them time off, but it is not paid time off. We are talking about paid time off in this bill, so that working parents do not have to worry about making the mortgage payment or making the car payment if they take that 2 hours off for their child's soccer game. If their budget is a little tight this month because they had an extra visit to the dentist or the car breaks down, then the employee always has the right to take the cash for the hours he or she has banked. But if they have a secure budget and would rather have a little extra paid time to go to the soccer game, to go to the PTA meeting, to go to the baseball game, the Family Friendly Workplace Act gives them that option. It is an added advantage. It takes nothing away. That is what is important for all of us to remember.

When the labor unions say, ''We think this is a bad bill,'' what are they afraid of? The Federal employees who have this right now love it. The polls show they love it. A recent Government Accounting Office survey found that Federal employees are pleased with their comptime and flextime options, 10 to 1. They love being able to work flexible schedules, like the very popular 9-hour days for 8 days, 8 hours the next day, then taking every other Friday off. They love that option to get to go on a camping trip on Friday or participate in a child's school activity. One parent here in the Washington, DC, area even talked about how wonderful it was that she and so many other parents at her child's school who were Federal employees are able to attend plays, football games, and other school activities on Fridays. She talked about the pride she felt at being able to see her son play football at so many Friday games. I think it is high time that every hourly worker in America have that same ability and right.

Mr. President, we will apparently have a long time to talk about this bill because Senator WELLSTONE and others have signaled they may try and filibuster this bill. He is going to try to avoid a vote on the floor of the Senate on whether we are going to give the 60 million hourly working men and women in this country the same opportunity for flexible scheduling that the rest of the country enjoys. They want to avoid a vote to be able to tell that working mother that ''Yes, you can take Friday afternoon off, with pay, in order to see your child in a school play or to take your child to the doctor.

I think for them to filibuster this bill and not give that added right to hourly employees begs—begs—for an explanation.

Mr. President, I see our distinguished majority leader has come to the floor. I am happy to yield the floor and just say, in closing, that we will not give up this bill. If they are going to filibuster it, they will know we are going to fight for the hourly working moms in this country to spend more time with their children and at the same time be able to make the home mortgage payment and the car payment. Thank you, Mr. President, and I again want to thank the distinguished gentleman from Missouri, Senator ASHCROFT, as well as the distinguished committee and subcommittee chairmen, Senator JEFFORDS and Senator DEWINE, for their leadership and hard work on this most important bill.

I yield the floor.

Mr. LOTT. Mr. President, first, I commend the distinguished Senator from Texas for her remarks today and on several occasions with regard to the working mothers of this country and the women who would benefit from this opportunity, as well as her work on the spousal IRA last year. In so many ways she has raised our sensitivity to ways that we can help the working women and the moms of America.

She was on the air this morning shortly after 7 o'clock, speaking up about this important legislation. I hear her often at all hours of the day. She is doing a great job. I commend her for her leadership.

I also want to thank the Senator from Missouri, Senator ASHCROFT, Senator DEWINE from Ohio, Senator JEFFORDS, all of the Members who have worked to bring this legislation to the floor. S. 4 is probably one of the most important things we can do this year to help the workers of America have flexibility with their work schedules, to deal with the comptime issue in a different way that is more beneficial to them. This is very important legislation.

I had hoped we could come together on an agreement on getting it completed and moving it through the Congress and on to the President for his signature. There were indications in the administration that they would like to do it, and from the Democratic leadership. So far, it has not happened. But we feel this is so important we must bring it to a foreseeable conclusion and make sure that the amendments that are offered are relevant.

CLOTURE MOTION

Mr. LOTT. Therefore, Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the committee amendment to calendar No. 32, S. 4, the Family Friendly Workplace Act of 1997.

Trent Lott, John Ashcroft, Susan M. Collins, Kay Bailey Hutchison, Mike DeWine, Judd Gregg, Paul Coverdell, Gordon Smith, John W. Warner, Thad Cochran, Conrad Burns, Fred Thompson, Don Nickles, Wayne Allard, Jeff Sessions, Dirk Kempthorne.

