NLWJC - Kagan

DPC - Box 006 - Folder 021

Comp Time - Legislation

Comp time - legislation

COMP TIME SIDE BY SIDE

May 23, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Expanded FMLA	24 Hour expansion	No comparable provisions	In February '97, the Administration decided not to link the expansion to the comp time veto threat.
Protecting Vulnerable Workers	Exclude temp, seasonal, part time, construction, and garment workers. Labor Secretary has discretion to add others	Ballenger: exempt workers w/ fewer than 1,000 hours Ashcroft: Manager's amendment includes 1250 hour/one year tenure threshold (based on FMLA)	Republicans have been willing to compromise by setting hours limit. Such a limit would not protect all garment and construction workers.
Choice: FMLA	All employees have right to use comp time for any purpose currently guaranteed by FMLA whenever they need it.[1]	No comparable position	Agencies and Congressional staff feel this is "must have." Families need flexibility to respond to FMLA covered emergencies. Note: Where employer has elected to offer a comp time plan, this creates a right to take comp time w/o notice -- even in workplaces where FMLA would not apply (e.g. fewer than 50 employees).

[1]Democrats are considering expanding this right to include use of comp time for school related activities.

COMP TIME SIDE BY SIDE

May 23, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Choice: Employer denial of use of earned comp time	Workers can use comp time for any purpose as long as they provide **at least two weeks notice,** unless it would cause **substantial and grievous injury** to the employer. Workers can use comp time with **less than two weeks** notice, if it does not **unduly disrupt** business.	**Regardless of the amount of notice** the worker provides, employers can deny use of comp time if they say the firm would be **unduly disrupted.**	This provision is a key element of employee choice in the President's proposal. The NEC feels this is a strong rhetorical and policy position. Democratic congressional staff feel this is must have. However, this is likely to be a major disagreement with Republicans.
Choice: Cash Out	Employees choose whether to cash out comp time, w/ 15 days notice to employer. Employees choose whether to keep earned comp time for up to 3 months after year's end.[2] Employers prohibited from unilaterally cashing out employees comp time	30 days notice Earned comp time must be cashed out at year's end. Employers can cash out workers' earned comp time in excess of 80 hours at any time with 30 days notice.	Allowing unilateral employer cash out would limit employee choice in using earned comp time to meet family and other needs.

[2] Democrats are considering requiring employers to pay interest on comp time at cash out.

COMP TIME SIDE BY SIDE

May 23, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Protecting Employees: comp time limits	Accumulated comp time limited to 80 hours	Ballenger: Limited to 160 hours. Ashcroft: Limited to 240 hours.	Ballenger (as introduced) was 240 hours. Republicans compromised to 160 hours when bringing the bill to the House floor.
Protecting Employees: Good Information	Require notice of comp time accrual on pay stub, as is common practice with paid and sick leave. Treat comp time like other benefits and give written explanation of the plan, e.g. in employer handbook.	No comparable position. Add comp time law to DOL poster.	Good information will enhance employee choice.
Protecting Employees: Employer Termination of Plans	Employers must give 60 days notice to terminate or modify plans.	Requires 30 days notice.	
Protecting Employees: Bankruptcy	When firms go bankrupt, unpaid comp time would receive special protection.[3]	No special protections. Grassley is expected to offer an amendment to treat comp time as wages and raise the limit on protected wages to $6,000.	

[3] Democrats are considering raising the limit on protected "wages" (including comp time) to $8,000.

COMP TIME SIDE BY SIDE

May 23, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Protecting Employees: Prohibiting coercion and discrimination	Employers cannot discriminate in offering comp time plans, but must offer to all similarly situated employees.	No comparable position.	Republicans argue that their anti-coercion provisions cover this. We disagree.
Protecting Employees: Strong Remedies	Strong remedies (e.g. consequential damages) for all employer violations.	Inadequate remedies; apply only to coercion.	Strong remedies deter violations.
Protecting Employees: Use of Comp Time Counts as Hours Worked	Use of comp time counts towards the 40 hour work week.	No comparable position.	Without this protection employees may be denied premium pay (time and a half) for extra hours they work. This is money out of employees' pockets. (Note: SBA thinks small businesses may have concerns about possible employee abuse.)
Pilot	Four year sunset. Commission study.	Ballenger: Five year sunset. Ashcroft: No sunset.	Ballenger added sunset prior to consideration by the full House.
Record Keeping	Allows civil money penalties for record keeping violations.	No comparable provisions.	
80 Hour Bi-Weekly Overtime	No comparable provisions.	Establishes voluntary 80 bi-week. Time and a half overtime is due only for hours over 80 in a two week period.	Ashcroft position means employees who work 50 hours in a week might get only 50 hours pay, instead of 55 hours pay. This is money out of employees' pockets.

COMP TIME SIDE BY SIDE

May 23, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Standard for Overtime Pay	Retains current law requirement that overtime is due for overtime work that is "suffered or permitted". In other words, employee gets paid for overtime worked, even if employer does not expressly request it in advance.	Eliminates "suffer or permit" standard for employees in 80 hour week and flexible credit hours program.	Current law says that if you work overtime you get paid overtime. Ashcroft would say that your employer must request your overtime in advance or he doesn't have to pay you.
Flexible Credit Hours	No comparable provisions	Work hours beyond a basic work schedule (set by the employer and employee) accrue on a straight time basis for later use as time off.	Violates the basic premise of the 40 hour work week that employees get time and a half for hours worked beyond the 40 hour work week.

Comp time - Legislatic

COMP TIME LEGISLATION
RELEVANT BACKGROUND INFORMATION

MAY 5, 1997

- **Overtime hours are increasing and at an all-time high in the manufacturing sector.** CPS data show that in 1996 31% of all workers put in more than 40 hours per week -- up from 24% in 1980. In the manufacturing sector overtime is at a record high -- average of about five hours per week.

- **Many workers depend on overtime wages.** In March of 1997 the manufacturing worker took home an average of $524/week in straight time and $96/week in overtime. Overtime accounted for almost 20% of weekly earnings -- up from 12% in 1991.

- **The majority of American workers will be affected by comp time legislation.** About two-thirds of US workers are hourly workers.

- **Even the House Republicans feel that the Ashcroft bill goes too far.** During the mark-up of his bill, Representative Cass Ballenger defended his bill against charges that it undermines the 40 hour work week: "Opponents of this legislation claim that somehow it undermines the 40 hour work week. And I'm sure this developed out of the Senate [Ashcroft] bill, which does have that problem, but this one does not." Others referenced the issue during the floor debate.

