

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1406  
OFFERED BY MRS. ROBY**

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 2013”.

**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)(A) 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 ceeding 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 received by such  
22 employee when the compensatory time was  
23 earned; or

24 “(ii) the final regular rate received by  
25 such employee,

1           whichever is higher.

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

6                   “(7) USE OF TIME.—An employee—

7                           “(A) who has accrued compensatory time  
8           off authorized to be provided under paragraph  
9           (1); and

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

16                   “(8) DEFINITIONS.—For purposes of this sub-  
17           section—

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

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

23   **SEC. 3. REMEDIES.**

24           Section 16 of the Fair Labor Standards Act of 1938  
25   (29 U.S.C. 216) is amended—

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

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

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

13   **SEC. 4. NOTICE TO EMPLOYEES.**

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

22   **SEC. 5. SUNSET.**

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

