



## H.R. 1180 – The Working Families Flexibility Act of 2017 (Rep. Roby, R-AL)

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### FLOOR SCHEDULE:

Expected to be considered on May 2, 2017 under a [closed rule](#).

### TOPLINE SUMMARY:

[H.R. 1180](#) would amend the Fair Labor Standards Act (FLSA) to permit private sector employers to compensate their employees for overtime hours through either cash wages or paid time off (“comp time”) at a rate of not less than 1.5 hours for each hour of overtime worked. Employers could only offer comp time on a voluntary basis or in accordance with a collective bargaining agreement. The bill would sunset in five years.

### COST:

A Congressional Budget Office (CBO) score is not yet available.

A CBO [cost estimate](#) for a similar bill introduced in the 113<sup>th</sup> Congress found that enacting the legislation would at the time not affect either direct spending or revenues or spending subject to appropriation.

### CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

H.R. 1180 amends the Fair Labor Standards Act of 1938 (FLSA) to allow private sector employees the option to receive compensatory time (“comp time”) instead of cash wages for overtime work. The option to receive comp time instead of overtime cash wages has been available to public sector employees for almost 30 years. H.R. 1180 does not alter public sector comp time provisions, weaken any existing FLSA protections, or change the 40-hour work week.

Employers would be permitted to offer employees working more than 40 hours in any seven-day period either: (1) cash wages at the overtime rate of 1.5 times the regular wage rate; or, (2) comp time at a rate of 1.5 hours for every hour of overtime worked. This decision would be completely voluntary for both the employer and employee, and acceptance of a comp time agreement could not be a condition of

employment. The employee would be permitted to use comp time within a reasonable period if it did not unduly disrupt employer operations. H.R. 1180 allows employers to discontinue a comp time policy after giving employees 30 days notice, so long as a collective bargaining agreement does not provide otherwise. The agreement to offer comp time flexibility would be between the union and employer if the relevant private sector employees are represented by a union.

H.R. 1180 imposes certain limits on comp time. First, only employees that have worked more than 1,000 hours in a 12-month period of continuous employment with the employer are eligible to enter into a comp time agreement. Additionally, an employee can only accrue 160 hours of comp time. The bill also requires that all unused accrued comp time be paid out to employees at the end of each calendar year, and allows that an employer may cash out an employee's unused comp time in excess of 80 hours at any time so long as the employer provides 30 days notice. Conversely, the bill permits the employee to request to cash out accrued comp time within 30 days of requesting it in writing.

The bill includes a number of employee protections, including: (1) making any employer that coerces, threatens, or intimidates an employee to choose comp time liable to the employee for double damages; (2) permitting an individual employee to withdraw a comp time agreement at any time and opt for cash wages for any additional work; (3) requiring that all unused comp time be paid out to the employee upon voluntary or involuntary termination of employment at the employee's regular or final wage rate, whichever is higher; and, (4) requiring that all unused comp time be treated as wage payments due to the employee and guaranteed the same protections as unpaid wages in the event of employer bankruptcy.

The bill would also require the Secretary of Labor to update materials that the department provides to employers for the purposes of explaining the Fair Labor Standards Act to reflect the changes made by enactment, and requires the Government Accountability Office (GAO) to report on implementation within the first two years of enactment and annually thereafter. The bill would sunset in five years.

A similar bill was passed in the 113<sup>th</sup> Congress by a vote of 223-204. The past legislative bulletin can be found [here](#).

#### **COMMITTEE ACTION:**

H.R. 1180 was referred to the House Committee on Education and Workforce and reported by a vote of 22-16 on April 26.

#### **ADMINISTRATION POSITION:**

A Statement of Administration Policy is not yet available.

#### **CONSTITUTIONAL AUTHORITY:**

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution. No specific enumerating clause was identified.

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