AMENDMENTS SUBMITTED

THE FAMILY FRIENDLY WORKPLACE ACT OF 1997

ABRAHAM AMENDMENTS NOS. 254–255

(Ordered to lie on the table.)

Mr. ABRAHAM submitted two amendments intended to be proposed by him to the 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, as follows:

AMENDMENT NO. 254

On page 26, strike lines 2 through 9 and insert 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 twice 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.''.

AMENDMENT NO. 255

On page 8, strike lines 6 through 14 and insert the following:

''(A) twice 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, twice the product of—''.

GRASSLEY AMENDMENT NO. 256

(Ordered to lie on the table.)

Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill, S. 4, supra; as follows:

At the end of the bill, add the following:

SEC. 4. APPLICATION OF LAWS TO LEGISLATIVE BRANCH.

(a) DEFINITIONS.—In this section, the terms ''Board'', ''covered employee'', and ''employing office'' have the meanings given the terms in sections 101 and 203 of Public Law 104–1.

(b) BIWEEKLY WORK PROGRAMS; FLEXIBLE CREDIT HOUR PROGRAMS; EXEMPTIONS.—

(1) IN GENERAL.—The rights and protections established by sections 13(m) and 13A of the Fair Labor Standards Act of 1938, as added by section 3, shall apply to covered employees.

(2) REMEDY.—The remedy for a violation of paragraph (1) shall be such remedy, including liquidated damages, as would be appropriate if awarded under section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)), and (in the case of a violation concerning section 13A(d) of such Act), section 16(g)(1) of such Act (29 U.S.C. 216(g)(1)).

(3) ADMINISTRATION.—The Office of Compliance shall exercise the same authorities and perform the same duties with respect to the rights and protections described in paragraph (1) as the Office exercises and performs under title III of Public Law 104–1 with respect to the rights and protections described in section 203 of such law.

(4) PROCEDURES.—Title IV and section 225 of Public Law 104–1 shall apply with respect to violations of paragraph (1).

(5) REGULATIONS.—

(A) IN GENERAL.—The Board shall, pursuant to section 304 of Public Law 104–1, issue regulations to implement this subsection.

(B) AGENCY REGULATIONS.—The regulations issued under subparagraph (A) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in paragraph (1) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of the regulations would be more effective for the implementation of the rights and protections under this subsection.

(c) COMPENSATORY TIME OFF.—

(1) REGULATIONS.—The Board shall, pursuant to paragraphs (1) and (2) of section 203(c), and section 304, of Public Law 104–1, issue regulations to implement section 203 of such law with respect to section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by section 3(a).

(2) REMEDY.—The remedy for a violation of section 203(a) of Public Law 104–1 shall be such remedy, including liquidated damages, as would be appropriate if awarded under section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)), and (in the case of a violation concerning section 7(r)(6)(A) of such Act (29 U.S.C. 207(r)(6)(A)), section 16(f)(1) of such Act (29 U.S.C. 216(f)(1)).

(3) EFFECTIVE DATE.—Subsection (a)(3), and paragraphs (3) and (4) of subsection (c), of section 203 of Public Law 104–1 cease to be effective on the date of enactment of this Act.

(d) RULES OF APPLICATION.—For purposes of the application under this section of sections 7(r) and 13A of the Fair Labor Standards Act of 1938 to covered employees of an employing office, a reference in such sections—

(1) to a statement of an employee that is made, kept, and preserved in accordance with section 11(c) of such Act shall be considered to be a reference to a statement that is made, kept in the records of the employing office, and preserved until 1 year after the last day on which—

(A) the employing office has a policy offering compensatory time off, a biweekly work program, or a flexible credit hour program in effect under section 7(r) or 13A of such Act, as appropriate; and

(B) the employee is subject to an agreement described in section 7(r)(3) of such Act or subsection (b)(2)(A) or (c)(2)(A) of section 13A of such Act, as appropriate; and

(2) to section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)) shall be considered to be a reference to subchapter II of chapter 71 of title 5, United States Code.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—This section shall take effect, with respect to the application of section 7(r), 13(m), or 13A of the Fair Labor Standards Act of 1938 to covered employees, on the earlier of—

(A) the effective date of regulations promulgated by the Secretary of Labor to implement such section; and

(B) the effective date of regulations issued by the Board as described in subsection (b)(5) or (c)(1) to implement such section.

(2) CONSTRUCTION.—A regulation promulgated by the Secretary of Labor to implement section 7(r), 13(m), or 13A of such Act shall be considered to be the most relevant substantive executive agency regulation promulgated to implement such section, for purposes of carrying out section 411 of Public Law 104–1.

WELLSTONE AMENDMENTS NOS. 257–264

(Ordered to lie on the table.)

Mr. WELLSTONE submitted eight amendments intended to be proposed by him to the bill, S. 4, supra; as follows:

AMENDMENT NO. 257

Beginning on page 9, strike line 19 and all that follows through page 10, line 3 and insert the following:

''(9)(A) An employee shall be permitted by an employer to use any compensatory time off provided under paragraph (2)—

''(i) for any reason that qualifies for leave under—

''(I) section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)), irrespective of whether the employer is covered, or the employee is eligible, under such Act; or

''(II) an applicable State law that provides greater family or medical leave rights than does the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

''(ii) for any reason after providing notice to the employer not later than 2 weeks prior to the date on which the compensatory time off is to be used, except that an employee may not be permitted to use compensatory time off under this clause if the use of the compensatory time off will cause substantial and grievous injury to the operations of the employer; or

''(iii) for any reason after providing notice to the employer later than 2 weeks prior to the date on which the compensatory time off is to be used, except that an employee may not be permitted to use compensatory time off under this clause if the use of the compensatory time off will unduly disrupt the operations of the employer.''

