

An Empty Promise: The Working Families Flexibility Act Would Give Workers Less Flexibility and Less Pay

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The Working Families Flexibility Act sets up a dangerous false choice between time and money, when working families urgently need both. The bill does not promote family friendly or flexible workplaces. Instead, it would erode hourly workers' ability to make ends meet, plan for family time, and have predictability, stability and true flexibility at work.

Truly family friendly policies are common sense solutions that are available to all workers. Lawmakers should focus on updating and expanding our public policies to help ensure that workers have both fair wages and time to care for themselves and their families.

Background

The Working Families Flexibility Act (H.R. 1180/S.801), introduced by Rep. Martha Roby (R – Ala.) and Sen. Mike Lee (R – Utah), claims to give hourly workers more time with their families by allowing them, through an agreement with their employers, to choose paid time off as compensation for working more than 40 hours in one week (“comp time”). The bill would:

- ▶ Allow employers to offer comp time in lieu of time-and-a-half pay to non-supervisory (“non-exempt”) workers who work more than 40 hours in a week.
- ▶ Allow a worker to bank up to 160 hours of comp time, but without the guaranteed right to use that time when they need it, even in the case of a personal or family emergency. There would be no remedy for a worker whose request to use comp time is denied other than requesting a cash-out for the unused time.
- ▶ Allow employers to unilaterally decide to pay workers for any earned comp time that has been banked beyond 80 hours, jeopardizing a worker’s careful planning for time off for a parental leave or a major health event such as surgery.
- ▶ Allow workers to request that their banked comp time be paid out in cash rather than time off, but give employers up to 30 days to comply.
- ▶ Provide workers the right to sue if they are intimidated, threatened or coerced into requesting or not requesting a comp time agreement, but would not permit a worker to use more cost-effective administrative remedies through the U.S. Department of Labor (DOL).
- ▶ Provide no additional funding to DOL for investigation, enforcement or education, despite adding significant complexities to the Fair Labor Standards Act (FLSA).

Forced Choices, False Promises Lead to Less Pay, Less Time

The Working Families Flexibility Act would erode the basic guarantees of the Fair Labor Standards Act (FLSA): fair pay for overtime work and time off from work.

- ▶ Nearly 80 years ago, the FLSA created the guarantee of basic wage and hour protections. The FLSA created the norm of a 40-hour workweek and the right for certain workers to be paid at one-and-a-half times their regular rate when their workplaces demand longer hours.
- ▶ The FLSA's overtime pay requirement created a disincentive for employers to overwork employees, and an incentive to hire additional workers and create additional jobs.

The misnamed Working Families Flexibility Act would mean a pay cut for workers without any guaranteed flexibility or time off. If the proposal were adopted, workers would have less time, less money and less flexibility.

- ▶ Employers would have significant financial incentives to assign overtime hours to workers who agree to accept comp time instead of overtime wages. This would make workers' schedules less predictable and mandatory overtime hours more common – neither of which are family friendly outcomes. It would also create financial turmoil for workers who depend on overtime pay to make ends meet.
- ▶ Workers who accrue comp time would not be guaranteed the opportunity to use it when they need it. This means that hardworking people who have banked comp time still wouldn't have the right to use it if their employers say "no" – even if they needed the time to attend a parent-teacher conference, help an aging parent relocate to a nursing home, care for a new baby, or recover from their own serious illness.

The proposal includes few worker protections in cases of employer misconduct or bankruptcy.

- ▶ Employers would supposedly be prohibited from coercing, intimidating or threatening workers for the purpose of interfering with their right to request or decline to request comp time, but the only remedy provided – the right to sue in court – would be too costly, protracted and risky for a typical employee to pursue.
- ▶ Employees would have no remedy for denied comp time requests other than asking to have the value of the time cashed out. Even then, employers would have 30 days to cash out the value of the wages earned through overtime work, despite workers' more immediate needs.
- ▶ Workers whose employers go out of business or bankrupt would have no recourse to recover the value of banked time. For a typical hourly worker, 160 hours of lost comp time (the maximum allowed) would mean a loss of nearly \$2,400.¹

Real Solutions Provide Workers Fair Pay and More Time

Rather than forced choices and false promises, people need public policies that provide them with time to care for their own health and their families, wages that are fair and schedules that are predictable.

Truly family friendly policies must be available to all workers and reflect the needs of working people today, including by protecting workers' financial stability and enabling them to care for

children, older relatives and other family members while being productive, responsible employees. These policies include:

- ▶ **Guaranteeing paid sick days** – The Healthy Families Act (H.R. 1516/S. 636) would allow workers to earn up to seven paid sick days each year to recover from short-term illness, to care for a sick family member or attend a child’s health- or disability-related school meeting, to seek routine medical care or to obtain assistance related to domestic violence, sexual assault or stalking.
- ▶ **Creating a paid family and medical leave insurance program** – The Family And Medical Insurance Leave (FAMILY) Act (H.R. 947/S. 337) would create a national paid leave insurance program, modeled on successful programs in California, New Jersey, Rhode Island and, soon, New York. It would allow workers to earn a portion of their pay while they take time away from work to care for a new child; care for a seriously ill family member; address their own serious health condition; or manage certain military caregiving responsibilities.
- ▶ **Expanding the Family and Medical Leave Act** – The 1993 Family and Medical Leave Act’s (FMLA) guarantee of job protection should be made available to workers in smaller businesses and those who work part time. FMLA leave should be available to workers who need to care for grandparents, grandchildren, siblings, in-laws and domestic partners. And the law should cover time for bereavement, for parents to meet with a child’s teachers or school administrators, and for survivors of domestic violence, sexual assault or stalking.
- ▶ **Raising the minimum wage** – Workers, including tipped workers, badly need an increase in the federal minimum wage to \$15 over time. Studies show the current minimum wage is not livable, and the tipped minimum wage has not been raised in more than 20 years.
- ▶ **Promoting fair pay** – The Paycheck Fairness Act (H.R. 1619/S. 862 in the 114th Congress) would help women challenge and eliminate discriminatory pay practices in the workplace, limit the use of salary history in hiring and compensation decisions, help train women and girls to negotiate salaries, support government collection of critical wage data and reward employers that have good pay practices
- ▶ **Ensuring fair scheduling practices** – The Schedules That Work Act (H.R. 3071/S. 1772 in the 114th Congress) would give workers more control over their schedules and offer workers predictability and stability in shifts and work hours, consistent with FLSA protections.

¹ U.S. Bureau of Labor Statistics. (2016, November). *Highlights of Women’s Earnings in 2015*. Retrieved 30 March 2017, from <https://www.bls.gov/opub/reports/womens-earnings/2015/home.htm> (calculation is based on a median hourly wage of \$14.91 for full-time and part-time workers aged 25 or older in a sole or principal job who are paid hourly rates)

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at NationalPartnership.org.

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