

H.R. 5656 Undermines Overtime Law, Giving Workers Less Flexibility and Less Pay

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H.R. 5656 sets up a dangerous false choice between time and money, when working families urgently need both. This bill does not meet the needs of working people or promote flexible workplaces. Instead, it would erode workers' rights under the Fair Labor Standards Act and undermine hourly workers' ability to make ends meet, plan for family time, and have predictability, stability and true flexibility at work.

To support working people, 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.

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

H.R. 5656 (the misnamed 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.

- H.R. 5656, introduced by Rep. Martha Roby (Ala.-2), 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"). This proposal threatens a core principle of labor law in the United States: the 40-hour workweek.
- 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.
- Nothing in the FLSA prevents employers from offering paid time off if they choose to do so, or from allowing workers flexibility in their work schedules.

H.R. 5656 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, harming workers' ability to secure child care, budget for basic expenses or pursue education or job training. It would also create financial turmoil for workers who depend on overtime pay to make ends meet. This proposal would especially harm Black women and Latinas, who are disproportionately represented in lower-wage jobs with unpredictable scheduling practices and disproportionately subject to unstable schedules, even compared to coworkers at the same employer.¹
- 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 inadequate 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 \$2,600.²

The Wrong Approach for Working Families

H.R. 5656 would:

- Substitute comp time for overtime pay by allowing 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.

- Not guarantee any right of leave when it is needed. It would 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.
- Jeopardize a worker's careful planning for time off for a parental leave or a major health event such as surgery by allowing employers to unilaterally decide to pay workers for any earned comp time that has been banked beyond 80 hours.
- Give employers up to 30 days to comply after workers request that their banked comp time be paid out in cash rather than time off.
- Denies workers the right to more accessible agency means to vindicate their rights. Even though it would provide workers the right to sue if they are intimidated, threatened or coerced into requesting or not requesting a comp time agreement, it would not permit a worker to use more cost-effective administrative remedies through the U.S. Department of Labor (DOL).
- Despite adding significant complexities to the FLSA, provide no additional funding to DOL for investigation, enforcement or education.

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.

Working people need policies that are available to everyone and reflect their needs, 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. 1784/S. 840) 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. Workers at places of employment with fewer than 15 employees would earn seven unpaid, job-protected sick days.
- **Creating a paid family and medical leave insurance program** – The Family And Medical Insurance Leave (FAMILY) Act (H.R. 1185/S. 463) would create a national paid leave insurance program, modeled on successful programs in California, New Jersey, Rhode Island, New York and Washington state. 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, domestic partners and other family members, including individuals who are like family to them. And the law should cover time for parents to meet with a child’s teachers or school administrators or for elder care needs.
- **Raising the minimum wage** – The Raise the Wage Act (H.R. 582/S. 150) would increase the federal minimum wage to \$15 an hour over a seven-year period and gradually eliminate the subminimum wage for tipped workers and workers with disabilities.
- **Promoting fair pay** – The Paycheck Fairness Act (H.R. 7/S. 270), which was passed with bipartisan support in the House and is pending in the Senate, 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. 5004) would give workers more control over their schedules and offer workers predictability and stability in shifts and work hours, consistent with FLSA protections.

¹ Robbins, K. G., & Vogtman, J. (2016, April). *Low-Wage Jobs Held Primarily by Women Will grow the Most Over the Next Decade*. Retrieved 5 February 2020, from National Women’s Law Center website: <https://nwlc.org/wp-content/uploads/2016/04/Low-Wage-Jobs-Held-Primarily-by-Women-Will-Grow-the-Most-Over-the-Next-Decade.pdf>; Golden, L. (2016, December 5). *Still falling short on hours and pay*. Retrieved 5 February 2020, from Economic Policy Institute website: <https://www.epi.org/files/pdf/114028.pdf>; Schneider, D., & Harknett, K. (2019). *It’s About Time: How Work Schedule Instability Matters for Workers, Families, and Racial Inequality*. The Shift Project Publication. Retrieved 6 February 2020, from University of California, Berkeley website: <https://shift.berkeley.edu/its-about-time-how-work-schedule-instability-matters-for-workers-families-and-racial-inequality/>

² U.S. Bureau of Labor Statistics. (2019, November). *Highlights of Women’s Earnings in 2018 (Table 8, Median hourly earnings of wage and salary workers paid hourly rates, by selected characteristics, 2018 annual average)*. Retrieved 6 February 2020, from <https://www.bls.gov/opub/reports/womens-earnings/2018/home.htm> (calculation is based on a median hourly wage of \$16.11 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 all people meet the dual demands of work and family. More information is available at NationalPartnership.org.

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