

115TH CONGRESS  
1ST SESSION

# S. 801

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

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## IN THE SENATE OF THE UNITED STATES

APRIL 3, 2017

Mr. LEE (for himself, Mr. ALEXANDER, Mr. BLUNT, Mrs. CAPITO, Mr. CORNYN, Mr. COTTON, Mr. CRAPO, Mr. CRUZ, Mr. FLAKE, Mr. HATCH, Mr. JOHNSON, Mr. KENNEDY, Mr. McCONNELL, Mr. PERDUE, Mr. RISCH, Mr. ROUNDS, Mr. SCOTT, Mr. TOOMEY, Mr. UDALL, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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 2017”.

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

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

5 “(s) COMPENSATORY TIME OFF FOR PRIVATE EM-  
6 PLOYEES.—

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

13 “(2) CONDITIONS.—An employer may provide  
14 compensatory time to employees under paragraph  
15 (1) only if such time is provided in accordance  
16 with—

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

22 “(B) in the case of employees who are not  
23 represented by a labor organization that has  
24 been certified or recognized as the representa-  
25 tive of such employees under applicable law, an  
26 agreement arrived at between the employer and

1 employee before the performance of the work  
2 and affirmed by a written or otherwise  
3 verifiable record maintained in accordance with  
4 section 11(c)—

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

9 “(ii) entered into knowingly and vol-  
10 untarily by such employees and not as a  
11 condition of employment.

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

19 “(3) HOUR LIMIT.—

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

23 “(B) COMPENSATION DATE.—Not later  
24 than January 31 of each calendar year, the em-  
25 ployee’s employer shall provide monetary com-

1           pensation for any unused compensatory time off  
2           accrued during the preceding calendar year that  
3           was not used prior to December 31 of the pre-  
4           ceding year at the rate prescribed by paragraph  
5           (6). An employer may designate and commu-  
6           nicate to the employer's employees a 12-month  
7           period other than the calendar year, in which  
8           case such compensation shall be provided not  
9           later than 31 days after the end of such 12-  
10          month period.

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

18           “(D) POLICY.—Except where a collective  
19          bargaining agreement provides otherwise, an  
20          employer that has adopted a policy offering  
21          compensatory time to employees may dis-  
22          continue such policy upon giving employees 30  
23          days notice.

24           “(E) WRITTEN REQUEST.—An employee  
25          may withdraw an agreement described in para-

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

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

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

20 “(B) requiring any employee to use such  
21 compensatory time.

22 “(5) TERMINATION OF EMPLOYMENT.—An em-  
23 ployee who has accrued compensatory time off au-  
24 thorized to be provided under paragraph (1) shall,  
25 upon the voluntary or involuntary termination of

1 employment, be paid for the unused compensatory  
2 time in accordance with paragraph (6).

3 “(6) RATE OF COMPENSATION.—

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

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

11 “(ii) the final regular rate received by  
12 such employee,

13 whichever is higher.

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

18 “(7) USE OF TIME.—An employee—

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

22 “(B) who has requested the use of such  
23 compensatory time,

24 shall be permitted by the employee’s employer to use  
25 such time within a reasonable period after making

1 the request if the use of the compensatory time does  
2 not unduly disrupt the operations of the employer.

3 “(8) DEFINITIONS.—For purposes of this sub-  
4 section—

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

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

11 **SEC. 3. REMEDIES.**

12 Section 16 of the Fair Labor Standards Act of 1938  
13 (29 U.S.C. 216) is amended—

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

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

18 “(f) An employer that violates section 7(s)(4) shall  
19 be liable to the employee affected in the amount of the  
20 rate of compensation (determined in accordance with sec-  
21 tion 7(s)(6)(A)) for each hour of compensatory time ac-  
22 crued by the employee and in an additional equal amount  
23 as liquidated damages reduced by the amount of such rate  
24 of compensation for each hour of compensatory time used  
25 by such employee.”.

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

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

10 **SEC. 5. GAO REPORT.**

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

16 (1) data concerning the extent to which employ-  
17 ers provide compensatory time pursuant to section  
18 7(s) of the Fair Labor Standards Act of 1938, as  
19 added by this Act, and the extent to which employ-  
20 ees opt to receive compensatory time;

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

24 (3) the number of enforcement actions com-  
25 menced by the Secretary or commenced by the Sec-



1       retary on behalf of any employee for alleged viola-  
2       tions of such section;

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

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

9       **SEC. 6. SUNSET.**

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

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