AMENDMENT NO. 258

On page 28, after line 16, add the following:

SEC. 4. COMMISSION ON WORKPLACE FLEXIBILITY.

(a) ESTABLISHMENT.—There is established a Commission on Workplace Flexibility (referred to in this section as the ''Commission'').

(b) MEMBERSHIP.—The Commission shall be composed, and the members of the Commission shall be appointed, in accordance with paragraphs (1) and (2) of subsection (a), and subsection (b), of section 303 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2633(a) (1) and (2), and (b)).

(c) DUTIES.—

(1) STUDY.—The Commission shall conduct a comprehensive study of the impact of this Act, and the amendments made by this Act, on public and private sector employees, including the impact of this Act, and the amendments made by this Act—

(A) on the average earnings of employees, the hours of work of employees, the work schedules of employees, and the flexibility of scheduling work to accommodate family needs; and

(B) on the ability of employees to obtain the compensation to which the employees are entitled.

(2) REPORT.—

(A) IN GENERAL.—Not later than 1 year prior to the termination date of the Commission prescribed by subsection (e), the Commission shall prepare and submit to the appropriate committees of Congress and the

Secretary of Labor, a report concerning the findings of the study described in paragraph (1).

(B) RECOMMENDATIONS.—The report described in subparagraph (A) shall include recommendations on whether—

(i) the compensatory time provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) should be modified or extended, including—

(I) a recommendation on whether particular classes of employees or industries should be exempted or otherwise provided special treatment under the provisions; and

(II) a recommendation on whether additional protections should be provided, including additional protections for employees of public agencies.

(C) SPECIAL RULE.—The Commission shall have no obligation to conduct a study and issue a report pursuant to this section if funds are not authorized and appropriated for that purpose.

(d) COMPENSATION AND POWERS.—The compensation and powers of the Commission shall be as prescribed by sections 304 and 305, respectively, of the Family and Medical Leave Act of 1993 (29 U.S.C. 2634 and 2635).

(e) TRAVEL EXPENSES.—The members of the Commission shall be allowed reasonable travel expenses in accordance with section 304(b) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2634(b)).

(f) TERMINATION.—The Commission shall terminate 4 years after the date of enactment of this Act.

SEC. 5. CESSATION OF EFFECTIVENESS.

This Act, and the amendments made by this Act, cease to be effective 4 years after the date of enactment of this Act.

AMENDMENT NO. 259

On page 10, strike lines 4 through 7 and insert the following:

''(10) In a case in which an employee uses accrued compensatory time off under this subsection, the accrued compensatory time off used shall be considered as hours worked during the applicable workweek or other work period for the purposes of overtime compensation and calculation of entitlement to employment benefits.

''(11)(A) The term 'compensatory time off' means the hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.

''(B) The term 'monetary overtime compensation' means the compensation required by subsection (a).''.

AMENDMENT NO. 260

On page 10, strike line 4, and insert the following:

''(10) The entire liquidated value of an employee's accumulated compensatory time, calculated as provided for in this subsection, shall, for purposes of proceedings in bankruptcy under title 11, United States Code, be treated as unpaid wages earned by the individual as of—

''(A) the date the employer was or becomes legally or contractually obligated to provide monetary compensation to the employee for the compensatory time; or

''(B) if the employer was not legally or contractually obligated to provide such monetary compensation prior to ceasing to do business, the date of ceasing to do business.

''(11) The terms 'monetary overtime compensation'''.

AMENDMENT NO. 261

Beginning on page 3, strike lines 15 through 23 and insert the following:

''(B) In this subsection:

''(i) The term 'employee' does not include—

''(I) an employee of a public agency;

''(II) an employee who is a part-time employee;

''(III) an employee who is a temporary employee; and

''(IV) an employee who is a seasonal employee.

''(ii) The term 'employer' does not include—

''(I) a public agency; and

''(II) an employer in the garment industry.

''(iii) The term 'employer in the garment industry' means an employer who is involved in the manufacture of apparel.

''(iv) The term 'part-time employee' means an employee whose regular workweek for the employer involved is less than 35 hours per week.

''(v) The term 'seasonal employee' means an employee in—

''(I) the construction industry;

''(II) agricultural employment (as defined by section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(3))); or

''(III) any other industry that the Secretary by regulation determines is a seasonal industry.

''(vi) The term 'temporary employee' means an employee who is employed by an employer for a season or other term of less than 12 months, or is otherwise treated by the employer as not a permanent employee of the employer.''

AMENDMENT NO. 262

Beginning on page 10, strike line 17 and all that follows through page 26, line 18.

AMENDMENT NO. 263

On page 28, after line 16, add the following:

SEC. 4. EFFECTIVE DATE.

This Act shall not take effect until the Secretary of Labor—

(1) makes a written determination that the aggregate number of complaints that are subject to investigation by the Wage and Hour Division of the Employment Standards Administration of the Department of Labor and unresolved by the Secretary of Labor for the year involved is less than 10 percent of the aggregate number of all complaints that are subject to investigation by the Wage and Hour Division of the Employment Standards Administration of the Department of Labor for the preceding calendar year; and

(2) submits the determination to the appropriate committees of Congress.

