

114TH CONGRESS
1ST SESSION

S. 803

To amend the Fair Labor Standards Act of 1938 to provide employees in the private sector with an opportunity for compensatory time off, similar to the opportunity offered to Federal employees, and a flexible credit hour program to help balance the demands of work and family, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2015

Ms. AYOTTE (for herself, Mr. MCCONNELL, and Mr. ISAKSON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to provide employees in the private sector with an opportunity for compensatory time off, similar to the opportunity offered to Federal employees, and a flexible credit hour program to help balance the demands of work and family, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Friendly and
5 Workplace Flexibility Act of 2015”.

1 **SEC. 2. COMPENSATORY TIME.**

2 Section 7 of the Fair Labor Standards Act of 1938
 3 (29 U.S.C. 207) is amended by adding at the end the fol-
 4 lowing:

5 “(s) COMPENSATORY TIME FOR PRIVATE EMPLOY-
 6 EES.—

7 “(1) DEFINITIONS.—In this subsection—

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

10 “(B) the terms ‘overtime compensation’,
 11 ‘compensatory time’, and ‘compensatory time
 12 off’ have the meaning given the terms in sub-
 13 section (o)(7).

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

20 “(3) AGREEMENT REQUIRED.—An employer
 21 may provide compensatory time off to an employee
 22 under paragraph (2) only in accordance with—

23 “(A) applicable provisions of a collective
 24 bargaining agreement between an employer and
 25 a labor organization that has been certified or

1 recognized as the representative of the employ-
2 ees of the employer under applicable law; or

3 “(B) in the case of an employee who is not
4 represented by a labor organization described in
5 subparagraph (A), an agreement between the
6 employer and employee arrived at before the
7 performance of the work—

8 “(i) in which the employer has offered
9 and the employee has chosen to receive
10 compensatory time off under this sub-
11 section in lieu of monetary overtime com-
12 pensation;

13 “(ii) that the employee enters into
14 knowingly, voluntarily, and not as a condi-
15 tion of employment; and

16 “(iii) that is affirmed by a written or
17 otherwise verifiable record maintained in
18 accordance with section 11(c).

19 “(4) HOUR LIMIT.—An employee may accrue
20 not more than 160 hours of compensatory time
21 under this subsection, and shall receive overtime
22 compensation for any such compensatory time in ex-
23 cess of 160 hours.

24 “(5) UNUSED COMPENSATORY TIME.—

25 “(A) COMPENSATION PERIOD.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), not later than January
3 31 of each calendar year, the employer of
4 the employee shall provide monetary com-
5 pensation for any unused compensatory
6 time under this subsection accrued during
7 the preceding calendar year that the em-
8 ployee did not use prior to December 31 of
9 the preceding year at the rate prescribed
10 by paragraph (7)(A).

11 “(ii) ALTERNATIVE COMPENSATION
12 PERIOD.—An employer may designate and
13 communicate to an employee a 12-month
14 period other than the calendar year for de-
15 termining unused compensatory time under
16 this subsection, and the employer shall
17 provide monetary compensation not later
18 than 31 days after the end of such 12-
19 month period at the rate prescribed by
20 paragraph (7)(A).

21 “(B) EXCESS OF 80 HOURS.—An employer
22 may provide monetary compensation, at the
23 rate prescribed by paragraph (7)(A), for any
24 unused compensatory time under this sub-
25 section of an employee in excess of 80 hours at

1 any time after providing the employee notice
2 that is not later than 30 days prior to providing
3 such compensation.

4 “(C) TERMINATION OF EMPLOYMENT.—
5 Upon the voluntary or involuntary termination
6 of an employee, the employer of such employee
7 shall provide monetary compensation at the rate
8 prescribed by paragraph (7)(A) for any unused
9 compensatory time under this subsection.

10 “(6) WITHDRAWAL OF COMPENSATORY TIME
11 AGREEMENT.—

12 “(A) EMPLOYER.—Except where a collec-
13 tive bargaining agreement provides otherwise,
14 an employer that has adopted a policy of offer-
15 ing compensatory time to employees under this
16 subsection may discontinue such policy after
17 providing to such employees notice that is not
18 later than 30 days prior to discontinuing the
19 policy.

20 “(B) EMPLOYEE.—

21 “(i) IN GENERAL.—An employee may
22 withdraw an agreement described in para-
23 graph (3)(B) after providing notice to the
24 employer of the employee 30 days prior to
25 the withdrawal.