Mr. LOTT. For the information of all Senators, the cloture vote on S. 4 will occur on Thursday, May 15, and I ask unanimous consent the vote time be determined by the majority leader after consultation with the Democratic leader and that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I rise to speak in opposition to S. 4, the Family Friendly Workplace Act. At a time when we should be debating ways to raise the wages of working Americans to reverse two decades of decline, S. 4 proposes comptime policies which will place additional downward pressure on the standard of living of working Americans. Rather than seeking a bipartisan solution to give great flexibility to workers without jeopardizing their income, S. 4 unnecessarily undermines longstanding wage protections afforded American workers.

The problem is simple: Working families today find both their time and financial resources stretched to the breaking point. The average working family has not seen their income increase over the past 20 years. In almost two-thirds of families, both mom and dad have to work to make ends meet. Financial resources and family time both are at a premium.

Manifestations of the problem are easy to manage, and they occur in various forms every day. We have heard much discussion about the working mom and her problems. The working mom, for example, might get a call from her daughter's school, and the teacher requests a meeting explaining that the child's grades have slipped, and normally the child is a very attentive child, but she has become disruptive. Concerned about her daughter, who is usually a good student, mom seeks to schedule a teacher conference as quickly as possible without diminishing her income. The factory where she works is currently busy, so she approaches the manager and requests to work an hour of overtime this week so she can take an hour and a half to see her daughter's teacher next Thursday.

How would S. 4 address this problem? Unfortunately, the answer is, inadequately, if at all. First, under S. 4, a worker cannot avail herself of the program. Comptime is provided solely at the discretion of the employer. It is a program that only the employer can offer. Second, even if the employee had been offered comptime and, indeed, had already worked an hour of overtime, there is no guarantee that she will receive the time off that she needs. The Republican bill nebulously allows an employee to take time off within a reasonable period after making the request time does not unduly disrupt the employer.

There are no further guidelines. So, if an employer found the timing of the mother's request was not reasonable or if the time would be unduly disruptive, the request could be denied. Considering the fact that the worker has already earned the right to this compensation, her request for a particular time off deserves deference.

Inexplicably, the sponsors of S. 4 rejected an amendment offered in the Labor and Human Resources Committee that would have ensured a worker receive the time requested if the request was made 2 weeks in advance and would not cause the employer substantial injury. This bill offers quite a bit more flexibility to the employer than it does to the employee, and it does not represent another real option for the wage earner, the hourly wage earner in America.

In addition, there are serious concerns regarding how much choice employees actually will have. The bill contains hortatory language dictating that programs be the voluntary choice of the employee and that employers cannot coerce employees into taking time off in lieu of pay. However, S. 4 fails to provide a verifiable system by which employees choose to take comp time. Indeed, the bill fails to stipulate safeguards concerning potential discrimination.

Under the bill, employees will be quickly divided into two groups: those who accept time off as overtime and those who want pay. The bill does not explicitly or effectively prevent an employer from offering overtime only to those who will accept time off. Again, in committee, the sponsors of S. 4 rejected amendments which would have clarified the principle that employees cannot be distinguished based on their willingness to take nonpaid overtime.

Most seriously, the current Family Friendly Workplace Act contains a provision which devastates the family's ability to both schedule time together and make ends meet: the evisceration of the 40-hour workweek. Under this legislation, an employer would be permitted to schedule employees to work 50, 60, 70, even 80 hours a week without providing any overtime pay. Overtime pay would only be required after working 80 hours in a 2-week period. It is difficult to contemplate how an employee scheduled to work 70 or 80 hours a week at the discretion of the employer will be able to better schedule time to attend to the needs of his or her family. Supporters of the bill may argue that the program is voluntary. Yet the bill's sponsors have denied workers the ability to refuse this voluntary program when the employers offer it.