AMENDMENT NO. 264

At the appropriate place, insert the following:

SEC. ___. BATTERED WOMEN'S FAMILY LEAVE AND SAFETY.

(a) REFERENCE.—whenever in this section an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.).

(b) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) violence against women is the leading cause of physical injury to women, and the department of justice estimates that intimate partners commit more than 1,000,000 violent crimes against women every year;

(B) approximately 95 percent of the victims of domestic violence are women;

(C) in the united states, a woman is more likely to be assaulted, injured, raped, or killed by a male partner than by any other type of assailant;

(D) the bureau of labor statistics predicts that women will account for two-thirds of all new entrants into the workforce between now and the year 2000;

(E) violence against women dramatically affects women's workforce participation, insofar as one-quarter of the battered women surveyed had lost a job due at least in part to the effects of domestic violence, and over one-half had been harassed by their abuser at work;

(F) a study by Domestic Violence Intervention Services, Inc found that 96 percent of employed domestic violence victims had some type of problem in the workplace as a direct result of their abuse or abuser;

(G) the availability of economic support is a critical factor in a women's ability to leave abusive situations that threaten them and their children, and over one-half of the battered women surveyed stayed with their batterers because they lacked resources to support themselves and their children;

(H) a report by the New York City victims services agency found that abusive spouses and lovers harass 74 percent of battered women at work, 54 percent of battering victims miss at least 3 days of work per month, 56 percent are late for work at least 5 times per month, and a University of Minnesota study found that 24 percent of women in support groups for battered women had lost a job partly because of being abused;

(I) 49 percent of senior executives recently surveyed said domestic violence has a harmful effect on their company's productivity, 47 percent said domestic violence negatively affects attendance, and 44 percent said domestic violence increases health care costs, and the bureau of national affairs estimates that domestic violence costs employers between $3,000,000,000 and $5,000,000,000 per year; and

(J) existing federal and state legislation does not expressly authorize battered women to take leave from work to seek legal assistance and redress, counseling, or assistance with safety planning and activities.

(2) PURPOSES.—Pursuant to the affirmative power of congress to enact this section under section 5 of the Fourteenth Amendment to the Constitution, as well as under clause 1 of section 8 of article I of the Constitution and clause 3 of section 8 of article I of the Constitution, the purposes of this section are—

(A) to promote the national interest in reducing domestic violence by enabling victims of domestic violence to maintain the financial independence necessary to leave abusive situations, to achieve safety and minimize the physical and emotional injuries from domestic violence, and to reduce the devastating economic consequences of domestic violence to employers and employees, by entitling employed victims of domestic violence to take reasonable leave under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) to seek medical help, legal assistance, counseling, and safety planning and assistance without penalty from their employer;

(B) to promote the purposes of the Fourteenth Amendment by protecting the civil and economic rights of victims of domestic violence and by furthering the equal opportunity of women to employment and economic self-sufficiency;

(C) to minimize the negative impact on interstate commerce from dislocations of employees and harmful effects on productivity, health care costs, and employer costs from domestic violence; and

(D) to accomplish the purposes described in subparagraphs (A) , (B) and (C) in a manner that accommodates the legitimate interests of employers.

(c) ENTITLEMENT TO LEAVE FOR DOMESTIC VIOLENCE.—

(1) AUTHORITY FOR LEAVE.—Section 102(a)(1) (29 U.S.C. 2612(a)(1)) is amended by adding at the end the following:

''(A) In order to care for the child or parent of the employee, if such child or parent is addressing domestic violence and its effects.

''(B) Because the employee is addressing domestic violence and its effects, the employee is unable to perform any of the functions of the position of such employee.''.

(2) DEFINITION.—section 101 (29 U.S.C. 2611) is amended by adding at the end the following:

''(14) ADDRESSING DOMESTIC VIOLENCE AND ITS EFFECTS.—The term 'addressing domestic violence and its effects' means—

''(A) experiencing domestic violence;

''(B) seeking medical attention for or recovering from injuries caused by domestic violence;

''(C) seeking legal assistance or remedies, including communicating with the police or an attorney, or participating in any legal proceeding related to domestic violence;

''(D) attending support groups for victims of domestic violence;

''(E) obtaining psychological counseling related to experiences of domestic violence;

''(F) participating in safety planning and other actions to increase safety from future domestic violence, including temporary or permanent relocation; and

''(G) any other activity necessitated by domestic violence which must be undertaken during hours of employment.''.

(3) INTERMITTENT OR REDUCED LEAVE.—Section 102(b) (29 U.S.C. 2612(b)) is amended by adding at the end the following:

''(3) DOMESTIC VIOLENCE.—Leave under subparagraph (E) or (F) of subsection (a)(1) may be taken by an employee intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.''.

(4) PAID LEAVE.—Section 102(d)(2)(B) (29 U.S.C. 2612(d)(2)(B)) is amended by striking ''(C) or (D)'' and inserting ''(C), (D), (E), or (F)''.

(5) CERTIFICATION.—section 103 (29 U.S.C. 2613) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) DOMESTIC VIOLENCE.—In determining if an employee meets the requirements of subparagraph (E) or (F) of section 102(a)(1), the employer of an employee may require the employee to provide—

''(1) documentation of the domestic violence, such as police or court records, or documentation of the domestic violence from a shelter worker, attorney, clergy, or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects; or

''(2) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances which provide the basis for the claim, or physical evidence of domestic violence, such as photographs, torn or bloody clothes, etc.''.