1 “(ii) REQUEST FOR MONETARY COM-
2 PENSATION.—At any time, an employee
3 may request in writing monetary com-
4 pensation for any accrued and unused
5 compensatory time under this subsection.
6 The employer of such employee shall pro-
7 vide monetary compensation at the rate
8 prescribed by paragraph (7)(A) not later
9 than 30 days after receiving the written re-
10 quest.

11 “(7) MONETARY COMPENSATION.—

12 “(A) RATE OF COMPENSATION.—An em-
13 ployer providing monetary compensation to an
14 employee for accrued compensatory time under
15 this subsection shall compensate the employee
16 at a rate not less than the greater of—

17 “(i) the regular rate of the employee
18 on the date the employee earned such com-
19 pensatory time; or

20 “(ii) the final regular rate received by
21 such employee.

22 “(B) TREATMENT AS UNPAID OVER-
23 TIME.—Any monetary payment owed to an em-
24 ployee for unused compensatory time under this
25 subsection, as calculated in accordance with

1 subparagraph (A), shall be considered unpaid
2 overtime compensation for the purposes of this
3 Act.

4 “(8) USING COMPENSATORY TIME.—An em-
5 ployer shall permit an employee to take time off
6 work for compensatory time accrued under para-
7 graph (2) within a reasonable time after the em-
8 ployee makes a request for using such compensatory
9 time if the use does not unduly disrupt the oper-
10 ations of the employer.

11 “(9) PROHIBITION OF COERCION.—

12 “(A) IN GENERAL.—An employer that pro-
13 vides compensatory time under paragraph (2)
14 shall not directly or indirectly intimidate,
15 threaten, or coerce, or attempt to intimidate,
16 threaten, or coerce, any employee for the pur-
17 pose of interfering with the rights of an em-
18 ployee under this subsection—

19 “(i) to use accrued compensatory time
20 in accordance with paragraph (8) in lieu of
21 receiving monetary compensation;

22 “(ii) to refrain from using accrued
23 compensatory time in accordance with
24 paragraph (8) and receive monetary com-
25 pensation; or

1 “(iii) to refrain from entering into an
2 agreement to accrue compensatory time
3 under this subsection.

4 “(B) DEFINITION.—In subparagraph (A),
5 the term ‘intimidate, threaten, or coerce’ in-
6 cludes—

7 “(i) promising to confer or conferring
8 any benefit, such as appointment, pro-
9 motion, or compensation; or

10 “(ii) effecting or threatening to effect
11 any reprisal, such as deprivation of ap-
12 pointment, promotion, or compensation.”.

13 **SEC. 3. FLEXIBLE CREDIT HOUR PROGRAM.**

14 Section 7 of the Fair Labor Standards Act of 1938
15 (29 U.S.C. 207), as amended by section 2, is further
16 amended by adding at the end the following:

17 “(t) FLEXIBLE CREDIT HOUR PROGRAM.—

18 “(1) DEFINITIONS.—In this subsection—

19 “(A) the term ‘at the election of’, used
20 with respect to an employee, means at the ini-
21 tiative of, and at the request of, the employee;

22 “(B) the term ‘basic work requirement’
23 means the number of hours, excluding overtime
24 hours, that an employee is required to work or

1 is required to account for by leave or otherwise
2 within a specified period of time;

3 “(C) the term ‘employee’ does not include
4 an employee of a public agency;

5 “(D) the term ‘flexible credit hour’ means
6 any hour that an employee, who is participating
7 in a flexible credit hour program, works in ex-
8 cess of the basic work requirement; and

9 “(E) the term ‘overtime compensation’ has
10 the meaning given the term in subsection
11 (o)(7).

12 “(2) PROGRAM ESTABLISHMENT.—An employer
13 may establish a flexible credit hour program for an
14 employee to accrue flexible credit hours in accord-
15 ance with this subsection and, in lieu of monetary
16 compensation, reduce the number of hours the em-
17 ployee works in a subsequent day or week at a rate
18 of one hour for each hour of employment for which
19 overtime compensation is required by this section.