S. 4 proposes to eliminate a very clear standard; namely, that employees who work more than 40 hours in a week are entitled to premium wages for those extra hours. In its place, the so-called Family Friendly Workplace Act

leaves workers with a nebulous framework. Most of S. 4's provisions are aimed at hourly employees who depend upon their overtime pay. Eight million overtime workers will hold down two jobs in an effort to make financial ends meet and are the most likely targets of this legislation. More than 80 percent of these individuals make less than $28,000 a year. For these people, overtime pay can represent as much as 15 percent of their wages. These workers already face precarious financial situations. The reality is that they cannot risk their job by challenging their employer's application of comptime or realistic demanding wages rather than comptime or flextime. Without clear rules, these workers will be left without redress and left extremely vulnerable.

Would most employers implement comptime in an equitable manner? I am sure many would. However, S. 4 gives managers the authority to effectively eliminate all overtime pay, and truth be told, there are significant numbers of employers who already abuse the current system. Indeed, last year, the Department of Labor awarded $100 million in overtime pay which was wrongly denied by employers. Labor examiners report that half the garment industry now fails to pay the minimum wage. This bill would only protect those who currently violate the law. We should simply exempt these troubled industries from comptime legislation. Yet this was another suggestion rejected by the sponsors of S. 4.

Many Democrats, including myself, would be interested in crafting legislation which ensures flexibility while guaranteeing protections to ensure employee choice—true employee choice. Last year, President Clinton suggested legislation addressing many of these goals. My colleagues should make no mistake, there are solutions to the growing time demands on working families such as the extremely successful Family and Medical Leave Act.

The Family and Medical Leave Act guarantees employees the right to take 12 weeks of unpaid leave for certain family emergencies. Since being enacted in 1993, the Family and Medical Leave Act has been embraced by the vast majority of employers and employees who have been governed by its regulations. Employers have found that it has only incrementally increased the benefits, hiring, and administrative costs they face. The law readily defines eligibility and lengths of benefits. The Family and Medical Leave Act administration costs have been low, if nonexistent, and its benefits extraordinary. Comptime, properly structured comptime, legislation protecting the workers, particularly the most vulnerable workers, could provide the same types of benefits.

Now, proponents of this bill claim that this legislation provides flexibility to needy families. We should be clear. The bill will impact the 50 percent of American workers who receive hourly compensation and are thus classified as hourly wage employees. These are our most economically vulnerable citizens.

A recent article in the Wall Street Journal points out that more and more progressive employees are implementing, under current law, flexible workplace schedules for both hourly and salaried employees. Indeed, as the article points out, one such company, Chevron, has implemented a flexibility option which would allow an employee to work four 10-hour days and have the fifth day off to tend the family. Again, these options are provided under current law.

Now, I compliment these progressive companies for their policies. But I also believe that the Wall Street Journal article points out the reality of some of the fears that are being expressed today on the floor. Businesses are appropriately concerned, first and foremost, with their bottom line. As one corporate manager was quoted in the Wall Street Journal article, ''You have to look at [the work-friendly arrangements] as a business strategy, rather than an accommodation'' because the accommodation doesn't get to the bottom line. Employers will move toward plans that make economic sense to them. Yet, S. 4 provides all the wrong incentives. It potentially discriminates against workers who request pay instead of time off, as well as being inflexible in granting workers' requests for time off.

The PRESIDING OFFICER. The hour of 12:30 has arrived.

Mr. DEWINE. Will the Senator yield?

Mr. REED. Yes.

Mr. DEWINE. How much longer would the Senator like to go so that we can get a unanimous-consent for him to finish?

Mr. REED. Approximately 2 minutes.

Mr. DEWINE. Mr. President, I ask unanimous consent that the time be extended for the recess by an additional 20 minutes. That would enable, I think, the Senators who are now on the floor to make their statements. I ask unanimous consent that we extend our time until 12:50.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REED. Mr. President, I would like to take one moment on a point that has been addressed periodically throughout the course of the debate. First is the argument that this legislation simply gives to private sector employees the same benefits enjoyed by public employees. Public employees do have certain flexibilities, but they also have a great deal more protection than typical hourly wage earners. When we tried to provide some of these additional protections to the private sector at the committee level that are enjoyed by public sector workers, they were rejected.