(6) CONFIDENTIALITY.—section 103 (29 U.S.C. 2613), as amended by subsection (e), is amended—

(A) in the title by adding before the period the following: **''; CONFIDENTIALITY''**; and

(B) by adding at the end the following:

''(f) CONFIDENTIALITY.—all evidence of domestic violence experienced by an employee or the employee's child or parent, including an employee's statement, any corroborating evidence, and the fact that an employee has requested leave for the purpose of addressing domestic violence and its effects, shall be retained in the strictest confidence by the employer, except to the extent consented to by the employee where disclosure is necessary to protect the employee's safety.''.

(d) ENTITLEMENT TO LEAVE FOR FEDERAL EMPLOYEES FOR DOMESTIC VIOLENCE.—

(1) AUTHORITY FOR LEAVE.—Section 6382 of title 5, United States Code is amended by adding at the end the following:

''(E) In order to care for the child or parent of the employee, if such child or parent is addressing domestic violence and its effects.

''(F) Because the employee is addressing domestic violence and its effects, the employee is unable to perform any of the functions of the position of such employee.''.

(2) DEFINITION.—section 6381 of title 5, united states code is amended—

(A) by striking ''and'' at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the term 'addressing domestic violence and its effects' means—

''(A) experiencing domestic violence;

''(B) seeking medical attention for or recovering from injuries caused by domestic violence;

''(C) seeking legal assistance or remedies, including communicating with the police or an attorney, or participating in any legal proceeding related to domestic violence;

''(D) attending support groups for victims of domestic violence;

''(E) obtaining psychological counseling related to experiences of domestic violence;

''(F) participating in safety planning and other actions to increase safety from future domestic violence, including temporary or permanent relocation; and

''(G) any other activity necessitated by domestic violence which must be undertaken during hours of employment.''.

(3) INTERMITTENT OR REDUCED LEAVE.—Section 6382(b) of title 5, United States Code, is amended by adding at the end the following:

''(3) Leave under subparagraph (E) or (F) of subsection (a)(1) may be taken by an employee intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.''.

(4) OTHER LEAVE.—Section 6382(d) of title 5, United States Code, is amended by striking ''(C) or (D)'' and inserting ''(C), (D), (E), or (F)''.

(5) CERTIFICATION.—section 6383 of title 5, united states code, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) DOMESTIC VIOLENCE.—In determining if an employee meets the requirements of subparagraph (E) or (F) of section 6382(a)(1), the employer of an employee may require the employee to provide—

''(1) documentation of the domestic violence, such as police or court records, or documentation of the domestic violence from a shelter worker, attorney, clergy, or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects; or

''(2) other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances which provide the basis for the claim, or physical evidence of domestic violence, such as photographs, torn or bloody clothes, etc.''.

(6) CONFIDENTIALITY.—section 6383 of title 5, united states code, as amended by subsection (e), is amended—

(A) in the title by adding before the period the following: **''; confidentiality''**, and

(B) by adding at the end the following:

''(g) CONFIDENTIALITY.—All evidence of domestic violence experienced by an employee or the employee's child or parent, including an employee's statement, any corroborating evidence, and the fact that an employee has requested leave for the purpose of addressing domestic violence and its effects, shall be retained in the strictest confidence by the employer, except to the extent consented to by the employee where disclosure is necessary to protect the employee's safety.''.

(e) EFFECT ON OTHER LAWS AND EMPLOYMENT BENEFITS.—

(1) MORE PROTECTIVE.—Nothing in this section or the amendments made by this section shall be construed to supersede any provision of any Federal, State or local law, collective bargaining agreement, or other employment benefit program which provides leave benefits for employed victims of domestic violence than the rights established under this section or such amendments.

(2) LESS PROTECTIVE.—The rights established for employees under this section or the amendments made by this section shall not be diminished by any collective bargaining agreement, any employment benefit program or plan, or any State or local law.

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect upon the expiration of 180 days from the date of the enactment of this section.

GORTON AMENDMENT NO. 265

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill, S. 4, supra; as follows:

Beginning on page 10, strike line 8 and all that follows through page 10, line 6 and insert the following: ''subsection (o)(8).''.

(4) APPLICATION OF THE COERCION AND REMEDIES PROVISIONS TO EMPLOYEES OF STATE AGENCIES.—Section 7(o) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(o)) is amended—

(A) in paragraph (7), by striking ''(7) For'' and inserting ''(8) For''; and

(B) by inserting after paragraph (6), the following:

''(7)(A) The provisions relating to the prohibition of coercion under subsection (r)(6)(A) shall apply to an employee and employer described in this subsection to the same extent the provisions apply to an employee and employer described in subsection (r).

''(B)(i) Except as provided in clause (ii), the remedies under section 16(f) shall be made available to an employee described in this subsection to the same extent the remedies are made available to an employee described in subsection (r).

''(ii) In calculating the amount an employer described in this subsection would be liable for under section 16(f) to an employee described in this subsection, the Secretary shall, in lieu of applying the rate of compensation in the formula described in section 16(f), apply the rate of compensation described in paragraph (3)(B).''.

(5) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that the notice reflects the amendments made to the Act by this subsection.

BAUCUS (AND OTHERS) AMENDMENT NO. 266

(Ordered to lie on the table.)

