

Bill Allowing Private Employers to Offer Comp Time Approved by House, Heads to Senate

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Private-sector employers soon may be able to grant compensatory time in lieu of overtime pay to employees.

On May 3, 2017, the House of Representatives passed the Working Families Flexibility Act ([H.R. 1180, S. 801](#)) by a vote of 229 to 117. The Act would amend the Fair Labor Standards Act to allow private-sector employers to grant compensatory time (or “comp time”) in lieu of paying overtime to hourly workers. Public-sector employers have had that ability since 1985.

Under federal law, non-exempt employees must receive overtime pay at one-and-one-half times their regular rate of pay for each hour worked over 40 in a workweek. The proposed change would give employees a second option. If the employer and employee agree in writing, the employee can receive 1.5 hours of compensatory time for each overtime hour worked. The employee may use the accrued comp time as paid time off in subsequent weeks, so long as the “use of the compensatory time does not unduly disrupt the operations of the employer.” Proponents of the measure say that accruing compensatory time gives employees more flexibility and helps maintain work-life balance.

The comp time would be paid at the employee’s regular rate of pay during the week in which it was earned, or the week in which it was used, whichever is higher. Employees would be able to accrue up to 160 hours of compensatory time. Employers would be required to cash out accrued compensatory time at the end of each year and at the end of an employee’s employment.

The measure would need to be passed by the Senate, where it would require some Democratic support to avoid a filibuster, and signed by the President before it becomes law. The White House has issued a statement supporting the bill, making it likely that the President would sign it if the bill were approved by the Senate. If enacted, the law would have to be reauthorized after five years, following a study on its impacts and enforcement.

Employers should be mindful that many states have their own overtime laws that may not permit the use of compensatory time.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

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