Public employees can only be fired for cause, unlike most private sector employees, who have at-will contracts. Most public sector employees have grievance systems, which assure them that any disagreements with their employer will receive equitable redress. Public employees need not worry about the bankruptcy of their employer. The list goes on. Public employees have the power to ensure that flexibility works for them. If the sponsors of this legislation had been willing to provide any of these types of protections to those impacted by this bill, I think their argument would have some merit. Unfortunately, my colleagues have been unwilling to incorporate any significant worker protections into their bill.

Mr. President, I believe that this bill has been offered in good faith. Many employers would implement this legislation equitably. However, some employers would not. And, sadly, large sectors of employers do not follow even the current rules.

Unfortunately, portions of this legislation have been hijacked by those same interests who opposed an increase in the minimum wage, the implementation of the Family and Medical Leave Act, and who now impose the implementation of employee-oriented flexible work schedules. This well-intentioned idea now contains large loopholes by which some employers could dramatically reduce the pay of employees.

Mr. President, I hope these problems can be addressed so we can provide today's workers stretched thin by demands of work and family, the power with which to make use of flexible work schedules. I hope we can work to amend this so that it would reflect a bill that is balanced between the needs for employees and time with their families and giving them the opportunities to make the choices so that they can effect the policies for their families and improve the quality and climate of the workplace. I hope that we all can work toward that end.

I thank the Chair and yield back my time.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise today not only as a proud original cosponsor of S. 4, the Family Friendly Workplace Act, but also as a parent of three wonderful children. I am a working parent of three wonderful children. Many of my colleagues know from personal experience that being a parent is tough work—even for Senators.

I come to the floor today to speak as an advocate for more family time. My family is my lifeblood. They were by my side long before I became a Senator, and they will be by my side long after I leave this job. If I had to make a choice between politics and parenting, my duties as a father would receive my vote.

Having said that, I think it is important that my colleagues keep in mind that there are millions of working American parents in their States who confront far greater difficulties managing work and families than we do. As a

Senator, I have flexibility to spend time with my family. But what about the millions of working parents that want paid time off with their kids? They can't have it because they remain tethered to a 60-year-old act that prevents them from crossing that bridge to the 21st century.

This is a different world from 60 years ago. In 1938, only 2 out of 12 mothers worked. Now, 9 out of 12 mothers work. We have had so much Government help that two parents in a family have to work. One works to pay the bills; the other one works to pay the taxes. We have to reverse that trend. Until we do, we have to find ways that they can keep the family together and have time to spend with their families.

S. 4 would amend the Fair Labor Standards Act of 1938—not eliminate it from the pages of history, as the opponents of this bill would like us to believe. This vital piece of legislation would provide American working parents with flexible work schedules and increase their choices and options for their time at work and quality time with their families, even if they don't work for the Federal Government. Ensuring that such opportunities are provided for working parents can only serve to strengthen our American families.

I do recognize that there are changes in this Nation's work force that have been made over the past 60 years. There has been this influx of women into our Nation's work force. According to the Bureau of Labor statistics, 63 percent of mother and father households now see both parents working outside the home. Moreover, 76 percent of mothers with school-age children now work.

Americans want flexibility. This month's Money magazine shows that 64 percent of the American public and 68 percent of women would prefer time off to overtime pay—if they had a choice. I predict that these percentages will continue to increase. I urge my colleagues to invest now, while it is still a meager 68 percent. That number will continue to rise and the payoff will be big for our Nation's workers—not just in paid time off from work, but paid time off with family—a true investment in America's future.