Mr. BAUCUS (for himself, Mr. KERREY, and Ms. LANDRIEU) submitted an amendment intended to be proposed by them to the bill, S. 4, supra; as follows:

Beginning on page 1, strike line 3 and all that follows through page 28, line 16 and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family-Friendly Workplace Act of 1997''.

SEC. 2. APPLICATION TO CERTAIN EMPLOYEES IN THE PRIVATE SECTOR.

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) An employee who is not a part-time, temporary, or seasonal employee (as defined in paragraph (13)(C)), who is not an employee of a public agency or of an employer in the garment industry, and who is not otherwise exempted from this subsection by regulations promulgated by the Secretary under paragraph (3)(D), may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time at a rate not less than 1½ hours for each hour of employment for which overtime compensation is required by this section.

''(2) An employer may provide compensatory time to an eligible employee under paragraph (1) only—

''(A) pursuant to—

''(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other written agreement between the employer and the representative of the employee; or

''(ii) in the case of an employee who is not represented by a collective bargaining agent or other representative designated by the employee, a plan adopted by the employer and provided in writing to the employees of the employer which provides employees with a voluntary option to receive compensatory time in lieu of overtime compensation for overtime work where there is an express, voluntary written request by an individual employee for compensatory time in lieu of overtime compensation, provided to the employer prior to the performance of any overtime assignment;

''(B) if the employee has not earned compensatory time in excess of the applicable limit prescribed by paragraph (3)(A) or in regulations issued by the Secretary under paragraph (3)(D);

''(C) if the employee is not required as a condition of employment to accept or request compensatory time; and

''(D) if the agreement or plan complies with the requirements of this subsection and the regulations promulgated by the Secretary thereunder, including the availability of compensatory time to similarly situated employees on an equal basis.

''(3)(A) An employee may earn not more than a total of 80 hours of compensatory time in any year or alternative 12-month period designated pursuant to subparagraph (C). The employer shall regularly report to the employee on the number of compensatory hours earned by the employee and the total amount of the employee's earned and unused compensatory time, in accordance with regulations issued by the Secretary of Labor.

''(B) Upon the request of an employee who has earned compensatory time, the employer shall, within 15 days after the request, provide monetary compensation for any such compensatory time at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher.

''(C) Not later than January 31 of each calendar year, an employer shall provide monetary compensation to each employee of the employer for any compensatory time earned during the preceding calendar year for which the employee has not already received monetary compensation (either through compensatory time or cash payment) at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher. An agreement or plan under paragraph (2) may designate a 12-month period other than the calendar year, in which case such monetary compensation shall be provided not later than 31 days after the end of such 12-month period. An employee may voluntarily, at the employee's own initiative, request in writing that such end-of-year payment of monetary compensation for earned compensatory time be delayed for a period not to exceed 3 months. This subparagraph shall have no effect on the limit on earned compensatory time set forth in subparagraph (A) or in regulations issued by the Secretary pursuant to subparagraph (D).

''(D) The Secretary may promulgate regulations regarding classes of employees, including but not limited to all employees in particular occupations or industries, to—

''(i) exempt such employees from the provisions of this subsection;

''(ii) limit the number of compensatory hours that such employees may earn to less than the number provided in subparagraph (A); or

''(iii) require employers to provide such employees with monetary compensation for earned compensatory time at more frequent intervals than specified in subparagraph (C);

where the Secretary has determined that such regulations are necessary or appropriate to protect vulnerable employees, where a pattern of violations of this Act may exist, or to ensure that employees receive the compensation due them.

''(4) An employee who has earned compensatory time authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid for unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher. A terminated employee's receipt of, or eligibility to receive, monetary compensation for earned compensatory time shall not be used—

''(A) by the employer to oppose an application of the employee for unemployment compensation; or

''(B) by a State to deny unemployment compensation or diminish the entitlement of the employee to unemployment compensation benefits.

''(5) An employee shall be permitted to use any compensatory time earned pursuant to paragraph (1)—

''(A) for any reason that would qualify for leave under section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)), or any comparable State law, irrespective of whether the employer is covered or the employee is eligible under such Act or law; or

''(B) for any other purpose—

''(i) upon notice to the employer at least 2 weeks prior to the date on which the compensatory time is to be used, unless use of the compensatory time at that time will cause substantial and grievous injury to the operations of the employer; or

''(ii) upon notice to the employer within the 2 weeks prior to the date on which the compensatory time is to be used, unless use of the compensatory time at that time will unduly disrupt the operations of the employer.

An employee's use of earned compensatory time may not be substituted by the employer for any other paid or unpaid leave or time off to which the employee otherwise is or would be entitled or has or would earn, nor satisfy any legal obligation of the employer to the employee pursuant to any law or contract.

''(6) An employee shall not be required by the employer to use any compensatory time earned pursuant to paragraph (1).

''(7)(A) When an employee receives monetary compensation for earned compensatory time, the monetary compensation shall be treated as compensation for hours worked for purposes of calculation of entitlement to employment benefits.

''(B) When an employee uses earned compensatory time, the employee shall be paid for the compensatory time at the employee's regular rate at the time the employee performed the overtime work or at the regular rate earned by the employee when the compensatory time is used, whichever is higher, and the hours for which the employee is so compensated shall be treated as hours worked during the applicable workweek or other work period for purposes of overtime compensation and calculation of entitlement to employment benefits.