- **Comp time, alternative work schedules and flexible credit hours were permitted in the public sector principally to allow state and local governments to avoid the high cost of paying overtime.** When the Supreme Court ruled that public sector employees were subject to overtime requirements, the Fair Labor Standards Act was amended to give state and local government alternatives to paying high overtime costs. The changes were not made in the spirit of family friendliness; they were intended to save employers money.

COMP TIME SIDE BY SIDE

May 5, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Expanded FMLA	24 Hour expansion	No comparable provisions	In February '97, the Administration decided not to link the expansion to the comp time veto threat.
Protecting Vulnerable Workers	Exclude temp, seasonal, part time, construction, and garment workers. Labor Secretary has discretion to add others	Ballenger: exempt workers w/ fewer than 1,000 hours Ashcroft: no comparable provisions	Republicans have been willing to compromise by setting hours limit. Such a limit would not protect garment workers. Would protect only some construction workers.
Choice: FMLA	All employees have right to use comp time for any purpose currently guaranteed by FMLA whenever they need it.	No comparable position	Agencies and Congressional staff feel this is "must have." Families need flexibility to respond to FMLA covered emergencies. Note: Where employer has elected to offer a comp time plan, this creates a right to take comp time w/o notice -- even in workplaces where FMLA would not apply (e.g. fewer than 50 employees).

COMP TIME SIDE BY SIDE

May 5, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Choice: Employer denial of use of earned comp time	Workers can use comp time for any purpose as long as they provide **at least two weeks notice**, unless it would cause **substantial and grievous injury** to the employer. Workers can use comp time with **less than two weeks** notice, if it does not **unduly disrupt** business.	**Regardless of the amount of notice** the worker provides, employers can deny use of comp time if they say the firm would be **unduly disrupted.**	This provision is a key element of employee choice in the President's proposal. The NEC feels this is a strong rhetorical and policy position. Democratic congressional staff feel this is must have. However, this is likely to be a major disagreement with Republicans.
Choice: Cash Out	Employees choose whether to cash out comp time, w/ 15 days notice to employer Employees choose whether to keep earned comp time for up to 3 months after year's end Employers prohibited from unilaterally cashing out employees comp time	30 days notice Earned comp time must be cashed out at year's end. Employers can cash out workers' earned comp time in excess of 80 hours at any time with 30 days notice.	Allowing unilateral employer cash out would limit employee choice in using earned comp time to meet family and other needs.
Protecting Employees: comp time limits	Accumulated comp time limited to 80 hours	Ballenger: limited to 160 hours. Ashcroft: Limited to 240 hours.	Ballenger (as introduced) was 240 hours. Republicans compromised to 160 hours when bringing the bill to the House floor.

COMP TIME SIDE BY SIDE

May 5, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Protecting Employees: Good Information	Require notice of comp time accrual on pay stub, as is common practice with paid and sick leave. Treat comp time like other benefits and give written explanation of the plan, e.g. in employer handbook.	No comparable position. Add comp time law to DOL poster.	Good information will enhance employee choice.
Protecting Employees: Employer Termination of Plans	Employers must give 60 days notice to terminate or modify plans.	Requires 30 days notice.	
Protecting Employees: Bankruptcy	When firms go bankrupt, unpaid comp time would receive special protection.	No special protections.	Ashcroft staff have made inquiries regarding our provisions. Appear to be considering how to address this issue.
Protecting Employees: Prohibiting coercion and discrimination	Employers cannot discriminate in offering comp time plans, but must offer to all similarly situated employees.	No comparable position.	Republicans argue that their anti-coercion provisions cover this. We disagree.
Protecting Employees: Strong Remedies	Strong remedies (e.g. consequential damages) for all employer violations.	Inadequate remedies; apply only to coercion.	Strong remedies deter violations.

COMP TIME SIDE BY SIDE

May 5, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Protecting Employees: Use of Comp Time Counts as Hours Worked	Use of comp time counts towards the 40 hour work week.	No comparable position.	Without this protection employees may be denied premium pay (time and a half) for extra hours they work. This is money out of employees' pockets. (Note: SBA thinks small businesses may have concerns about possible employee abuse.)
Pilot	Four year sunset. Commission study.	Ballenger: Five year sunset. Ashcroft: no sunset.	Ballenger added sunset prior to consideration by the full House.
Record Keeping	Allows civil money penalties for record keeping violations.	No comparable provisions.	
80 Hour Bi-Weekly Overtime	No comparable provisions.	Establishes voluntary 80 bi-week. Time and a half overtime is due only for hours over 80 in a two week period.	Ashcroft position means employees who work 50 hours in a week might get only 50 hours pay, instead of 55 hours pay. This is money out of employees' pockets.
Standard for Overtime Pay	Retains current law requirement that overtime is due for overtime work that is "suffered or permitted". In other words, employee gets paid for overtime worked, even if employer does not expressly request it in advance.	Eliminates "suffer or permit" standard for employees in 80 hour week and flexible credit hours program.	Current law says that if you work overtime you get paid overtime. Ashcroft would say that your employer must request your overtime in advance or he doesn't have to pay you.

COMP TIME SIDE BY SIDE

May 5, 1997

Issue	Clinton	Ashcroft/Ballenger	Notes and Comments
Flexible Credit Hours	No comparable provisions	Work hours beyond a basic work schedule (set by the employer and employee) accrue on a straight time basis for later use as time off.	Violates the basic premise of the 40 hour work week that employees get time and a half for hours worked beyond the 40 hour work week.

DRAFT

DRAFT 1/10/97

COMPARE PRESIDENT CLINTON'S PROPOSED "FAMILY-FRIENDLY WORKPLACE ACT"
TO
BALLENGER COMP-TIME PROPOSAL (1997)