Wage payers are not the heartless and cruel reincarnations of Ebenezer Scrooge and Simon Legree, like we keep hearing on the floor here. Having played the wage payer role for more than 26 years, I take great offense when employers are characterized as being the bad guys in this thing. I have been a small businessman, and my wife and I had shoe stores, small shoe stores, family shoe stores. We employed, in each store, three to five people. It gives you a different perspective on the world and on flexibility. Back here, I have been in partisan discussions where we have talked about whether small businesses have 500 employees or 125 employees. I have to tell you, that isn't even close. Small businesses have 1 to 5 employees. These are small businesses where the guy that owns the business sweeps the front walk, cleans the toilet, and waits on customers. That is a focus that we have to get in this United States. We have to think about those small businesses and the flexibility they need, instead of overburdening with continuous regulations and tough forms to fill out for taxes. Eighty percent of the American work force works in those small businesses—90 percent in my State.

Now, they used to have flextime. Why don't they now? They can't afford to litigate. We have become a Nation of victims. If something doesn't go just exactly the way we want it to work, we complain about it, try and figure out how we have been a victim, and we try to figure out how to make somebody pay for it. When it gets into a contentious situation like that, some of the things not provided for in law have to be watched very carefully. That is why there isn't as much flextime now as there used to be. I went to a small business hearing in Casper, and when it was over, the news media said, ''You only had 75 people here at a time. Why were there not more here?'' They are kind of prohibited from coming to daytime hearings, because if they had an extra person to be able to attend the hearing, they would fire them because it would be too much overhead.

That is the kind of perspective we have to look at. Those are the people this seeks to work with. It seeks to give people working in the small businesses some flexibility so they can do the things they need to, without being overburdened by the problems that are provided in the Family and Medical Leave Act. That excludes businesses under 50, and there is a good reason for it. If they have employees with less than 50, they have problems filling out just the paperwork for that bill with 300 pages of regulation. This is a 45-page bill. I can picture small businessmen trying to handle what we may force on them with this many pages of legislation. As for the Ebenezer Scrooges and Simon Legrees, they are probably out there; 2 percent of the businessmen probably fall into that category. We have to quit writing laws to take care of the 2 percent in this country and write laws that take care of the 98 percent, the good employers that want to work together, that want to keep their business going. That is a focus we lost in this discussion.

Part of the reason for this flextime is so that the business can still function. They say, why isn't there a provision in here that absolutely guarantees the employee to take off any time that he wants to? If you only have three people and the other two who don't have an investment in the business insist they are going to leave tomorrow morning, you don't have enough help to take care of the customers. If you do that a few days in a row, you don't have anymore customers. If you don't have the customers, then you don't have a business. I have to tell you, in small business, the employee understands that. He is more sensitive to the business than anybody in the big businesses, and he knows that it is his job that goes. So he is interested in having a flexible work situation that we are trying to provide with this bill and that it does provide with this bill, without putting anybody out of business and taking away all three to five of those jobs.

I have heard some things against the Family Friendly Workplace Act besides the ones mentioned on the floor. Employees have talked to me and say, ''How come there are limits in this bill on how many hours I can collect?'' They would like to work extra so they could have the biggest anniversary party you could ever imagine. They may have a son graduating from college and they want some extended time together, probably their last time together. They may want to build up some hours for that. In this bill, there are limitations on that. So they are going to have to pick one or the other, or maybe neither. I hear the employer saying, well, by golly, this puts us in a bit of a bind, because if there is enough work force around here now, and they have enough flexibility on where they go to work. If my competitor offers this flex, then I am going to have to offer the flex. So it isn't a perfect bill for anybody. But it is a perfect bill for most and it will provide solutions in the work force.

Four years ago, the President signed the Family and Medical Leave Act into law. While well intended, the Federal Government took 13 pages and made it into 300 pages, instead of targeting employees with choices and options, and overburdened everybody with a bunch of paperwork. It is making a difference, but it is unpaid time, without any option in the private sector to change that around so it is paid time.