''(8) Except in a case of a collective bargaining agreement, an employer may modify or terminate a compensatory time plan described in paragraph (2)(A)(ii) upon not less than 60 days' notice to the employees of the employer.

''(9) An employer may not pay monetary compensation in lieu of earned compensatory time except as expressly prescribed in this subsection.

''(10) It shall be an unlawful act of discrimination, within the meaning of section 15(a)(3), for an employer—

''(A) to discharge, or in any other manner penalize, discriminate against, or interfere with, any employee because such employee may refuse or has refused to request or accept compensatory time in lieu of overtime compensation, or because such employee may request to use or has used compensatory time in lieu of receiving overtime compensation;

''(B)(i) to request, directly or indirectly, that an employee accept compensatory time in lieu of overtime compensation;

''(ii) to require an employee to request such compensatory time as a condition of employment or as a condition of employment rights or benefits; or

''(iii) to qualify the availability of work for which overtime compensation is required upon an employee's request for or acceptance of compensatory time in lieu of overtime compensation; or

''(C) to deny an employee the right to use, or force an employee to use, earned compensatory time in violation of this subsection.

''(11) An employer who violates any provision of this subsection shall be liable, in an action brought pursuant to subsection (b) or (c) of section 16, in the amount of overtime compensation that would have been paid for the overtime hours worked or overtime hours that would have been worked, plus an additional equal amount as liquidated damages, such other legal or equitable relief as may be appropriate to effectuate the purpose of this section, costs, and, in the case of an action filed under section 16(b), reasonable attorney's fees. Where an employee has used compensatory time or received monetary compensation for earned compensatory time for such overtime hours worked, the amount of such time used or monetary compensation paid to the employee shall be offset against the liability of the employer under this paragraph, but not against liquidated damages due.

''(12)(A) The entire liquidated value of an employee's accumulated compensatory time,

calculated as provided for in this subsection, shall, for purposes of proceedings in bankruptcy under title 11, United States Code, be treated as unpaid wages earned by the individual—

''(i) if the date the employer was or becomes legally or contractually obligated to provide monetary compensation to the employee for the compensatory time was more than 90 days before the cessation of business, as if such date was within 90 days before the cessation of business by the employer;

''(ii) if the date the employer was or becomes legally or contractually obligated to provide such monetary compensation was within 90 days before the cessation of business by the employer, as of such date; or

''(iii) if the employer was not legally or contractually obligated to provide such monetary compensation prior to ceasing to do business, as of the date of ceasing to do business.

''(B) The amount of such monetary compensation shall not be limited by any ceiling on the dollar amount of wage claims provided under Federal law for such proceedings.

''(13) In this subsection—

''(A) the term 'overtime compensation' means the compensation required by subsection (a);

''(B) the term 'compensatory time' means hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of overtime compensation;

''(C) the term 'part-time, temporary, or seasonal employee' means—

''(i) an employee whose regular workweek for the employer is less than 35 hours per week;

''(ii) an employee who is employed by the employer for a season or other term of less than 12 months or is otherwise treated by the employer as not a permanent employee of the employer; or

''(iii) an employee in the construction industry, in agricultural employment (as defined in section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(3))), or in any other industry which the Secretary by regulation has determined is a seasonal industry; and

''(D) the term 'overtime assignment' means an assignment of hours for which overtime compensation is required under this section.

''(14) The Secretary may issue regulations as necessary and appropriate to implement this subsection including, but not limited to, regulations implementing recordkeeping requirements and prescribing the content of plans and employee notification.''.

SEC. 3. CIVIL MONEY PENALTIES.

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended by striking the second sentence and inserting the following: ''Any person who violates section 6, 7, or 11(c) shall be subject to a civil penalty not to exceed $1,000 for each such violation.''.

SEC. 4. CONSTRUCTION.

Section 18 of the Fair Labor Standards Act of 1938 (29 U.S.C. 218) is amended by adding at the end the following:

''(c)(1) No provision of this Act or of any order thereunder shall be construed to—

''(A) supersede any provision of any State or local law that provides greater protection to employees who are provided compensatory time in lieu of overtime compensation;

''(B) diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater protection to employees provided compensatory time in lieu of overtime compensation; or

''(C) discourage employers from adopting or retaining compensatory time plans that provide more protection to employees.

''(2) Nothing in this subsection shall be construed to allow employers to provide compensatory time plans to classes of employees who are exempted from section 7(r), to allow employers to provide more compensatory time than allowed under subsection (o) or (r) of section 7, or to supersede any limitations placed by subsection (o) or (r) of section 7, including exemptions and limitations in regulations issued by the Secretary thereunder.''.

SEC. 5. COMMISSION ON WORKPLACE FLEXIBILITY.

(a) ESTABLISHMENT.—There is established a Commission on Workplace Flexibility (referred to in this section as the ''Commission'').

(b) MEMBERSHIP; COMPENSATION; POWERS; TRAVEL EXPENSES.—The Commission shall be composed, and the members of the Commission shall be appointed, in accordance with paragraphs (1) and (2) of subsection (a), and subsection (b) of section 303 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2633(a)(1) and (2) and (b)). The compensation and powers of the Commission shall be as prescribed by sections 304 and 305, respectively, of such Act (29 U.S.C. 2634 and 2635). The members of the Commission shall be allowed reasonable travel expenses in accordance with section 305(b) of such Act (29 U.S.C. 2635(b)).