	President Clinton's Family-Friendly Workplace Proposal	Ballenger Comp Time Proposal
EXPAND EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT	The Family and Medical Leave Act is expanded to allow employees 24 hours a year to provide additional care for their children and elder relatives, such as attending parent-teacher conferences, medical or dental appointments, etc., or interviewing at nursing or group homes.	No comparable provisions.
EXEMPTIONS TO PROTECT VULNERABLE SECTORS	To protect against coercion, part-time, seasonal, temporary, garment, and construction workers would be exempted from comp time. The Secretary of Labor would also be able to issue regulations to exclude workers who are vulnerable to coercion or certain occupations and industries where necessary to effectively protect employee rights to overtime pay.	No comparable provisions. Comp time can be offered by any private sector employer to any employees, no matter how vulnerable to abuse, and there is no authority to restrict its availability by issuing notice-and-comment regulations.
EMPLOYEE CHOICE	***Employees choose when to <u>earn</u> comp time:*** • whether to get cash or comp time each time they work overtime, or for a designated period; • whether to cash-out earned comp time with 15 days notice to employer; • whether to keep their earned comp time in the bank for up to three more months after year-end cash-out. Employers may not cash-out employees' earned comp time at their sole discretion to deprive workers of their earned comp time off.	***Employers*** would have the right to cash-out workers' earned comp time in excess of 80 hours at any time with 30 days notice to employee, effectively reducing employees' right to choose comp time off even if reasonable notice was given and there would be no disruption to the employer. Earned comp time must be cashed out by the employer each year with no employee-choice options. ***Employers*** maintain ultimate control of when to grant their workers comp time. Regardless of the amount of notice the worker provides, employers can deny use of comp time if they claim the

civil B:11 - 240 hrs straight (over 80)
New bill - (Ers can comp out at 80 still up to 240 hrs

	President Clinton's Family-Friendly Workplace Proposal	Ballenger Comp Time Proposal
	Employees have more control over when to <u>use</u> comp time. Employees may use comp time for family and medical leave reasons whenever they need it. Workers can use comp time for any purpose as long as they provide two or more weeks of notice, unless it would cause substantial and grievous injury to the employer. They can use comp time with less notice, but only if the employer is not unduly disrupted.	firm would be "unduly disrupted." Employees may withdraw from a comp time agreement at any time.
EMPLOYEE CHOICE **(CONTINUED)**	Employers would have to cash-out employees' earned comp time within 15 days of the employee's request, upon termination, or annually (unless the employee chooses otherwise).	Employers would have up to 30 days to payout the cash due for accumulated comp time after an employee request.
ASSURE BETTER PROTECTION OF EMPLOYEES' RIGHTS	Workers can accumulate comp time for overtime worked (at a rate of time-and-a-half) in a comp time bank, limited to 80 hours a year in comp time to ensure against abuse. All additional overtime work must be compensated in cash. Employees would receive direct written notice of the plan and regular reports on accrual and use of comp time. Employers could terminate or modify comp time plans only with 60 days' notice to employees. To ensure workers receive their comp time when firms enter bankruptcy, unpaid comp time would receive special protection -- the same ordinarily given to unpaid wages - in bankruptcy proceedings.	Employees can accumulate up to 240 hours of comp time. The DOL poster would be revised to reflect the comp time amendments, but employees are not guaranteed notice of or information on the accrual or use of comp time hours. Employers could eliminate or modify comp time plans with 30 days notice to employees. Unpaid comp time is treated the same as unpaid overtime compensation. No special protections are provided in bankruptcy proceedings.

	President Clinton's Family-Friendly Workplace Proposal	Ballenger Comp Time Proposal
ASSURE BETTER PROTECTION OF EMPLOYEES' RIGHTS (CONTINUED)	Improves remedies against violators, including double damages for overtime that an employee would have earned, but was not permitted to work because the worker wanted to earn pay rather than comp time, in lawsuits brought by either DOL or private actions. Civil money penalties for violations of minimum wage, overtime, comp time and for recordkeeping violations. Comp time could not be used to replace or substitute for other leave benefits. Unused comp time could not be used to deprive a worker of deserved unemployment eligibility. Comp time is treated as wages for employment benefits purposes, and use of comp time is hours worked for overtime purposes. Explicit protections are included against superseding or diminishing employer obligations under any State or local law or existing agreement or benefit plan providing greater employee protections for comp time.	For violations of anti-coercion provisions, double damages available for employees who earn comp time (i.e., there is no remedy for employees who are denied overtime work because they want overtime pay instead of comp time). Does not change current law on civil money penalties, available only for repeated or willful minimum wage or overtime violations. No comparable provisions on unemployment compensation or health and pension benefit plans. Employers could eliminate or replace paid leave plans based on making the comp time option available. Comp time used is not treated as hours worked. No comparable provisions.
PILOT	Comp time provision expires in four years. Bipartisan Commission will study and report to the Secretary of Labor and Congress before the sunset on the effects of the comp time provisions.	No comparable provisions. Comp time would be permanently authorized in the private sector without regard to its actual effects in the Nation's workplaces or on workers.

President Clinton's "Family-Friendly Workplace Act of 1996"
Compared to 1997 Ballenger Comp Time Proposal (H.R.1)

- ***The President's proposal expands employee rights under the Family and Medical Leave Act.***

  The President's proposal enables employees to take additional time off (up to 24 hours a year) under the Family and Medical Leave Act for parental involvement and elder care purposes - to participate in children's school activities such as parent-teacher conferences, and to take children or elder relatives to medical or dental appointments or other appointments for professional services, such as interviewing at nursing or group homes. **The Ballenger bill has no comparable provision.**

- ***The President's proposal protects the most vulnerable workers.***

  The President's bill - **but not the Ballenger bill** - excludes part-time, seasonal, temporary, garment, and construction workers from eligibility for comp time. Further, the Secretary of Labor may take additional steps through rulemaking to protect other employees at risk of losing their rights to overtime pay due to comp time abuses or where otherwise needed to assure proper compensation is paid. **The Ballenger bill has no comparable provisions.**

- ***The President's proposal assures employees have greater control over when they use their comp time off.***

  The President's bill - **but not the Ballenger bill** - guarantees employees the right to use their comp time for qualifying Family and Medical Leave Act reasons.

  It also allows them to use their comp time for other purposes if they give at least two weeks' notice, unless the time off would cause substantial and grievous injury to the employer - under Ballenger, the employer can deny employees their use of comp time if it would "unduly disrupt" operations.

  The President's proposal allows employees to choose whether they want to delay the annual cash-out of unused comp time for up to three months - **under the Ballenger bill, there is no such employee-choice option.**

- ***The President's proposal assures that all workers who earn comp time have their rights protected.***

  The President's proposal prevents the accumulation of huge unpaid comp time liabilities by providing for an 80-hour annual limit on earned comp time, **compared to the Ballenger bill's 240-hour limit.**

  Employees would receive regular written reports on their accrual and use of comp time under the President's proposal. **The Ballenger bill has no such provision.**

  Unpaid comp time would receive special protection in bankruptcies. **The Ballenger bill lacks this protection.**

  Stronger remedies are provided by the President's bill for violations of employees' rights compared to the Ballenger bill, *e.g.*, damages where overtime work was denied to an employee who wanted pay instead of comp time.

  The President's bill - **but not the Ballenger bill** - specifically protects employees against an employer substituting comp time for paid leave or diminishing other employment benefits.