One of the things that came up in the committee was a request or suggestion that people could take their time, time and a half, take the money, and when they had an emergency or just wanted to see a ball game, they could just pay for it. That isn't how America works. When you get that money, you spend it. Particularly with working mothers, if they get the paycheck, they say this paycheck is now my family's and it has to go for the bills. But they can bank hours; the hours are theirs. The hours are theirs to spend the way they want to. It is a way to bank it. Then if they run into that family emergency where the refrigerator breaks down, they can make that trade and take the money. This bill says you can take the cash if you want to. You can bank the hours, and you can take cash.

It is a much easier situation than trying to meet all of the Federal guidelines on everything else that we have. I have to tell you one of the reasons I am in on this bill. When I was in my campaign, I was in Cheyenne, WY, a

company down there does first-day stamp covers; it's one of the biggest ones in the world. If you want a first-day cover on any stamp, there is a place in Cheyenne—not just for the ones that are going to happen, but for the ones that already happened. It's one of the greatest museums of stamps. When the Federal Government passed this law that said that employees can have flextime and comptime in the Federal Government, the same proposals we are talking about here, some of the people working for that company were married to Federal employees. Now, the ones working for the Federal Government could do that kind of time. The ones working for the private business could not. So they got the employees together and said let's offer this opportunity, and they took it to management and management said, ''why not?'' They offered it to the employees. Then they got in trouble because it is only a Federal law. I ask you, how fair is Government if two people in the same family don't have the same advantages and the one that gets all the advantages is the one working for the Federal Government? Businesses are not Ebenezer Scrooges or Simon Legrees. They are the ones who want it to work for the employees. They have worked on this for 19 years now, and they are overjoyed that we are considering this at this moment. They sent somebody back at their expense to testify on behalf of the employee to get this kind of flex in the schedule.

I ask you, are those people working for Unicover crazy? No, they want flextime in their schedule. Private sector employees know that the Federal employees have this flexibility.

I urge my colleagues to join me in giving the employees the opportunity to balance their work and family obligations. This bill is just common sense. We can put all kinds of smoke screens behind it. We can make it look like it is just for big business.

But, please, on behalf of the small businesses of this country, on behalf of the working people, particularly the working mothers of this country, let's give them some flexibility in their work schedule so that they can have better families. If we have better families, we will have a better America. And the Family Friendly Workplace Act will provide that.

I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I rise to support the Family Friendly Workplace Act once again. Senator JEFFORDS earlier today submitted to the Senate the committee substitute. I would like to take a few moments now to explain the terms of that substitute to the Senate.

I note the time. I, therefore, ask unanimous consent that our time for the recess be extended by an additional 7 minutes.

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

Mr. DEWINE. I thank the Chair.

Mr. President, as has been pointed out by my colleague, Senator WELLSTONE, we had the opportunity to have hearings. We had the opportunity to thoroughly discuss this bill in not only the subcommittee but the committee. We listened to the criticism. We listened to the constructive comments that were made. I believe that the committee substitute that has been brought forward today addresses the legitimate concerns that were, in fact, raised by many of our colleagues on the other side of the aisle. I think this committee substitute is a fine work product. I am pleased to be able to discuss today some of the details.

First, the collective bargaining process.

When we drafted this bill, we wanted to give nonunion employees the ability to select flexible work options through individualized agreements with their employers—and to give union members the ability to select these options collectively. We wanted all unionized employees to use the collective bargaining process to select these options. During the markup, however, it was pointed out by Senator KENNEDY that the bill actually limited the scope of coverage to unions who are recognized representatives of the employees under section 9(a) of the National Labor Relations Act [NLRA]. It's true that a great many unions are recognized under section 9(a)—but that provision does not, in fact, cover all union members.

Under the committee substitute before us today, all employees who are members of unions will obtain their flexible work options through the collective bargaining process. The new language says, and I quote, ''where a valid collective bargaining agreement exists between an employee and a labor organization that has been certified or recognized as the representative of the employees of employer under applicable law,'' end of quote, the employee may obtain flexible work options through collective bargaining.