(c) DUTIES.—

(1) STUDY.—The Commission shall conduct a comprehensive study of the impact of the provision of compensatory time on public and private sector employees, including the impact of this Act—

(A) on average earnings of employees, hours of work of employees, work schedules of employees, and flexibility of scheduling work to accommodate family needs; and

(B) on the ability of vulnerable employees or other employees to obtain the compensation to which the employees are entitled.

(2) REPORT.—

(A) IN GENERAL.—A report concerning the findings of the study described in paragraph (1) shall be prepared and submitted to the appropriate committees of Congress and to the Secretary not later than 1 year prior to the expiration of this title.

(B) RECOMMENDATIONS.—The report described in subparagraph (A) shall include recommendations on whether—

(i) the compensatory time provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et. seq.) should be modified or extended, including—

(I) a recommendation on whether particular classes of employees or industries should be exempted or otherwise given special treatment under the provisions;

(II) a recommendation on whether additional protections should be provided, including additional protections to employees of public agencies; and

(III) a recommendation on whether the provisions should be applied to any category of exempt employees.

(C) SPECIAL RULE.—The Commission shall have no obligation to conduct a study and prepare and submit a report pursuant to this section if funds are not authorized and appropriated for that purpose.

SEC. 6. EFFECTIVE DATE; CESSATION OF EFFECTIVENESS.

(a) EFFECTIVE DATE.—The provisions of this title, and the amendments made by this title, shall become effective 6 months after the date of enactment of this Act.

(b) CESSATION OF EFFECTIVENESS.—The provisions of this title, and the amendments made by this title, shall cease to be effective 4 years after the date of enactment of this Act.

KENNEDY AMENDMENTS NOS. 267–274

(Ordered to lie on the table.)

Mr. KENNEDY submitted eight amendments intended to be proposed by him to the bill, S. 4, supra; as follows:

AMENDMENT NO. 267

Beginning on page 9, strike line 19 and all that follows through page 10, line 3 and insert the following:

''(9)(A) An employee shall be permitted by an employer to use any compensatory time off provided under paragraph (2)—

''(i) for any reason that qualifies for leave under—

''(I) section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)), irrespective of whether the employer is covered, or the employee is eligible, under such Act; or

''(II) an applicable State law that provides greater family or medical leave rights than does the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

''(ii) for any reason after providing notice to the employer not later than 2 weeks prior to the date on which the compensatory time off is to be used, except that an employee may not be permitted to use compensatory time off under this clause if the use of the compensatory time off will cause substantial and grievous injury to the operations of the employer; or

''(iii) for any reason after providing notice to the employer later than 2 weeks prior to the date on which the compensatory time off is to be used, except that an employee may not be permitted to use compensatory time off under this clause if the use of the compensatory time off will unduly disrupt the operations of the employer.''

AMENDMENT NO. 268

On page 28, after line 16, add the following:

SEC. 4. COMMISSION ON WORKPLACE FLEXIBILITY.

(a) ESTABLISHMENT.—There is established a Commission on Workplace Flexibility (referred to in this section as the ''Commission'').

(b) MEMBERSHIP.—The Commission shall be composed, and the members of the Commission shall be appointed, in accordance with paragraphs (1) and (2) of subsection (a), and subsection (b), of section 303 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2633(a) (1) and (2), and (b)).

(c) DUTIES.—

(1) STUDY.—The Commission shall conduct a comprehensive study of the impact of this Act, and the amendments made by this Act, on public and private sector employees, including the impact of this Act, and the amendments made by this Act—

(A) on the average earnings of employees, the hours of work of employees, the work schedules of employees, and the flexibility of scheduling work to accommodate family needs; and

(B) on the ability of employees to obtain the compensation to which the employees are entitled.

(2) REPORT.—

(A) IN GENERAL.—Not later than 1 year prior to the termination date of the Commission prescribed by subsection (e), the Commission shall prepare and submit to the appropriate committees of Congress and the Secretary of Labor, a report concerning the findings of the study described in paragraph (1).

(B) RECOMMENDATIONS.—The report described in subparagraph (A) shall include recommendations on whether—

(i) the compensatory time provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) should be modified or extended, including—

(I) a recommendation on whether particular classes of employees or industries should be exempted or otherwise provided special treatment under the provisions; and

(II) a recommendation on whether additional protections should be provided, including additional protections for employees of public agencies.

(C) SPECIAL RULE.—The Commission shall have no obligation to conduct a study and issue a report pursuant to this section if funds are not authorized and appropriated for that purpose.

(d) COMPENSATION AND POWERS.—The compensation and powers of the Commission shall be as prescribed by sections 304 and 305, respectively, of the Family and Medical Leave Act of 1993 (29 U.S.C. 2634 and 2635).

(e) TRAVEL EXPENSES.—The members of the Commission shall be allowed reasonable travel expenses in accordance with section 304(b) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2634(b)).

(f) TERMINATION.—The Commission shall terminate 4 years after the date of enactment of this Act.

SEC. 5. CESSATION OF EFFECTIVENESS.

This Act, and the amendments made by this Act, cease to be effective 4 years after the date of enactment of this Act.

AMENDMENT NO. 269

On page 10, strike lines 4 through 7 and insert the following:

''(10) In a case in which an employee uses accrued compensatory time off under this subsection, the accrued compensatory time off used shall be considered as hours worked during the applicable workweek or other work period for the purposes of overtime compensation and calculation of entitlement to employment benefits.