- ***The President proposes a temporary pilot and evaluation of the impact of the change on workers and businesses.***

  The President's proposal would evaluate the effects of comp time on workers and work places over a four-year temporary pilot. **Under the Ballenger bill, comp time in lieu of overtime pay would be permanently authorized in the private sector for the first time in the history of the Fair Labor Standards Act.**

DRAFT 1/22/97

Senator Ashcroft's "Family Friendly Workplace Act"

This bill would amend the FLSA to essentially give private sector employees the same benefits of compensatory time off, biweekly work schedules, and flexible credit hour programs (*i.e.*, "flex-time") that presently are available to employees of the Federal government. The "comp time" provisions of this bill are ***virtually identical*** to H.R. 1, the comp time bill introduced in the House by Congressman Ballenger on January 7.

Comp time provisions

The comp time provisions are the same as the Ballenger comp time bill in the House.

Biweekly Work Programs

Allows an employer to establish biweekly work schedules with overtime due only for hours worked over 80 in the biweekly payperiod *which are requested in advance by the employer* (*i.e.*, hours voluntarily worked over 40 in one week are paid at regular straight time). Overtime requested in advance by an employer may be paid in either overtime pay or comp time off (both computed at time-and-a-half).

Flexible Credit Hour Programs

Allows employers to establish flexible credit hour programs -- the employee elects and the employer and employee jointly designate the employee's basic work hours. Hours worked beyond the basic work requirement can be accumulated as credit hours (hour-for-hour) and used later as paid time off to reduce daily or weekly work hours. Employees may accumulate and "bank" up to 50 credit hours. Hours worked above 40 per week *that are requested in advance by an employer*, other than flexible credit hours, are overtime hours (which may be paid in either overtime pay or comp time off, computed at time-and-a-half). Employers must cash out any unused accumulated credit hours at year-end.

Participation

Employees may not be required to participate in either the biweekly or flexible credit hour programs. Participation may not be a condition of employment. Employers may not intimidate, threaten or coerce employees into electing such programs. Where a valid collective bargaining agreement is in effect, participation may only be according to the agreement.

Limitations on Salary Practices for Exempt Employees

New provisions are added to the FLSA declaring that the fact that an employee is ***subject to*** deductions in compensation for absences of less than a full work day, or absences of less than a full pay period, shall not be a factor in deciding whether the employee is exempt as a salaried executive, administrative, or professional employee - only ***actual reductions in compensation*** may be considered. Reductions in accrued leave do not count as a factor, and payment of overtime or extra compensation also may not be considered as a factor.

UNITE Liability Legislation
Introduced by Kennedy and Clay

Bill Summary:

The UNITE bill makes manufacturer, and retailers when acting as manufacturer, liable for FLSA violations committed by their contractors, including civil penalties.

Retailers would also be liable when not acting as a manufacturer for contractor violations on goods the retailer purchased.

Significant Facts:

Clay delayed moving forward with his bill when the Administration was considering transmitting the proposal to the Hill.

The bill does not include a "safe harbor" for retailers or manufacturers who have set up monitoring systems. Since the Administration was not going to actively support the bill, Clay and Kennedy decided to go back to original UNITE proposal which did not include the safe harbor.

Talking Points:

Over the past year American consumers have become more aware and more concerned about the operation of sweatshops in this country.

Initiatives like those of Senator Kennedy and Representative Clay have the potential of being an important step in making our laws more effective in bringing an end to sweatshops in this country.

Initiatives like the Kennedy-Clay bill recognize the influence retailers have on garment manufacturers and contractors, and in essence Kennedy-Clay bill makes the entire industry responsible for assuring that workers are treated in accordance with the law.

This Administration continues to be committed to working with all interested and concerned parties to develop and implement both industry driven and government initiatives. We want to make sweatshops a subject our kids learn about in history class instead of discussing as a current event.

DRAFT 1/9/97

Ballenger Comp Time Bill, The "Working Families Flexibility Act" (H.R. 1)

H.R. 1, introduced January 7, 1997, would apply FLSA's comp time provisions now available only for State and local governments to the private sector, with certain changes. It is *nearly identical* to the Ballenger comp time bill passed by the House in the 104th Congress.

Basic Provisions:

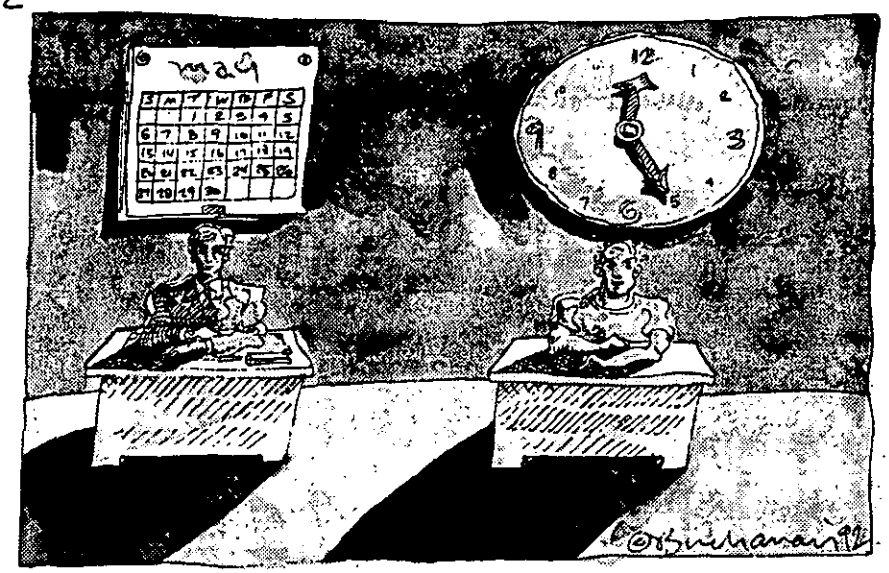
- Amends FLSA to *add a new comp time subsection applicable just to the private sector (i.e., would not affect current provisions for State and local governments, or the Federal government).*
- Comp time hours accrue at 1½ times the number of overtime hours worked.
- Comp time is available only if there is a collective bargaining agreement *with a labor organization recognized as in Sec. 9(a) of the National Labor Relations Act*, or under an agreement or understanding "knowingly and voluntarily" agreed to by employees before the overtime work is performed, and only if the agreement or understanding was not a condition of employment.
- Comp time is available only if employers secure and preserve a record of a written affirmation or otherwise verifiable statement that an employee has chosen comp time in lieu of overtime.
- Employees may accrue no more than 240 hours of comp time in a bank without cash payment.
- Any unused comp time (in the "bank") at year-end must be cashed out at the higher of the employee's regular rate at time of payment or the regular rate when the comp time was earned.
- Employers may unilaterally cash out any unused comp time in excess of 80 hours at any time after 30 days notice to employees (payments at the higher of the regular rate when the comp time was earned or the rate at time of payment).
- Employers may discontinue their comp time policies after giving employees 30 days notice. Employees may withdraw from a comp time agreement at any time.
- Employees may, at any time, request in writing that they be paid in cash for accrued comp time; the employer has 30 days to make the payments, computed at the higher of the regular pay rate when the comp time was earned or the rate at time of payment.
- Employers may not intimidate, threaten or coerce (or attempt to, directly or indirectly) employees into requesting or not requesting comp time in lieu of overtime pay, or require any employee to use comp time.
- Terminated employees are paid for unused comp time at the higher of their regular pay rate in effect when the comp time was earned or the final regular rate.
- Payment owed to an employee for unused comp time is considered unpaid overtime compensation.
- Employees would be allowed to schedule and use their comp time as paid time off within a reasonable time after requesting it, if the time away from work does not unduly disrupt the employer's operations.
- Private sector employers violating the anti-intimidation/coercion provisions would be liable to affected employees for damages, computed as the amount of each hour of comp time accrued in violation, plus an equal amount in liquidated damages, less each hour of comp time that the employee used during the period. *(Reference to section 7(r)(3) is assumed to be a drafting error which should read "section 7(r)(4)".)*
- DOL would be required to revise the FLSA poster within 30 days of enactment to reflect the comp time amendments.

