H. R. 1180

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2017

Mrs. ROBY introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector.

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 “Working Families Flexibility Act of 2017”.

SEC. 2. COMPENSATORY TIME.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:
“(s) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

“(1) GENERAL RULE.—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 overtime compensation is required by this section.

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

“(A) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

“(B) in the case of employees who are not represented by a labor organization that has been certified or recognized as the representative of such employees under applicable law, an agreement arrived at between the employer and employee before the performance of the work and affirmed by a written or otherwise verifi-
ble record maintained in accordance with section 11(c)—

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

“(ii) entered into knowingly and voluntarily by such employees and not as a condition of employment.

No employee may receive or agree to receive compensatory time off under this subsection unless the employee has worked at least 1,000 hours for the employee’s employer during a period of continuous employment with the employer in the 12-month period before the date of agreement or receipt of compensatory time off.

“(3) HOUR LIMIT.—

“(A) MAXIMUM HOURS.—An employee may accrue not more than 160 hours of compensatory time.

“(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 pre-
ceeding year at the rate prescribed by paragraph
(6). An employer may designate and commun-
icate to the employer’s employees 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 em-
ployer may provide monetary compensation for
an employee’s unused compensatory time in ex-
cess of 80 hours at any time after giving the
employee at least 30 days notice. Such com-
pensation shall be provided at the rate pre-
scribed by paragraph (6).

“(D) Policy.—Except where a collective
bargaining agreement provides otherwise, an
employer that has adopted a policy offering
compensatory time to employees may dis-
continue such policy upon giving employees 30
days notice.

“(E) Written Request.—An employee
may withdraw an agreement described in para-
graph (2)(B) at any time. An employee may
also request in writing that monetary com-
pensation be provided, at any time, for all compensatory time accrued that has not yet been used. Within 30 days of receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

“(4) **PRIVATE EMPLOYER ACTIONS.**—An employer that provides compensatory time 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—

“(A) interfering with such employee’s rights under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours; or

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

“(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 in accordance with paragraph (6).
“(6) RATE OF COMPENSATION.—

“(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 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 shall be considered unpaid 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,

shall be permitted by the employee’s employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer.
“(8) DEFINITIONS.—For purposes of this sub-
section—

“(A) the term ‘employee’ does not include
an employee of a public agency; and

“(B) the terms ‘overtime compensation’
and ‘compensatory time’ shall have the mean-
ings given such terms by subsection (o)(7).”.

SEC. 3. REMEDIES.

Section 16 of the Fair Labor Standards Act of 1938
(29 U.S.C. 216) is amended—

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

(2) by adding at the end the following:

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

SEC. 4. NOTICE TO EMPLOYEES.

Not later than 30 days after the date of enactment
of this Act, the Secretary of Labor shall revise the mate-
rials the Secretary provides, under regulations published in section 516.4 of title 29, Code of Federal Regulations, 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 Act.

SEC. 5. GAO REPORT.

Beginning 2 years after the date of enactment of this Act and each of the 3 years thereafter, the Comptroller General shall submit a report to Congress providing, with respect to the reporting period immediately prior to each such report—

(1) data concerning the extent to which employers provide compensatory time pursuant to section 7(s) of the Fair Labor Standards Act of 1938, as added by this Act, and the extent to which employees opt to receive compensatory time;

(2) the number of complaints alleging a violation of such section filed by any employee with the Secretary of Labor;

(3) the number of enforcement actions commenced by the Secretary or commenced by the Secretary on behalf of any employee for alleged violations of such section;
(4) the disposition or status of such complaints and actions described in paragraphs (2) and (3); and

(5) an account of any unpaid wages, damages, penalties, injunctive relief, or other remedies obtained or sought by the Secretary in connection with such actions described in paragraph (3).

SEC. 6. SUNSET.

This Act and the amendments made by this Act shall expire 5 years after the date of enactment of this Act.