''(11)(A) The term 'compensatory time off' means the hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.

''(B) The term 'monetary overtime compensation' means the compensation required by subsection (a).''.

AMENDMENT NO. 270

On page 10, strike line 4, and insert the following:

''(10) The entire liquidated value of an employee's accumulated compensatory time, calculated as provided for in this subsection, shall, for purposes of proceedings in bankruptcy under title 11, United States Code, be treated as unpaid wages earned by the individual as of—

''(A) the date the employer was or becomes legally or contractually obligated to provide monetary compensation to the employee for the compensatory time; or

''(B) if the employer was not legally or contractually obligated to provide such monetary compensation prior to ceasing to do business, the date of ceasing to do business.

''(11) The terms 'monetary overtime compensation'''.

AMENDMENT NO. 271

Beginning on page 10, strike line 17 and all that follows through page 26, line 18.

AMENDMENT NO. 272

Beginning on page 26, strike line 19 and all that follows through page 28, line 16.

AMENDMENT NO. 273

Beginning on page 3, strike lines 15 through 23 and insert the following:

''(B) In this subsection:

''(i) The term 'employee' does not include—

''(I) an employee of a public agency;

''(II) an employee who is a part-time employee;

''(III) an employee who is a temporary employee; and

''(IV) an employee who is a seasonal employee.

''(ii) The term 'employer' does not include—

''(I) a public agency; and

''(II) an employer in the garment industry.

''(iii) The term 'employer in the garment industry' means an employer who is involved in the manufacture of apparel.

''(iv) The term 'part-time employee' means an employee whose regular workweek for the employer involved is less than 35 hours per week.

''(v) The term 'seasonal employee' means an employee in—

''(I) the construction industry;

''(II) agricultural employment (as defined by section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(3))); or

''(III) any other industry that the Secretary by regulation determines is a seasonal industry.

''(vi) The term 'temporary employee' means an employee who is employed by an employer for a season or other term of less than 12 months, or is otherwise treated by the employer as not a permanent employee of the employer.''

AMENDMENT NO. 274

Beginning on page 10, strike line 17 and all that follows through page 26, line 18.

DODD AMENDMENTS NOS. 275–276

(Ordered to lie on the table.)

Mr. DODD submitted two amendments intended to be proposed by him to the bill, S. 4, supra; as follows:

AMENDMENT NO. 275

On page 5, line 12, strike ''240'' and insert ''80''.

AMENDMENT NO. 276

Beginning on page 10, strike line 17 and all that follows through page 26, line 18.

KENNEDY AMENDMENT NO. 277

(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill, S. 4, supra; as follows:

On page 7, strike line 13 and insert the following:

''(B) It shall be an unlawful act of discrimination, within the meaning of section 15(a)(3), for an employer—

''(i) to discharge or in any other manner penalize, discriminate against, or interfere with, any employee because—

''(I) the employee may refuse or has refused to request or accept compensatory time off in lieu of monetary overtime compensation;

''(II) the employee may request to use or has used compensatory time off in lieu of monetary overtime compensation; or

''(III) the employee has requested the use of compensatory time off at a specific time of the employee's choice;

''(ii) to request, directly or indirectly, that an employee accept compensatory time off in lieu of monetary overtime compensation;

''(iii) to require an employee to request compensatory time off in lieu of monetary overtime compensation as a condition of employment or as a condition of employment rights or benefits;

''(iv) to qualify the availability of work for which monetary overtime compensation is required upon the request of an employee for, or acceptance of, compensatory time off in lieu of monetary overtime compensation; or

''(v) to deny an employee the right to use, or coerce an employee to use, earned compensatory time off in violation of this subsection.

''(C) An agreement or understanding that is entered''.

SPECTER AMENDMENT NO. 278

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the bill, S. 4, supra; as follows:

On page 7, after line 12, insert

''(iii) UNLAWFUL DISCRIMINATION.—It shall be an unlawful act of discrimination, within the meaning of section 15(a)(3), for an employer to request, directly or indirectly, that an employee accept compensatory time off in lieu of monetary overtime compensation, or to qualify the availability of work for which overtime compensation is required upon employee's request for or acceptance of compensatory time off in lieu of monetary overtime compensation.''.

THE FLANK DOCUMENT TO THE CONVENTIONAL FORCES IN EUROPE TREATY

KERRY (AND OTHERS) EXECUTIVE AMENDMENT NO. 279

Mr. KERRY (for himself, Mr. SARBANES, Mr. ABRAHAM, Mrs. FEINSTEIN, and Mr. BIDEN) proposed an executive amendment to condition No. 5 of the Resolution of Ratification (Treaty Doc. No. 105–5); as follows:

Strike subparagraph (F) of section 2(5) and insert the following:

(F) COMPLIANCE REPORT ON ARMENIA AND OTHER STATES PARTIES IN THE CAUCASUS REGION.—Not later than August 1, 1997, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether Armenia was in compliance with the Treaty in allowing the transfer of conventional armaments and equipment limited by the Treaty through Armenian territory to the secessionist movement in Azerbaijan;

(ii) whether other States Parties located in the Caucasus region are in compliance with the Treaty; and

(iii) if Armenia is found not to have been in compliance under clause (i) or, if any other State Party is found not to be in compliance under clause (ii), what actions the President has taken to implement sanctions as required by chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance to the independent states of the former Soviet Union) or other provisions of law.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Senate