Workplace

Dickering Over Docking Rules on Salaried Employees' Pay

9-20-92

By Frank Swoboda
Washington Post Staff Writer



BY YVONNE BUCHANAN FOR THE WASHINGTON POST

In the American workplace there are just two kinds of people: those who get paid a salary and those who are paid by the hour.

The federal rules governing employee pay are quite simple. If you get paid by the hour, you're entitled to collect 1½ times your hourly wage for every hour worked in a week in excess of 40 hours.

But if you're paid a salary, you cannot collect overtime nor have your pay docked for taking a few hours off.

Now some employers want to change that with a proposal to allow companies to dock the pay of salaried workers who take time off during the day to do such things as take a child to the doctor, see a ballgame or run a personal errand.

Generally, the law defines salaried workers as executives and administrative and professional employees.

The assumption behind the law was that salaried workers would be compensated for their lack of overtime by better pay.

But in today's work force, with a growing number of lower-paid white-collar jobs, particularly in the service sector, the issue of whether someone is a salaried or hourly employee has come to the forefront.

Some employers want to be able to work their salaried emploeyees more than 40 hours a week without paying overtime, yet take away their pay on a prorated, hourly basis if they take time off the job.

"They can't have it both ways," one Labor Department official said about such employers.

"Salaried" employees are defined as those who receive predetermined annual pay that isn't affected by the quantity or quality of work performed.

It was understood that a salaried employee might work five hours one day and 20 the next.

But, under the Fair Labor Standards Act, which sets wage and hour rules, a salaried employee who is treated like an hourly worker is immediately eligible for overtime.

Not only that, but such an employee can seek back overtime pay for up to two years.

There are some exceptions. Under what are known as "docking rules," there are certain circumstances under which an employer can reduce the pay of a salaried worker.

Such exemptions include situations in which the employee is absent for an entire week, is away from the job for an entire day for reasons other than sickness or accident, or is absent for more than a day for reasons of sickness or disability when the employee is covered by a paid-leave policy.

Salaried workers also can be docked in some disciplinary cases.

But an employer who docks the pay of a salaried worker for any hours less than a full day runs a double risk. Not only does that employee become an hourly employee eligible to receive retroactive overtime pay, but every other employee covered by the partial docking policy becomes eligible for overtime.

There's no problem if employees use sick leave or vacation time to take a child to the doctor.

And there's no problem if the employer voluntarily grants employees time off without docking their pay.

The problem only arises when employees have exhausted their leave time or don't want to use it and the employer reduces their pay for the lost time.

The issue has come to a head in recent years as the Labor Department has begun to crack down on wage and hour violators, particularly among small businesses.

If department investigators discover a violation, they assess back overtime payments for everyone in the class of salaried workers, even if no one has filed a complaint.

The Labor Department has indicated a willingness to change the docking rule, but because of an earlier regulatory snafu by the agency, it will require legislation to deal with the problem.

Because of the foul-up, the federal courts have ruled that the department can only change the rules for future workers, but Congress has to act if they want to make the changes cover employees now.

A subcommittee of the House Education and Labor Committee began hearings last week on legislation—the Workplace Leave Fairness Act—that would preserve the overtime exemption for salaried workers who took a leave of any type.

Rep. Thomas E. Petri (R-Wis.) said in June that at a time when workers are demanding more flexibility on the job, the Labor Department's docking rule "is an example of government at its worst."

But Rudolph Oswald, research director of the AFL-CIO, sees no need for change. "This is something everybody's lived with for 50 years," he said. "All the employer has to do is pay them and there's no problem."

Oswald said the same employer who wants to dock a salaried employee for taking off a few hours is just as apt to have that same employee work 60 hours the next week without paying any overtime. "That's what being a salaried worker is all about," he said.

Organized labor opposes the change, but the legislation has the backing of nine governors from major states, including New York, Texas and California.

They have complained to Labor Secretary Lynn Martin that enforcement of the docking rule is costing their states "hundreds of millions" of dollars in overtime payments to salaried workers.

The fate of the bill in this Congress is unclear.

MEMORANDUM

TO: Peggy Taylor and Jon Hiatt

FROM: David Silberman

DATE: January 18, 1997

SUBJECT: Comparison of Last Year's and This Year's Ballenger Bills

I've compared the Ballenger bill that passed the House last year with this year's version (H.R. 1). Although there has been a fair amount of reorganization of text, I can find only two changes of substance.

1. Last year's bill covered public and private employees alike, and thus gave public employees the benefit of many of the ways in which the bill improved upon the current law public sector. H.R. 1, in contrast, applies only to the private sector and leaves the current section governing public employees unchanged. In this regard, the Ballenger bill now parallels the Clinton Administration proposal.