20 “(3) AGREEMENT REQUIRED.—

21 “(A) IN GENERAL.—An employer may
22 carry out a flexible credit hour program under
23 paragraph (2) only in accordance with—

24 “(i) applicable provisions of a collec-
25 tive bargaining agreement between an em-

1 ployer and a labor organization that has
2 been certified or recognized as the rep-
3 resentative of the employees of the em-
4 ployer under applicable law; or

5 “(ii) in the case of an employee who
6 is not represented by a labor organization
7 described in clause (i), an agreement be-
8 tween the employer and the employee ar-
9 rived at before the performance of the
10 work that—

11 “(I) the employee enters into
12 knowingly, voluntarily, and not as a
13 condition of employment; and

14 “(II) is affirmed by a written
15 statement maintained in accordance
16 with section 11(c).

17 “(B) HOURS DESIGNATED.—An agreement
18 that is entered into under subparagraph (A)
19 shall provide that, at the election of the em-
20 ployee, the employer and the employee will
21 jointly designate flexible credit hours for the
22 employee to work within an applicable period of
23 time.

24 “(4) HOUR LIMIT.—An employee participating
25 in a flexible credit hour program may not accrue

1 more than 50 flexible credit hours, and shall receive
2 overtime compensation for flexible credit hours in
3 excess of 50 hours.

4 “(5) UNUSED FLEXIBLE CREDIT HOURS.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), not later than January 31 of
7 each calendar year, the employer of an em-
8 ployee who is participating in a flexible credit
9 hour program shall provide monetary com-
10 pensation for any flexible credit hour accrued
11 during the preceding calendar year that the em-
12 ployee did not use prior to December 31 of the
13 preceding calendar year at a rate prescribed by
14 paragraph (7)(A)(i).

15 “(B) ALTERNATIVE COMPENSATION PE-
16 RIOD.—An employer may designate and com-
17 municate to the employees of the employer a
18 12-month period other than the calendar year
19 for determining unused flexible credit hours,
20 and the employer shall provide monetary com-
21 pensation, at a rate prescribed by paragraph
22 (7)(A)(i), not later than 31 days after the end
23 of the 12-month period.

24 “(6) PROGRAM DISCONTINUANCE AND WITH-
25 DRAWAL.—

1 “(A) EMPLOYER.—An employer that has
2 established a flexible credit hour program under
3 paragraph (2) may discontinue a flexible credit
4 hour program for employees described in para-
5 graph (3)(A)(ii) after providing notice to such
6 employees not later than 30 days prior to dis-
7 continuing such program.

8 “(B) EMPLOYEE.—

9 “(i) IN GENERAL.—An employee may
10 withdraw an agreement described in para-
11 graph (3)(A)(ii) at any time by submitting
12 written notice of withdrawal to the em-
13 ployer of the employee not later than 30
14 days prior to the withdrawal.

15 “(ii) REQUEST FOR MONETARY COM-
16 PENSATION.—An employee may request in
17 writing, at any time, that the employer of
18 such employee provide monetary compensa-
19 tion for all accrued and unused flexible
20 credit hours. Not later than 30 days after
21 receiving such written request, the em-
22 ployer shall provide the employee monetary
23 compensation for such unused flexible
24 credit hours at a rate prescribed by para-
25 graph (7)(A)(i).

1 “(7) MONETARY COMPENSATION.—

2 “(A) FLEXIBLE CREDIT HOURS.—

3 “(i) RATE OF COMPENSATION.—An
4 employer providing monetary compensation
5 to an employee for accrued flexible credit
6 hours shall compensate such employee at a
7 rate not less than the regular rate of the
8 employee on the date the employee receives
9 the monetary compensation.

10 “(ii) TREATMENT AS UNPAID OVER-
11 TIME.—Any monetary payment owed to an
12 employee for unused flexible credit hours
13 under this subsection, as calculated in ac-
14 cordance with clause (i), shall be consid-
15 ered unpaid overtime compensation for the
16 purposes of this Act.

17 “(B) OVERTIME HOURS.—

18 “(i) IN GENERAL.—Any hour that an
19 employee works in excess of 40 hours in a
20 workweek that is requested in advance by
21 the employer, other than a flexible credit
22 hour, shall be an ‘overtime hour’.

23 “(ii) RATE OF COMPENSATION.—The
24 employee shall be compensated for each
25 overtime hour at a rate not less than one

1 and one-half times the regular rate at
2 which the employee is employed, in accord-
3 ance with subsection (a)(1), or receive
4 compensatory time off in accordance with
5 subsection (s), for each such overtime
6 hour.

7 “(8) USE OF FLEXIBLE CREDIT HOURS.—An
8 employer shall permit an employee to use accrued
9 flexible credit hours to take time off work, in accord-
10 ance with the rate prescribed by paragraph (2),
11 within a reasonable time after the employee makes
12 a request for such use if the use does not unduly
13 disrupt the operations of the employer.

