

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 1338
OFFERED BY MRS. McMORRIS RODGERS**

Insert after section 9 the following (and redesignate
section 10 as section 11):

1 SEC. 10. COMPENSATORY TIME OFF FOR EMPLOYEES.

2 (a) COMPENSATORY TIME.—Section 7 of the Fair
3 Labor Standards Act of 1938 (29 U.S.C. 207) is amended
4 by adding at the end the following:

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

7 “(1) GENERAL RULE.—

8 “(A) COMPENSATORY TIME OFF.—An em-
9 ployee may receive, in accordance with this sub-
10 section and in lieu of monetary overtime com-
11 pensation, compensatory time off at a rate not
12 less than one and one-half hours for each hour
13 of employment for which overtime compensation
14 is required by this section.

15 “(B) DEFINITION.—For purposes of this
16 subsection, the term ‘employee’ does not include
17 an employee of a public agency.

1 “(2) CONDITIONS.—An employer may provide
2 compensatory time to employees under paragraph
3 (1)(A) only if such time is provided in accordance
4 with—

5 “(A) applicable provisions of a collective
6 bargaining agreement between the employer
7 and the labor organization which has been cer-
8 tified or recognized as the representative of the
9 employees under applicable law; or

10 “(B) in the case of employees who are not
11 represented by a labor organization which has
12 been certified or recognized as the representa-
13 tive of such employees under applicable law, an
14 agreement arrived at between the employer and
15 employee before the performance of the work
16 and affirmed by a written or otherwise
17 verifiable record maintained in accordance with
18 section 11(c)—

19 “(i) in which the employer has offered
20 and the employee has chosen to receive
21 compensatory time in lieu of monetary
22 overtime compensation; and

23 “(ii) entered into knowingly and vol-
24 untarily by such employees and not as a
25 condition of employment.

1 No employee may receive or agree to receive com-
2 pensatory time off under this subsection unless the
3 employee has worked at least 1000 hours for the
4 employee's employer during a period of continuous
5 employment with the employer in the 12-month pe-
6 riod before the date of agreement or receipt of com-
7 pensatory time off.

8 “(3) HOUR LIMIT.—

9 “(A) MAXIMUM HOURS.—An employee
10 may accrue not more than 160 hours of com-
11 pensatory time.

12 “(B) COMPENSATION DATE.—Not later
13 than January 31 of each calendar year, the em-
14 ployee's employer shall provide monetary com-
15 pensation for any unused compensatory time off
16 accrued during the preceding calendar year
17 which was not used prior to December 31 of the
18 preceding year at the rate prescribed by para-
19 graph (6). An employer may designate and
20 communicate to the employer's employees a 12-
21 month period other than the calendar year, in
22 which case such compensation shall be provided
23 not later than 31 days after the end of such 12-
24 month period.

1 “(C) EXCESS OF 80 HOURS.—The em-
2 ployer may provide monetary compensation for
3 an employee’s unused compensatory time in ex-
4 cess of 80 hours at any time after giving the
5 employee at least 30 days notice. Such com-
6 pensation shall be provided at the rate pre-
7 scribed by paragraph (6).

8 “(D) POLICY.—Except where a collective
9 bargaining agreement provides otherwise, an
10 employer which has adopted a policy offering
11 compensatory time to employees may dis-
12 continue such policy upon giving employees 30
13 days notice.

14 “(E) WRITTEN REQUEST.—An employee
15 may withdraw an agreement described in para-
16 graph (2)(B) at any time. An employee may
17 also request in writing that monetary com-
18 pensation be provided, at any time, for all com-
19 pensatory time accrued which has not yet been
20 used. Within 30 days of receiving the written
21 request, the employer shall provide the em-
22 ployee the monetary compensation due in ac-
23 cordance with paragraph (6).

24 “(4) PRIVATE EMPLOYER ACTIONS.—An em-
25 ployer which provides compensatory time under

1 paragraph (1) to employees shall not directly or indi-
2 rectly intimidate, threaten, or coerce or attempt to
3 intimidate, threaten, or coerce any employee for the
4 purpose of—

5 “(A) interfering with such employee’s
6 rights under this subsection to request or not
7 request compensatory time off in lieu of pay-
8 ment of monetary overtime compensation for
9 overtime hours; or

10 “(B) requiring any employee to use such
11 compensatory time.

12 “(5) TERMINATION OF EMPLOYMENT.—An em-
13 ployee who has accrued compensatory time off au-
14 thorized to be provided under paragraph (1) shall,
15 upon the voluntary or involuntary termination of
16 employment, be paid for the unused compensatory
17 time in accordance with paragraph (6).

18 “(6) RATE OF COMPENSATION.—

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

23 “(i) the regular rate received by such
24 employee when the compensatory time was
25 earned; or

1 “(ii) the final regular rate received by
2 such employee,
3 whichever is higher.

4 “(B) CONSIDERATION OF PAYMENT.—Any
5 payment owed to an employee under this sub-
6 section for unused compensatory time shall be
7 considered unpaid overtime compensation.

8 “(7) USE OF TIME.—An employee—

9 “(A) who has accrued compensatory time
10 off authorized to be provided under paragraph
11 (1); and

12 “(B) who has requested the use of such
13 compensatory time,
14 shall be permitted by the employee’s employer to use
15 such time within a reasonable period after making
16 the request if the use of the compensatory time does
17 not unduly disrupt the operations of the employer.

18 “(8) DEFINITIONS.—The terms ‘overtime com-
19 pensation’ and ‘compensatory time’ shall have the
20 meanings given such terms by subsection (o)(7).”.

21 (b) REMEDIES.—Section 16 of the Fair Labor Stand-
22 ards Act of 1938 (29 U.S.C. 216) is amended—

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

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

2 “(f) An employer which violates section 7(r)(4) shall
3 be liable to the employee affected in the amount of the
4 rate of compensation (determined in accordance with sec-
5 tion 7(r)(6)(A)) for each hour of compensatory time ac-
6 crued by the employee and in an additional equal amount
7 as liquidated damages reduced by the amount of such rate
8 of compensation for each hour of compensatory time used
9 by such employee.”.

10 (c) NOTICE TO EMPLOYEES.—Not later than 30 days
11 after the date of the enactment of this Act, the Secretary
12 of Labor shall revise the materials the Secretary provides,
13 under regulations published in section 516.4, Code of Fed-
14 eral Regulations, to employers for purposes of a notice ex-
15 plaining the Fair Labor Standards Act of 1938 to employ-
16 ees so that such notice reflects the amendments made to
17 such Act by this Act.

18 (d) SUNSET.—This section and the amendments
19 made by this section shall expire 5 years after the date
20 of the enactment of this Act.