2. Last year's bill permitted comp. time to be provided either pursuant to an agreement with a union or, "in the case of employees who are not represented by a collective bargaining agent or other representative designated by the employee," pursuant to individual "agreement()s or understanding(s)." This year's bill narrows the class of employees who are deemed to be represented -- and broadens the class for whom individual agreements are permissible. Specifically, section (r)(2)(A) (i)(II) now allows for comp. time pursuant to an individual agreement or understanding with respect to "employees who are not represented by a labor organization recognized as provided in section 9(a) of the NRA."

Section 9(a) of the NRA is the section which provides processes for a majority to designate a union to be the exclusive representative. Under H.R. 1, then, if there is not an exclusive representative designated by a majority of the employees, the employer can reach agreement individually with individual employees.

This change in the bill is significant for the building trades, in particular. In the building and construction industry, unions generally are recognized through pre-hire agreements authorized by NRA section 8(f), and not by majority decision pursuant to NRA section 9(a). Thus, in theory H.R. 1 would allow even an organized contractor to bypass the union and deal directly with the employees with respect to comp. time on the ground that the employees do not have a 9(a) representative. (Whether an organized contractor would do so is another question, which I leave to more experienced heads.)

105th CONGRESS
1st Session

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.

IN THE SENATE OF THE UNITED STATES

January 21, 1997

Mr. Ashcroft (for himself, Mrs. Hutchison, Mr. Lott, Mr. Nickles, Mr. Craig, Ms. Collins, Mr. DeWine, Mr. Allard, Mr. Brownback, Mr. Chafee, Mr. Coats, Mr. Domenici, Mr. Enzi, Mr. Faircloth, Mr. Gramm, Mr. Grams, Mr. Grassley, Mr. Hagel, Mr. Hatch, Mr. Helms, Mr. Hutchinson, Mr. Kyl, Mr. Murkowski, Mr. Roberts, Mr. Sessions, Mr. Thurmond, Mr. Warner, Mr. Coverdell, and Mr. Jeffords) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

---

A BILL

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Family Friendly Workplace Act''.

SEC. 2. PURPOSES.

The purposes of this Act are--

(1) to assist working people in the United States;

(2) to balance the demands of workplaces with the needs of families;

(3) to provide such assistance and balance such demands by

allowing employers to offer compensatory time off, which employees may voluntarily elect to receive, and to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

(4) to give private sector employees the same benefits of compensatory time off, biweekly work schedules, and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

SEC. 3. WORKPLACE FLEXIBILITY OPTIONS.

(a) Compensatory Time Off.--

(1) In general.--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) Compensatory Time Off for Private Employees.--

``(1) General rule.--

``(A) Compensatory time off.--An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which monetary overtime compensation is required by this section.

``(B) Definition.--For purposes of this subsection, the term 'employee' does not include an employee of a public agency.

``(2) Conditions.--An employer may provide compensatory time off to employees under paragraph (1)(A) only pursuant to the following:

``(A) Such time may be provided only in accordance with--

``(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employees recognized as provided in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

``(ii) in the case of employees who are not represented by a labor organization recognized as provided in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if such agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

``(B) If such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

``(C) If the employee has not accrued compensatory time off in excess of the limit applicable to the employee prescribed by paragraph (3).

``(3) Hour limit.--

``(A) Maximum hours.--An employee may accrue not more than 240 hours of compensatory time off.

``(B) Compensation date.--Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (6). An employer may designate and communicate to the employees of the employer a 12-month

period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

``(C) Excess of 80 hours.--The employer may provide monetary compensation for an employee's unused compensatory time off in excess of 80 hours at any time after giving the employee at least 30 days' notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

``(D) Policy.--An employer that has adopted a policy offering compensatory time off to employees may discontinue such policy upon giving employees 30 days' notice.

``(E) Written request.--An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time off accrued that has not yet been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

``(4) Prohibition of coercion.--

``(A) In general.--An employer that provides compensatory time off under paragraph (1) to employees shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of--

``(i) interfering with the rights of the employee under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours; or

``(ii) requiring the employee to use such compensatory time off.

``(B) Definition.--As used in subparagraph (A), the term 'intimidate, threaten, or coerce' has the meaning given the term in section 13A(d)(3)(B).''.

(2) Remedies and sanctions.--Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended--

(A) in subsection (b), by striking ``(b) Any employer'' and inserting ``(b) Except as provided in subsection (f), any employer''; and

(B) by adding at the end the following:

``(f)(1) An employer that violates section 7(r)(4) shall be liable to the employee affected in an amount equal to--

``(A) the product of--

``(i) the rate of compensation (determined in accordance with section 7(r)(6)(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, the product of--

``(i) such rate of compensation; and

``(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

``(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, including a criminal penalty under subsection (a) and a civil penalty under subsection (e).''.

(3) Calculations and special rules.--Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by paragraph (1), is amended by adding at the end the following:

``(5) Termination of employment.--An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time off in accordance with paragraph (6).

``(6) Rate of compensation for compensatory time off.--

``(A) General rule.--If compensation is to be paid to an employee for accrued compensatory time off, such compensation shall be paid at a rate of compensation not less than--

``(i) the regular rate received by such employee when the compensatory time off was earned; or

``(ii) the final regular rate received by such employee,

whichever is higher.

``(B) Consideration of payment.--Any payment owed to an employee under this subsection for unused compensatory time off shall be considered unpaid monetary overtime compensation.

``(7) Use of time.--An employee--

``(A) who has accrued compensatory time off authorized to be provided under paragraph (1); and

``(B) who has requested the use of such compensatory time off,

shall be permitted by the employer of the employee to use such time within a reasonable period after making the request if the use of the compensatory time off does not unduly disrupt the operations of the employer.

``(8) Definitions.--The terms `monetary overtime compensation' and `compensatory time off' shall have the meanings given the terms `overtime compensation' and `compensatory time', respectively, by subsection (o)(7).''.

(4) Notice to employees.--Not later than 30 days after the date of the enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published at 29 C.F.R. 516.4, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that such notice reflects the amendments made to such Act by this subsection.

(b) Biweekly Work Programs and Flexible Credit Hour Programs.--

(1) In general.--The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following new section:

``SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

``(a) Purposes.--The purposes of this section are--

``(1) to assist working people in the United States;

``(2) to balance the demands of workplaces with the needs of families;

``(3) to provide such assistance and balance such demands by allowing employers to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

``(4) to give private sector employees the same benefits of biweekly work schedules and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

``(b) Biweekly Work Programs.--

``(1) In general.--Notwithstanding any other provision of law, an employer may establish biweekly work programs that allow the use of a biweekly work schedule--

``(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

``(B) in which more than 40 hours of the work requirement may occur in a week of the period.

``(2) Computation of overtime.--In the case of an employee participating in such a biweekly work program, all hours worked in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by an employer, shall be overtime hours.

