



COMPENSATORY TIME

STATUS

Representative Martha Roby (R-AL) has introduced the Working Families Flexibility Act of 2013, H.R. 1406. The legislation would amend the Fair Labor Standards Act of 1938 to allow employers to offer private-sector employees the choice of paid time off in lieu of cash wages for overtime hours worked.

Ancient History

A “Comp Time” bill, passed by a 222-210 margin in the House on March 19, 1997. A cloture vote on the the Senate version on June 4, 1997, failed to garner the sixty votes necessary to break the filibuster. The vote on cloture was 51-47. An earlier cloture vote in May had failed by a 53-47 margin.

IMPACT/ANALYSIS

In 1938, the Fair Labor Standards Act (FLSA) was written for a predominantly male work force and a market place primarily comprised of manufacturing firms. These demographics have dramatically changed. Today, women make up a much greater percentage of the work force. Private enterprise is dominated by service and high-technology industries rather than heavy manufacturing; global competition has significantly increased; and the lines between white and blue collar workers have been blurred.

Back in 1997, then Senator John Ashcroft (R-MO) observed, "In 1938, American movies like 'Mr. Smith Goes to Washington' and 'The Wizard of Oz' were still in production; U.S. involvement in World War II was three years away; the American labor force was almost entirely made up of industrial and agricultural workers; the right to collective bargaining was not yet three years old; less than 16 percent of married women were working outside their homes; and the Fair Labor Standards Act (FLSA) of 1938 was enacted. Now, nearly 60 years later, 'Mr. Smith Goes to Washington' and 'The Wizard of Oz' are American movie classics; World War II secured America's ascendancy to superpower status; service sector jobs dominate the economy; the right to collectively bargain is deeply embedded in our labor laws; more than 75 percent of women with school-age children work; and as absurd as it may seem, our rules governing the work place and working hours still are largely governed by the Fair Labor Standards Act of 1938."

The FLSA currently stands in the way of companies who attempt to utilize flexible human resource strategies in order to allow workers to pursue more fulfilling combinations of work, family life, and other interests. As then Representative Cass Ballenger (R-NC) noted back in 1997, "As the percentage of employees who must balance work and family issues grows rapidly, there is more and more pressure from employees for increased control over their work schedule. Flexibility in the work place continues to rank high on the list of issues of major concern to most employees." This legislation would allow employers to provide employees with the choice of overtime pay or compensatory time to help ease the burdens of juggling work and personal responsibilities.

Current Chairman Tim Walberg (R-MI) of the Subcommittee on Workforce Protections of the House Education and the Workforce Committee said at a recent hearing : oday's workplaces are a lot different than they were just a generation ago. Technology continues to alter the way goods and services reach consumers and cultural changes have transformed the nature of America's workforce. According to the Bureau of Labor Statistics, in 2011 nearly 60 percent of married families with children were headed by two working parents; roughly 66 percent of single moms and 79 percent of single dads were working. BLS also reports that for the same year 44 percent of all families included children under the age of 18."

LEGISLATION

The bill:

*Allows employers to offer employees a choice between cash wages and comp time for overtime hours worked. Employees who want to receive cash wages would continue to do so. No employee can be forced to take comp time instead of receiving overtime pay.

*Protects employees by requiring the employer and the employee to complete a written agreement to use comp time, entered into knowingly and voluntarily by the employee. Where the employee is represented by a union, the agreement to take comp time must be part of the collective bargaining agreement negotiated between the union and the employer.

*Retains all existing employee protections in current law, including the 40-hour workweek and how overtime compensation is accrued. The bill adds additional safeguards for workers to ensure the choice and use of comp time are truly voluntary.

*Allows employees to accrue up to 160 hours of comp time each year. An employer would be required to pay cash wages for any unused time at the end of the year. Workers are free to 'cash out' their accrued comp time whenever they choose to do so.

OUTLOOK

As most things in this town, partisanship reigns supreme. The House will pass it. The Senate will be a tough sell.