

117TH CONGRESS
1ST SESSION

S. 247

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

Mr. LEE (for himself, Mr. SCOTT of South Carolina, Mr. RISCH, Mr. BARRASSO, Mr. ROMNEY, Mr. CRAMER, Mrs. CAPITO, Mr. WICKER, Mr. INHOFE, Mr. GRASSLEY, Mr. CRAPO, Mr. CORNYN, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Working Families
5 Flexibility Act of 2021”.

6 **SEC. 2. COMPENSATORY TIME.**

7 Section 7 of the Fair Labor Standards Act of 1938
8 (29 U.S.C. 207) is amended by adding at the end the fol-
9 lowing:

1 “(t) COMPENSATORY TIME OFF FOR PRIVATE EM-
2 PLOYEES.—

3 “(1) GENERAL RULE.—An employee may re-
4 ceive, in accordance with this subsection and in lieu
5 of monetary overtime compensation, compensatory
6 time off at a rate not less than one and one-half
7 hours for each hour of employment for which over-
8 time compensation is required by this section.

9 “(2) CONDITIONS.—An employer may provide
10 compensatory time to employees under paragraph
11 (1) only if such time is provided in accordance
12 with—

13 “(A) applicable provisions of a collective
14 bargaining agreement between the employer
15 and the labor organization that has been cer-
16 tified or recognized as the representative of the
17 employees under applicable law; or

18 “(B) in the case of employees who are not
19 represented by a labor organization that has
20 been certified or recognized as the representa-
21 tive of such employees under applicable law, an
22 agreement arrived at between the employer and
23 employee before the performance of the work
24 and affirmed by a written or otherwise

1 verifiable record maintained in accordance with
2 section 11(c)—

3 “(i) in which the employer has offered
4 and the employee has chosen to receive
5 compensatory time in lieu of monetary
6 overtime compensation; and

7 “(ii) entered into knowingly and vol-
8 untarily by such employee and not as a
9 condition of employment.

10 No employee may receive or agree to receive com-
11 pensatory time off under this subsection unless the
12 employee has worked at least 1,000 hours for the
13 employee’s employer during a period of continuous
14 employment with the employer in the 12-month pe-
15 riod before the date of agreement or receipt of com-
16 pensatory time off.

17 “(3) HOUR LIMIT.—

18 “(A) MAXIMUM HOURS.—An employee
19 may accrue not more than 160 hours of com-
20 pensatory time.

21 “(B) COMPENSATION DATE.—Not later
22 than January 31 of each calendar year, the em-
23 ployee’s employer shall provide monetary com-
24 pensation for any unused compensatory time off
25 accrued during the preceding calendar year that

1 was not used prior to December 31 of the pre-
2 ceding calendar year at the rate prescribed by
3 paragraph (6). An employer may designate and
4 communicate to the employer's employees a 12-
5 month period other than the calendar year, in
6 which case such compensation shall be provided
7 not later than 31 days after the end of such 12-
8 month period.

9 “(C) EXCESS OF 80 HOURS.—The em-
10 ployer may provide monetary compensation for
11 an employee's unused compensatory time in ex-
12 cess of 80 hours at any time after giving the
13 employee at least 30 days notice. Such com-
14 pensation shall be provided at the rate pre-
15 scribed by paragraph (6).

16 “(D) POLICY.—Except where a collective
17 bargaining agreement provides otherwise, an
18 employer that has adopted a policy offering
19 compensatory time to employees may, upon giv-
20 ing employees 30 days notice, discontinue such
21 policy and provide monetary compensation to
22 each employee with accrued compensatory time
23 that has not yet been used for all such compen-
24 satory time. Such compensation shall be pro-
25 vided at the rate prescribed by paragraph (6).

1 “(E) WRITTEN REQUEST.—An employee
2 may withdraw an agreement described in para-
3 graph (2)(B) at any time. An employee may
4 also request in writing that monetary com-
5 pensation be provided, at any time, for all com-
6 pensatory time accrued that has not yet been
7 used. Within 30 days of receiving the written
8 request, the employer shall provide the em-
9 ployee the monetary compensation due in ac-
10 cordance with paragraph (6).