``(3) Overtime compensation provision.--The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

``(4) Compensation for hours in schedule.--Notwithstanding section 7 or any other provision of law that relates to premium pay for overtime work, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

``(c) Flexible Credit Hour Programs.--

``(1) In general.--Notwithstanding any other provision of law, an employer may establish flexible credit hour programs, under which, at the election of an employee, the employer and the employee jointly designate hours for the employee to work that are in excess of the basic work requirement of the employee so that the employee can accumulate flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

``(2) Computation of overtime.--In the case of an employee participating in such a flexible credit hour program, all hours worked in excess of 40 hours in a week that are requested in advance by an employer, other than flexible credit hours, shall be overtime hours.

``(3) Overtime compensation provision.--The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

``(4) Compensation for flexible credit hours.--Notwithstanding section 7 or any other provision of law that relates to premium pay for overtime work, an employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the employee is employed.

``(5) Accumulation and compensation.--

``(A) Accumulation of flexible credit hours.--An employee who is participating in such a flexible credit hour program can accumulate not more than 50 flexible credit hours.

``(B) Compensation for flexible credit hours of employees no longer subject to program.--Any employee who was participating in such a flexible credit hour program and who is no longer subject to such a program shall be paid at a rate not less than the regular rate at which the employee is employed on the date the employee receives such payment, for not more than 50 flexible credit hours accumulated by such employee.

``(C) Compensation for annually accumulated flexible credit hours.--

``(i) In general.--Not later than January 31 of each calendar year, the employer of an employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accumulated as described in subparagraph (A) during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the employee is employed on the date the employee receives such payment.

``(ii) Different 12-month period.--An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

``(d) Participation.--

``(1) In general.--Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

``(2) Collective bargaining agreement.--In a case in which a valid collective bargaining agreement exists, an employee may only be required to participate in such a program in accordance with the agreement.

``(3) Prohibition of coercion.--

``(A) In general.--An employer may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of such employee under this section to elect or not to elect to work a biweekly work schedule, to elect or not to elect to participate in a flexible credit hour program, or to elect or not to elect to work flexible credit hours (including working flexible credit hours in lieu of overtime hours).

``(B) Definition.--As used in subparagraph (A), the term `intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

``(e) Application of Programs in the Case of Collective Bargaining Agreements.--

``(1) Applicable requirements.--In the case of employees in a unit represented by an exclusive representative, any biweekly work program or flexible credit hour program described in subsection (b) or (c), respectively, and the establishment and termination of any such program, shall be subject to the provisions of this section and the terms of a collective bargaining agreement between the employer and the exclusive representative.

``(2) Inclusion of employees.--Employees within a unit represented by an exclusive representative shall not be included within any program under this section except to the extent expressly provided under a collective bargaining agreement between the employer and the exclusive representative.

``(3) Collective bargaining agreements.--Nothing in this

section shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefits program or plan that provides lesser or greater rights to employees than the benefits established under this section.

``(f) Definitions.--As used in this section:

``(1) Basic work requirement.--The term `basic work requirement' means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

``(2) Collective bargaining.--The term `collective bargaining' means the performance of the mutual obligation of the representative of an employer and the exclusive representative of employees in an appropriate unit to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

``(3) Collective bargaining agreement.--The term `collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

``(4) Election.--The term `at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

``(5) Employee.--The term `employee' means an employee, as defined in section 3, except that the term shall not include an employee, as defined in section 6121(2) of title 5, United States Code.

``(6) Employer.--The term `employer' means an employer, as defined in section 3, except that the term shall not include any person acting in relation to an employee, as defined in section 6121(2) of title 5, United States Code.

``(7) Exclusive representative.--The term `exclusive representative' means any labor organization that--

``(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to Federal law; or

``(B) was recognized by an employer immediately before the date of enactment of this section as the exclusive representative of employees in an appropriate unit--

``(i) on the basis of an election; or

``(ii) on any basis other than an election;

and continues to be so recognized.

``(8) Flexible credit hours.--The term `flexible credit hours' means any hours, within a flexible credit hour program established under subsection (c), that are in excess of the basic work requirement of an employee and that, at the election of the employee, the employer and the employee jointly designate for the employee to work so as to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

``(9) Overtime hours.--The term `overtime hours'--

``(A) when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer.

``(B) when used with respect to flexible credit hour programs under subsection (c), means all hours

worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

``(10) Regular rate.--The term `regular rate' has the meaning given the term in section 7(e).''.

(2) Prohibitions.--

(A) Purposes.--The purposes of this paragraph are to make violations of the biweekly work program and flexible credit hour program provisions by employers unlawful under the Fair Labor Standards Act of 1938, and to provide for appropriate remedies for such violations, including, as appropriate, fines, imprisonment, injunctive relief, and appropriate legal or equitable relief, including liquidated damages.

(B) Remedies and sanctions.--Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended by inserting before the semicolon the following: ``, or to violate any of the provisions of section 13A''.

(c) Limitations On Salary Practices Relating To Exempt Employees.--Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

``(m)(1)(A) In the case of a determination of whether an employee is an exempt employee described in subsection (a)(1), the fact that the employee is subject to deductions in compensation for--

``(i) absences of the employee from employment of less than a full workday; or

``(ii) absences of the employee from employment of less than a full pay period,

shall not be considered in making such determination.

``(B) In the case of a determination described in subparagraph (A), an actual reduction in compensation of the employee may be considered in making the determination.

``(C) For the purposes of this paragraph, the term `actual reduction in compensation' does not include any reduction in accrued paid leave, or any other practice, that does not reduce the amount of compensation an employee receives for a pay period.

``(2) The payment of overtime compensation or other additions to the compensation of an employee employed on a salary based on hours worked shall not be considered in determining if the employee is an exempt employee described in subsection (a)(1).''.

<all>

HISTORY 1:
CQ's WASHINGTON ALERT 01/28/97

*** HISTORY REPORT -- ALL LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: S4

SPONSOR: Ashcroft (R-MO)

BRIEF TITLE: Family Friendly Workplace Act.

OFFICIAL TITLE: A bill 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.

