



BURR ALERT

Bill to Allow Employees to Choose Between Overtime Wages and Paid Time Off Passes in House

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The House has finally taken action on overtime laws, though not the type of action employers have been anticipating over the past few years. On May 2, 2017, the U.S. House of Representatives passed a bill entitled the Working Families Flexibility Act of 2017 (H.R. 1180) by a 229-197 vote. The Working Families Flexibility Act of 2017 ("the Act") would amend the Fair Labor Standards Act ("FLSA") to allow certain employees to choose to take paid time off rather than overtime pay when working more than 40 hours in a workweek. For example, an employee who works 45 hours in a workweek could roll the 5 overtime hours worked into his or her paid time off bank instead of receiving overtime pay for the 5 overtime hours. The overtime hours would be accrued at an overtime rate, which means that the 5 overtime hours would be converted to 7.5 paid time off hours.

Among other things, the Act sets limits on how much time off employees may accrue (160 hours) and makes eligible only employees who have worked at least 1,000 hours during the preceding continuous 12-month period and who have voluntarily agreed (or had their collective bargaining representative agree) in writing to the comp time arrangement. At the end of the year, employers would be required to pay employees for the accrued paid time off. Employers could stop offering comp time as an option to employees upon 30 days' notice of the change in policy.

The bill is sponsored by Rep. Martha Roby, R-Ala., who claims the legislation would be a step toward reforming the "outdated" FLSA and give employees more flexibility. President Donald Trump's White House has also indicated support for the Act. The White House said in a statement that the Act would "help American workers balance the competing demands of family and work by giving them flexibility to earn paid time off – time they can later use for any reason, including family commitments like attending school appointments and caring for a sick child." A similar bill has been introduced in the Senate, but it is unclear when it will be considered. The Senate bill may not be able to collect the 60 votes needed to overcome a filibuster.

Critics of the bill have raised concerns both for employers and employees. Though the bill includes language prohibiting employers from "directly or indirectly" intimidating, threatening, or coercing employees to choose the comp time option or use accrued time, opponents of the bill contend that some low-wage workers who depend on overtime payments may feel pressured by employers to forego the overtime payments. In addition, the bill provides that comp time may be scheduled in a manner that "does not unduly disrupt operations of the employer," but increased paid leave options for employees may leave employers with periodic staffing shortfalls. In addition, because the leave is paid and accrues at an overtime rate, payroll cost savings for employers appear limited.

If the bill becomes law, before implementing a comp time plan, employers will need to consider the effects of additional paid time off on their operations. The comp time agreements may prove a viable

option for employees who work around 40 hours per week, but make less sense for employees who regularly work a significant amount of overtime.

We will continue to monitor the Working Families Flexibility Act of 2017's progress and report any updates.

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