

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1180
OFFERED BY MR. BYRNE**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Working Families
3 Flexibility Act of 2017”.

4 SEC. 2. COMPENSATORY TIME.

5 Section 7 of the Fair Labor Standards Act of 1938
6 (29 U.S.C. 207) is amended by adding at the end the fol-
7 lowing:

8 “(s) COMPENSATORY TIME OFF FOR PRIVATE EM-
9 PLOYEES.—

10 “(1) GENERAL RULE.—An employee may re-
11 ceive, in accordance with this subsection and in lieu
12 of monetary overtime compensation, compensatory
13 time off at a rate not less than one and one-half
14 hours for each hour of employment for which over-
15 time compensation is required by this section.

16 “(2) CONDITIONS.—An employer may provide
17 compensatory time to employees under paragraph

1 (1) only if such time is provided in accordance
2 with—

3 “(A) applicable provisions of a collective
4 bargaining agreement between the employer
5 and the labor organization that has been cer-
6 tified or recognized as the representative of the
7 employees under applicable law; or

8 “(B) in the case of employees who are not
9 represented by a labor organization that has
10 been certified or recognized as the representa-
11 tive of such employees under applicable law, an
12 agreement arrived at between the employer and
13 employee before the performance of the work
14 and affirmed by a written or otherwise
15 verifiable record maintained in accordance with
16 section 11(c)—

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

21 “(ii) entered into knowingly and vol-
22 untarily by such employees and not as a
23 condition of employment.

24 No employee may receive or agree to receive com-
25 pensatory time off under this subsection unless the

1 employee has worked at least 1,000 hours for the
2 employee's employer during a period of continuous
3 employment with the employer in the 12-month pe-
4 riod before the date of agreement or receipt of com-
5 pensatory time off.

6 “(3) HOUR LIMIT.—

7 “(A) MAXIMUM HOURS.—An employee
8 may accrue not more than 160 hours of com-
9 pensatory time.

10 “(B) COMPENSATION DATE.—Not later
11 than January 31 of each calendar year, the em-
12 ployee's employer shall provide monetary com-
13 pensation for any unused compensatory time off
14 accrued during the preceding calendar year that
15 was not used prior to December 31 of the pre-
16 ceding year at the rate prescribed by paragraph
17 (6). An employer may designate and commu-
18 nicate to the employer's employees a 12-month
19 period other than the calendar year, in which
20 case such compensation shall be provided not
21 later than 31 days after the end of such 12-
22 month period.

23 “(C) EXCESS OF 80 HOURS.—The em-
24 ployer may provide monetary compensation for
25 an employee's unused compensatory time in ex-

1 cess of 80 hours at any time after giving the
2 employee at least 30 days notice. Such com-
3 pensation shall be provided at the rate pre-
4 scribed by paragraph (6).

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

11 “(E) WRITTEN REQUEST.—An employee
12 may withdraw an agreement described in para-
13 graph (2)(B) at any time. An employee may
14 also request in writing that monetary com-
15 pensation be provided, at any time, for all com-
16 pensatory time accrued that has not yet been
17 used. Within 30 days of receiving the written
18 request, the employer shall provide the em-
19 ployee the monetary compensation due in ac-
20 cordance with paragraph (6).

21 “(4) PRIVATE EMPLOYER ACTIONS.—An em-
22 ployer that provides compensatory time under para-
23 graph (1) to employees shall not directly or indi-
24 rectly intimidate, threaten, or coerce or attempt to

1 intimidate, threaten, or coerce any employee for the
2 purpose of—

3 “(A) interfering with such employee’s
4 rights under this subsection to request or not
5 request compensatory time off in lieu of pay-
6 ment of monetary overtime compensation for
7 overtime hours; or

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

10 “(5) TERMINATION OF EMPLOYMENT.—An em-
11 ployee who has accrued compensatory time off au-
12 thorized to be provided under paragraph (1) shall,
13 upon the voluntary or involuntary termination of
14 employment, be paid for the unused compensatory
15 time in accordance with paragraph (6).

16 “(6) RATE OF COMPENSATION.—

17 “(A) GENERAL RULE.—If compensation is
18 to be paid to an employee for accrued compen-
19 satory time off, such compensation shall be paid
20 at a rate of compensation not less than—

21 “(i) the regular rate earned by such
22 employee when the compensatory time was
23 accrued; or

1 “(ii) the regular rate earned by such
2 employee at the time such employee re-
3 ceived payment of such compensation,
4 whichever is higher.

5 “(B) CONSIDERATION OF PAYMENT.—Any
6 payment owed to an employee under this sub-
7 section for unused compensatory time shall be
8 considered unpaid overtime compensation.

9 “(7) USE OF TIME.—An employee—

10 “(A) who has accrued compensatory time
11 off authorized to be provided under paragraph
12 (1); and

13 “(B) who has requested the use of such
14 compensatory time,
15 shall be permitted by the employee’s employer to use
16 such time within a reasonable period after making
17 the request if the use of the compensatory time does
18 not unduly disrupt the operations of the employer.

19 “(8) DEFINITIONS.—For purposes of this sub-
20 section—

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

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

1 **SEC. 3. REMEDIES.**

2 Section 16 of the Fair Labor Standards Act of 1938
3 (29 U.S.C. 216) is amended—

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

7 (2) by adding at the end the following:

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

16 **SEC. 4. NOTICE TO EMPLOYEES.**

17 Not later than 30 days after the date of enactment
18 of this Act, the Secretary of Labor shall revise the mate-
19 rials the Secretary provides, under regulations published
20 in section 516.4 of title 29, Code of Federal Regulations,
21 to employers for purposes of a notice explaining the Fair
22 Labor Standards Act of 1938 to employees so that such
23 notice reflects the amendments made to such Act by this
24 Act.

1 **SEC. 5. GAO REPORT.**

2 Beginning 2 years after the date of enactment of this
3 Act and each of the 3 years thereafter, the Comptroller
4 General of the United States shall submit a report to Con-
5 gress providing, with respect to the reporting period imme-
6 diately prior to each such report—

7 (1) data concerning the extent to which employ-
8 ers provide compensatory time pursuant to section
9 7(s) of the Fair Labor Standards Act of 1938, as
10 added by this Act, and the extent to which employ-
11 ees opt to receive compensatory time;

12 (2) the number of complaints alleging a viola-
13 tion of such section filed by any employee with the
14 Secretary of Labor;

15 (3) the number of enforcement actions com-
16 menced by the Secretary or commenced by the Sec-
17 retary on behalf of any employee for alleged viola-
18 tions of such section;

19 (4) the disposition or status of such complaints
20 and actions described in paragraphs (2) and (3); and

21 (5) an account of any unpaid wages, damages,
22 penalties, injunctive relief, or other remedies ob-
23 tained or sought by the Secretary in connection with
24 such actions described in paragraph (3).

1 **SEC. 6. SUNSET.**

2 This Act and the amendments made by this Act shall
3 cease to be in effect on the date that is 5 years after the
4 date of enactment of this Act.