INTRODUCED: 01/21/97

COSPONSORS: 30 (Dems: 0 Reps: 30 Ind: 0)

COMMITTEES: Senate Labor and Human Resources

LEGISLATIVE ACTION:

01/21/97 Referred to Committee on Labor and Human Resources (Text of bill appears on pgs. S221-S225 of the Jan. 21, 1997, Congressional Record, Part II) (CR p. S158)

01/21/97 ASHCROFT, R-Mo., Senate speech: Introduces the Family Friendly Workplace Act. (Colloquy with HUTCHISON, R-Texas, and JEFFORDS, R-Vt.) (Text of bill) (CR p. S221-S225)

01/21/97 Original cosponsor(s): 28

Allard (R-CO)	Faircloth (R-NC)	Kyl (R-AZ)
Brownback (R-KS)	Gramm, P. (R-TX)	Lott (R-MS)
Chafee (R-RI)	Grams, R. (R-MN)	Murkowski (R-AK)
Coats (R-IN)	Grassley (R-IA)	Nickles (R-OK)
Collins (R-ME)	Hagel (R-NE)	Roberts (R-KS)
Coverdell (R-GA)	Hatch (R-UT)	Sessions (R-AL)

Craig (R-ID)	Helms (R-NC)	Thurmond, S. (R-SC)
DeWine (R-OH)	Hutchinson, T. (R-AR)	Warner (R-VA)
Domenici (R-NM)	Hutchison, K. (R-TX)	
Enzi (R-WY)	Jeffords (R-VT)	

01/22/97 KYL, R-Ariz., Senate speech: Supports the Family Friendly Workplace Act. (CR p. S653-S654)

01/22/97 Cosponsor(s) added: 2

Mack (R-FL)	Smith, R.C. (R-NH)

01/21/97 LOTT, R-Miss., Senate speech: Supports the Republican priorities for the 105th Congress. (Colloquy with NICKLES, R-Okla., and DASCHLE, D-S.D.) (CR p. S122-S126)

01/21/97 DOMENICI, R-N.M., Senate speech: Supports the Family Friendly Workplace Act. (CR p. S134-S135)

01/23/97 ENZI, R-Wyo., Senate speech: Supports the Family Friendly Workplace Act. (CR p. S684)

	DEMOCRATIC SUBSTITUTE	H.R.1
Family Leave	As a condition of offering comp time, an employer must provide 24 hours of leave that employees may use to participate in the educational activities of their children or to accompany children or elders to routine medical appointments or related services.	No comparable provision.
Comp Time for Family and Medical Leave Purposes	Employees may use comp time for family and medical leave whenever they need it.	No comparable provision.
Coverage	Exempts vulnerable segments of the workforce including garment workers and part-time, temporary and seasonal workers (including construction and agricultural workers.) Authorizes the Secretary of Labor to implement further restrictions by regulation where necessary to ensure employees receive the compensation they are due.	A private sector employee may offer comp time to any employee otherwise entitled to overtime pay.
Right to Earn Comp Time	Employer is not required to offer comp time. Where employer does offer comp time, offer must be made to all similarly-situated employees (those doing same work, on same schedule, at same place.)	Employer is not required to offer comp time. Employer has unilateral discretion as to who may be offered comp time and may discriminate among similarly situated employees.
Voluntary, Informed Choice	Employers must notify workers of their comp time policy, including eligibility to earn, to use, and impact on compensation and benefits. Employee must unilaterally request comp time prior to performance of overtime work.	Employer may directly solicit comp time requests from individual employees without notifying others that comp time is being offered. Employer required to post a Labor Department notice regarding employee comp time rights – no further specific requirement for an employer to provide additional information to workers.

Comp time – legislation

Use of Comp Time	Unless it causes substantial and grievous injury to the employer's operations, employees may use comp time for any purpose as long as they provide at least two weeks notice to their employers. Where a worker provides less than 2 weeks notice, the worker may use comp time for any purpose unless the use of comp time unduly disrupts the employer's operation.	Employers maintain ultimate control of when to grant their workers comp time. Regardless of the amount of notice the worker provides, employers can deny the use of comp time if the firm claims they would be "unduly disrupted."
Cash Out of Comp Time	Employees may elect to cash out some or all of their unused comp time. When requested, employers shall cash out the comp time by the regular payday for the pay period in which the employer receives the worker's request to cash-out . Employer must buy back unused comp time on an annual basis, but employee may defer purchase for up to 3 months. Employer may not otherwise unilaterally purchase unused comp time.	Employees may elect to cash out some or all of unused comp time. Private-sector employers would have up to 30 days to pay out the cash due for accumulated comp time. Employer, upon 30 days notice, may unilaterally buy back all but 80 hours of employee's unused comp time. Employer must purchase all unused comp time on an annual basis.
Comp Time Bank	Private sector workers may accumulate comp time for overtime worked (at time-and-a-half rate) in a "comp time bank." A worker may not earn more than 80 hours of comp time in a year. All additional overtime work must be compensated in cash.	Employees may not accumulate more than 240 hours of comp-time. (Unused comp time must be purchased annually by employer.) No limit on amount of comp time an employee may earn so long as accrued, unused comp time does not exceed 240 hours.
Assurance that Employer Will Pay Comp Time	Comp time considered wages under FLSA. Secretary of Labor <u>may</u> require an employer to post a bond, such as those required for public building projects, to assure funds to pay for unused comp time. (President's proposal included bankruptcy protection, but provision is not germane.)	Comp time considered wages under FLSA.

Treatment of Comp Time as Hours Worked	Comp time shall count as hours worked for purposes of calculating overtime. (Employer must pay overtime when the comp time hours plus the hours worked for a week exceed 40 hours.)	Comp time does not count as hours worked for calculating overtime. Employer may require employee to work extra hours to make up for used comp time on an hour-for-hour basis without paying the employee overtime until total hours worked (excluding time spent on comp time) exceed 40.
Exemptions for Vulnerable Sectors	To ensure protections against coercion, part-time, seasonal, and temporary workers would be exempted from this proposal. The Secretary of Labor may, by regulation, prohibit or restrict an employer(s) from offering comp time where comp time may subject to abuse. The Secretary shall, by regulation, prohibit comp time where there is a pattern or practice of violating FLSA.	No comparable provisions.
Enforcement Provisions	Provides that it is unlawful discrimination for an employer to interfere with right of employees to choose between comp time and paid overtime, where employer conditions employment rights or benefits or the availability of overtime work upon an employee's comp time choice, and where an employer unlawfully restricts right of employee to use comp time. Employer may be liable for a fine of $10,000 or imprisonment of up to 6 months. Back pay awards for comp time violations would be offset by the amount of comp time an employee has used.	Employer may not interfere with employee's right to choose comp time and may not require employee to use comp time. Back pay awards in such circumstances would be offset by amount of comp time used. (Conditioning benefits or overtime availability is assumed to be interference in right to select comp time.)
Sunset	Comp time sunsets in four years.	No comparable provision.