I would like to point out, Mr. President, that notwithstanding this amendment, it has always been our intention to ensure that employees participate in S. 4's flexible options through agreements with their employer. Under no circumstances can an employer provide flexible options to an employee without either a written agreement from a non-union employee or collective bargaining agreement on behalf of a union employee.

This measure, along with the bill's anti-coercion measures, was intended and designed to protect employees from being forced to participate in any of the options available under S. 4. Today we simply strengthen that policy.

Senator WELLSTONE expressed concerns about the tenuous and short-lived nature of certain types of jobs in certain industries—questioning the ability of some workers to use and benefit from the flexible work options provided by S. 4. To address this concern, Senator WELLSTONE offered an amendment in markup which would have exempted part-time, seasonal, temporary, and garment-industry workers from the comptime provisions of the bill.

Even though we found Senator WELLSTONE's concerns legitimate, the majority of the Committee disagreed with the proposed solution—the exemption of whole industries and classes of workers as well as giving the Secretary of Labor broad authority to determine the eligibility of other industries.

We believe that workers should be protected from potentially abusive situations and that employees and employers that enter into any agreements have a stable relationship. However, we believe that it would be unfair to exempt whole industries and classes of workers—eliminating even the possibility of participating in a flexible work option, even if they have worked with the same employer for many years.

The solution provided by the committee substitute states that before an employee is eligible for a flexible work option, or before an employer can offer a flexible work option, the employee must work for the employer for 12 months and 1,250 hours within 1 year—ensuring that a stable relationship exists between the employer and the employee.

This solution may sound familiar. That's because it's the same basic requirement that exists under the Family and Medical Leave Act.

This requirement effectively creates the exception Senator WELLSTONE suggested. Employees whose duration is too short-lived or tenuous to take advantage of S. 4's options are excluded. However, employees who are not so situated have an opportunity to develop a stable trusting relationship with their employer.

In addition to satisfying Senator WELLSTONE's concerns, this change will allow long-term employees an opportunity to determine whether their employer is the type to respect the parameters of S. 4's flexible options and to determine if they want to participate or not.

The purpose of this provision—as of the bill in its entirety—is to increase the freedom and flexibility of the workers.

Mr. President, let me now turn to a third change we propose in the bill. We propose aligning the potential damages available for violations of S. 4's biweekly and flexible credit hour provisions. Some of our colleagues appear to believe that it's impossible to modify the Fair Labor Standards Act and still provide adequate protection to working men and women.

If my friends believe this, they are wrong. The purpose of our bill is worker protection. There are severe penalties for employers who violate the workers' rights.

S. 4 had strong penalties under the comptime provisions. The committee substitute takes these strong penalties and extends them to violations under the other flexible workplace options.

Mr. President, the committee substitute will also include an addition to the provisions for biweekly work schedules and flextime options. It will require the Department of Labor to revise its Fair Labor Standards Act posting requirements so employees are on notice of their rights and remedies under the biweekly and flextime options as well as the comptime option.

Let me now discuss the salary basis provision. Under the FLSA's salary basis standard, an employee is said to be paid on a salary basis—and thus exempt from the FLSA overtime requirements—if he or she regularly receives a straight salary rather than hourly pay. These individuals are usually professionals or executives. Furthermore, the FLSA regulations state that an exempt employee's salary is not subject to an improper reduction.

For years this subject to language was noncontroversial. Recently, however, some courts have reinterpreted this language to mean that even the possibility of an employee's salary being improperly docked can be enough to destroy the employee's exemption, even if that employee has never personally experienced a deduction. Seizing upon this reinterpretation, large groups of employees, many of whom are highly compensated, have won multimillion-dollar judgments in back overtime pay—even though many of them never actually experienced a pay deduction of any kind. This problem is especially rife in the public sector.

Mr. President, this legislation would not affect the outcome in cases where a salary has in fact been improperly docked. If an employer docks the pay of a salaried employee because the employee is absent for part of a day or a week, the employee could still lose his or her exempt status.

