

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

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Despite its name, the Cantor/Roby Working Families Flexibility Act of 2013 sets up a dangerous false choice between time and money, when working families really 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 ensure that workers have fair wages and time to care for themselves and their families.

Background

The Working Families Flexibility Act (H.R. 1406), introduced by Martha Roby (R – Ala.), 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 proposal is a centerpiece of House Majority Leader Eric Cantor’s “make life work” agenda.

The Working Families Flexibility Act:

- ▶ Allows employers to offer comp time in lieu of time-and-a-half pay to hourly, non-supervisory (“non-exempt”) workers who work more than 40 hours in a week.
- ▶ Allows 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 is no remedy for a worker whose request to use comp time is denied other than requesting a cash-out for the unused time.
- ▶ Allows 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 surgery.
- ▶ Allows workers to request that their banked comp time be paid out in cash rather than time off, but gives employers up to 30 days to comply.
- ▶ Provides workers the right to sue if they are intimidated, threatened or coerced into requesting or not requesting a comp time agreement, but does not permit a worker to use more cost-effective administrative remedies through the Department of Labor.

- ▶ Provides no additional funding to the Department of Labor 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 erodes the basic guarantees of the Fair Labor Standards Act: fair pay for overtime work and time off from work.

- ▶ Seventy-five 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 hourly 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 mis-named Working Families Flexibility Act will mean a pay cut for workers without any guaranteed flexibility or time off. If the proposal is adopted, workers will 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 employer says no – even if they need it to attend a parent-teacher conference, help an aging parent relocate to a nursing home, care for a new baby, recover from their own serious illness or to simply take a day off.

The proposal provides 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 – is too costly, protracted and risky for a typical hourly employee to pursue.
- ▶ Employees have no remedy for denied comp time requests other than asking to have the value of the time cashed out. Even then, employers have 30 days to cash out the value of the wages earned through overtime work, despite workers' more immediate financial needs.
- ▶ Workers whose employers go out of business or bankrupt have no recourse to recover the value of their banked time. One-hundred-sixty hours of lost comp time (the maximum allowed) would mean a loss of more than \$2,200 for a typical hourly worker.¹ Each year, on average, more than three million workers lose their jobs when businesses close. Even at the peak of the last business cycle (2006 – 2007), about 600,000 firms, employing 3.4 million workers, went out of business.²

Real Solutions Provide Workers Fair Pay and More Time

Rather than forced choices and false promises, workers need wages that are fair and public policies that provide time to care for themselves and their families.

Truly family friendly policies must be available to all workers and reflect the needs of today's families, including financial stability and the ability to care for children, elderly relatives and other family members while being productive, responsible employees. These solutions include:

- ▶ **Raising the Minimum Wage** – The Fair Minimum Wage Act (H.R. 1010/S. 5460) would provide a badly needed update to the federal minimum wage for all workers, including tipped workers. Studies show that the current minimum wage is not enough to live on, and the tipped minimum wage has not been raised in more than 20 years.
- ▶ **Promoting Fair Pay** – The Paycheck Fairness Act (H.R. 377/S. 460) would help women challenge and eliminate discriminatory pay practices in the workplace, help train women and girls to negotiate salaries, support government collection of critical wage data and reward employers that have good pay practices.
- ▶ **Guaranteeing Paid Sick Days** – The Healthy Families Act (H.R. 1286/S. 631) 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, to seek routine medical care or to obtain assistance related to domestic violence, sexual assault or stalking. Employers that already provide this type of leave would not have to provide additional sick time, and small businesses with fewer than 15 employees would be exempt.
- ▶ **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 a small number of hours of leave each year for parents to meet with their child's teachers or school administrators and for survivors of domestic violence, sexual assault or stalking to seek assistance.
- ▶ **Creating a Paid Family and Medical Leave Insurance Program** – A national paid family and medical leave insurance program, modeled on successful programs in California and New Jersey, would allow workers to earn a portion of their pay while they take a limited amount of time away from work to care for a newborn or newly adopted child or newly placed foster child; care for a family member with a serious health condition; address their own serious health condition; or deal with exigencies arising from a military service member's deployment.
- ▶ **Ensuring fair scheduling practices** – Workers should not be penalized for refusing overtime and public policies should create barriers to just-in-time scheduling and on-call shifts, which result in underemployment, lost opportunities and extra expenses for workers. Policies should encourage predictability and true flexibility in workers' ability to vary their work hours, consistent with current FLSA protections.

1 Based on a median hourly wage of \$14.12 for an hourly worker age 25+ in 2011, as reported in U.S. Bureau of Labor Statistics. (2012, October). *Highlights of Women's Earnings in 2011*, p. 46. Retrieved 5 April 2013, from <http://www.bls.gov/cps/cpswom2011.pdf>

2 U.S. Census Bureau. (2012). *Firm Births and Deaths by Employment Size of Enterprise: 1990 – 2007 (Table 765)*. Retrieved 5 April 2013, from <http://www.census.gov/compendia/statab/2012/tables/12s0765.pdf>

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 www.NationalPartnership.org.

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