14 “(9) PROHIBITION OF COERCION.—

15 “(A) IN GENERAL.—An employer shall not
16 directly or indirectly intimidate, threaten, or co-
17 erce, or attempt to intimidate, threaten, or co-
18 erce, any employee for the purpose of inter-
19 fering with the rights of the employee under
20 this subsection—

21 “(i) to elect or not to elect to partici-
22 pate in a flexible credit hour program, or
23 to elect or not to elect to work flexible
24 credit hours; or

1 “(ii) to use or refrain from using ac-
2 crued flexible credit hours in accordance
3 with paragraph (8).

4 “(B) DEFINITION.—In subparagraph (A),
5 the term ‘intimidate, threaten, or coerce’ has
6 the meaning given the term in subsection
7 (s)(9).”.

8 **SEC. 4. REMEDIES.**

9 Section 16 of the Fair Labor Standards Act of 1938
10 (29 U.S.C. 216) is amended—

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

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

15 “(f) An employer that violates subsection (s)(9) or
16 (t)(9) of section 7 shall be liable to the affected employee
17 in the amount of—

18 “(1) the rate of compensation, determined in
19 accordance with subsection (s)(7)(A) or (t)(7)(A)(i)
20 of section 7, for each hour of unused compensatory
21 time or for each unused flexible credit hour accrued
22 by the employee; and

23 “(2) liquidated damages equal to the amount
24 determined under paragraph (1).”.

1 **SEC. 5. NOTICE TO EMPLOYEES.**

2 Not later than 30 days after the date of enactment
3 of this Act, the Secretary of Labor shall revise the mate-
4 rials the Secretary provides, under regulations contained
5 in section 516.4 of title 29, Code of Federal Regulations,
6 to employers for purposes of a notice explaining the Fair
7 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to
8 employees so that the notice reflects the amendments
9 made to such Act by this Act.

10 **SEC. 6. PROTECTIONS FOR CLAIMS RELATING TO COMPEN-**
11 **SATORY TIME OFF AND FLEXIBLE CREDIT**
12 **HOURS IN BANKRUPTCY PROCEEDINGS.**

13 Section 507(a)(4)(A) of title 11, United States Code,
14 is amended—

15 (1) by striking “and”; and

16 (2) by inserting “, the value of unused, accrued
17 compensatory time off under section 7(s) of the Fair
18 Labor Standards Act of 1938 (29 U.S.C. 207(s)), all
19 of which shall be deemed to have been earned within
20 180 days before the date of the filing of the petition
21 or the date of the cessation of the debtor’s business,
22 whichever occurs first, at a rate of compensation not
23 less than the final regular rate received by such indi-
24 vidual, and the value of unused, accrued flexible
25 credit hours under section 7(t) of the Fair Labor
26 Standards Act of 1938 (29 U.S.C. 207(t)), all of

1 which shall be deemed to have been earned within
2 180 days before the date of the filing of the petition
3 or the date of the cessation of the debtor's business,
4 whichever occurs first, at a rate of compensation de-
5 scribed in paragraph (7)(A)(i) of such section 7(t)"
6 after "sick leave pay".

7 **SEC. 7. GAO REPORT.**

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

13 (1) data concerning the extent to which employ-
14 ers provide compensatory time and flexible credit
15 hours under subsections (s) and (t) of section 7 of
16 the Fair Labor Standards Act of 1938 (29 U.S.C.
17 207), as added by this Act, and the extent to which
18 employees opt to receive compensatory time under
19 subsection (s) and flexible credit hours under sub-
20 section (t);

21 (2) the number of complaints alleging a viola-
22 tion of subsection (s)(9) or (t)(9) of such section
23 filed by any employee with the Secretary of Labor,
24 and the disposition or status of such complaints;

1 (3) the number of enforcement actions com-
2 menced by the Secretary or commenced by the Sec-
3 retary on behalf of any employee for alleged viola-
4 tions of subsection (s)(9) or (t)(9) of such section,
5 and the disposition or status of such actions; and

6 (4) an account of any unpaid wages, damages,
7 penalties, injunctive relief, or other remedies ob-
8 tained or sought by the Secretary in connection with
9 such actions described in paragraph (3).

10 **SEC. 8. SUNSET.**

11 This Act and the amendments made by this Act shall
12 expire on the date that is 5 years after the date of enact-
13 ment of this Act.

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