The purpose of S. 4, in this regard, is to make clear that the employee will not lose his or her exempt status just because he or she is subject to—or not actually experiencing—an improper reduction in pay.

Mr. President, we're making progress on this legislation—a bill that would help give American workers the flexibility they need and deserve as they confront the challenges of a dynamic new century.

This bill will strengthen America's families, by allowing millions of hourly workers to balance family and work. Let's move forward in a bipartisan way to get it passed.

Mr. President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:59 p.m., recessed until 2:15 p.m.; whereupon, the Senate resembled when called to order by the Presiding Officer [Mr. COATS].

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

Mr. JEFFORDS. Mr. President, I call for the regular order with respect to S. 717.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 717) to amend the Individuals With Disabilities Education Act, to reauthorize and make improvements to that act, and for other purposes.

The Senate resumed consideration of the bill.

Mr. JEFFORDS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. Mr. President, I would like to take just a couple of minutes to rise in support of the Individuals With Disabilities Education Act. I have a particular interest in this bill in that I have been involved for a very long time with disabilities, chairman of the disabilities council in Wyoming, my wife teaching special kids, and so I wanted to comment very briefly.

I rise in support of the current bill to reauthorize IDEA, the Individuals With Disabilities Education Act. The Federal Government, in my view, should and does play a rather limited role in elementary and secondary education. This is the responsibility generally of communities, those of us who live there. State and local control, I think, is the strength of our educational system, and yet I believe strongly that this is an appropriate Federal responsibility. This is dealing with that kind of a special problem which exists in all places to ensure that every child has the opportunity to be the best that he or she can be.

IDEA helps local schools meet their constitutional responsibilities to educate everyone, and that is what we want to do. Today nearly twice as many students with disabilities drop out of school compared to students without disabilities, and that is what it is about, to have a program that helps keep students in school.

S. 717 does not have as much punch as legislation considered in the last Congress. Some issues about discipline and litigation were impossible to resolve last year, and therefore there was no reauthorization. This bill, as I understand it, represents a consensus. It is a product of negotiation. No party involved, as usual, received all they had hoped for, but nevertheless it is a fair approach. It is a step in the right direction. This bill has had a very long journey. We owe it to our local school districts to pass this reauthorization legislation that has been stymied for several years.

Education is clearly an issue that is on the minds of all of us. It is on the minds of Wyomingites. There is a great deal of uncertainty regarding the future and shape of secondary and elementary schools in Wyoming. State legislators currently are scrambling to provide a solution to a Supreme Court ruling that funding and opportunities must be allocated more uniformly and fairly across districts in Wyoming. I am hopeful that Congress can pass this IDEA legislation and eliminate at least one of the sources of uncertainty for educators and, more particularly, for parents in my State.

Since its original passage in 1975, it has become clear that there are improvements that are necessary to IDEA. Wyoming teachers and administrators have contacted me expressing concern about the endless paper trail. I hear that every night, as a matter of fact, at home; as I mentioned, my wife teaches special kids and spends, unfortunately, as much time in paperwork as she does with kids. That is too bad.

They complain the current law is unclear and places too much emphasis on paperwork and process rather than actually working hands-on with children. The bill we have before us today attempts to reduce paperwork associated with the individualized educational plan. Teachers and administrators also write to me, and I am sure to my fellow Senators, to ask for strengthening of the discipline and school safety provisions of the law. They want power to take steps necessary to assure that schools are safe for all children. S. 717 would give the power to school officials to remove disabled students who bring weapons or drugs to school and keep them out for as long as 45 days pending a final decision. This will give educators a clearer understanding of how they are able to exercise discipline with disabled children, as they should be able to.

IDEA has also proved to be a highly litigated area of law. This bill will require that mediation be made available in all States as an alternative to the more expensive court hearings. Mediation has been shown effective in resolving most of these kinds of disputes. Meeting with the mediator will help