11 “(4) PRIVATE EMPLOYER ACTIONS.—An em-
12 ployer that provides compensatory time under para-
13 graph (1) to employees shall not directly or indi-
14 rectly intimidate, threaten, or coerce or attempt to
15 intimidate, threaten, or coerce any employee for the
16 purpose of—

17 “(A) interfering with such employee’s
18 rights under this subsection to request or not
19 request compensatory time off in lieu of pay-
20 ment of monetary overtime compensation for
21 overtime hours; or

22 “(B) requiring any employee to use such
23 compensatory time.

24 “(5) TERMINATION OF EMPLOYMENT.—An em-
25 ployee who has accrued compensatory time off au-

1 thorized to be provided under paragraph (1) shall,
2 upon the voluntary or involuntary termination of
3 employment, be paid for the unused compensatory
4 time in accordance with paragraph (6).

5 “(6) RATE OF COMPENSATION.—

6 “(A) GENERAL RULE.—If compensation is
7 to be paid to an employee for accrued compen-
8 satory time off, such compensation shall be paid
9 at a rate of compensation not less than—

10 “(i) the regular rate received by such
11 employee when the compensatory time was
12 earned; or

13 “(ii) the final regular rate received by
14 such employee,

15 whichever is higher.

16 “(B) CONSIDERATION OF PAYMENT.—Any
17 payment owed to an employee under this sub-
18 section for unused compensatory time shall be
19 considered unpaid overtime compensation.

20 “(7) USE OF TIME.—An employee—

21 “(A) who has accrued compensatory time
22 off authorized to be provided under paragraph
23 (1); and

24 “(B) who has requested the use of such
25 compensatory time,

1 shall be permitted by the employee’s employer to use
 2 such time within a reasonable period after making
 3 the request if the use of the compensatory time does
 4 not unduly disrupt the operations of the employer.

5 “(8) DEFINITIONS.—For purposes of this sub-
 6 section—

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

9 “(B) the terms ‘overtime compensation’,
 10 ‘compensatory time’, and ‘compensatory time
 11 off’ shall have the meanings given such terms
 12 by subsection (o)(7).”.

13 **SEC. 3. REMEDIES.**

14 Section 16 of the Fair Labor Standards Act of 1938
 15 (29 U.S.C. 216) is amended—

16 (1) in subsection (b), in the first sentence, by
 17 striking “(b) Any employer” and inserting “(b) Ex-
 18 cept as provided in subsection (f), any employer”;
 19 and

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

21 “(f) An employer that violates section 7(t)(4) shall
 22 be liable to the employee affected in the amount of the
 23 rate of compensation (determined in accordance with sec-
 24 tion 7(t)(6)(A)) for each hour of compensatory time ac-
 25 crued by the employee and in an additional equal amount

1 as liquidated damages reduced by the amount of such rate
2 of compensation for each hour of compensatory time used
3 by such employee.”.

4 **SEC. 4. NOTICE TO EMPLOYEES.**

5 Not later than 30 days after the date of enactment
6 of this Act, the Secretary of Labor shall revise the mate-
7 rials the Secretary provides, under regulations published
8 in section 516.4 of title 29, Code of Federal Regulations
9 (or any corresponding similar regulation or ruling), to em-
10 ployers for purposes of a notice explaining the Fair Labor
11 Standards Act of 1938 (29 U.S.C. 201 et seq.) to employ-
12 ees so that such notice reflects the amendments made to
13 such Act by this Act.

14 **SEC. 5. GAO REPORT.**

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

20 (1) data concerning the extent to which employ-
21 ers provide compensatory time pursuant to section
22 7(t) of the Fair Labor Standards Act of 1938, as
23 added by this Act, and the extent to which employ-
24 ees opt to receive compensatory time;

1 (2) the number of complaints alleging a viola-
2 tion of such section filed by any employee with the
3 Secretary of Labor;

4 (3) the number of enforcement actions com-
5 menced by the Secretary or commenced by the Sec-
6 retary on behalf of any employee for alleged viola-
7 tions of such section;

8 (4) the disposition or status of such complaints
9 and actions described in paragraphs (2) and (3); and

10 (5) an account of any unpaid wages, damages,
11 penalties, injunctive relief, or other remedies ob-
12 tained or sought by the Secretary in connection with
13 such actions described in paragraph (3).

14 **SEC. 6. SUNSET.**

15 This Act and the amendments made by this Act shall
16 expire 5 years after the date of enactment of this Act.

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