

111TH CONGRESS  
1ST SESSION

# H. R. 933

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2009

Mrs. MCMORRIS RODGERS (for herself, Mr. McKEON, Mr. WILSON of South Carolina, Mr. PAUL, Ms. GRANGER, Mr. BURTON of Indiana, Mr. EHLERS, Mr. MCHENRY, Mr. CONAWAY, Mr. KIRK, Mr. JORDAN of Ohio, Mr. LATTA, Mr. KLINE of Minnesota, and Mr. SOUDER) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector.

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 Work-  
5 place Act”.

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 “(r) COMPENSATORY TIME OFF FOR PRIVATE EM-  
6 PLOYEES.—

7 “(1) GENERAL RULE.—

8 “(A) COMPENSATORY TIME OFF.—An em-  
9 ployee may receive, in accordance with this sub-  
10 section and in lieu of monetary overtime com-  
11 pensation, compensatory time off at a rate not  
12 less than one and one-half hours for each hour  
13 of employment for which overtime compensation  
14 is required by this section.

15 “(B) DEFINITION.—For purposes of this  
16 subsection, the term ‘employee’ does not include  
17 an employee of a public agency.

18 “(2) CONDITIONS.—An employer may provide  
19 compensatory time to employees under paragraph  
20 (1)(A) only if such time is provided in accordance  
21 with—

22 “(A) applicable provisions of a collective  
23 bargaining agreement between the employer  
24 and the labor organization which has been cer-  
25 tified or recognized as the representative of the  
26 employees under applicable law; or

1           “(B) in the case of employees who are not  
2           represented by a labor organization which has  
3           been certified or recognized as the representa-  
4           tive of such employees under applicable law, an  
5           agreement arrived at between the employer and  
6           employee before the performance of the work  
7           and affirmed by a written or otherwise  
8           verifiable record maintained in accordance with  
9           section 11(c)—

10                   “(i) in which the employer has offered  
11                   and the employee has chosen to receive  
12                   compensatory time in lieu of monetary  
13                   overtime compensation; and

14                   “(ii) entered into knowingly and vol-  
15                   untarily by such employees and not as a  
16                   condition of employment.

17           No employee may receive or agree to receive com-  
18           pensatory time off under this subsection unless the  
19           employee has worked at least 1000 hours for the  
20           employee’s employer during a period of continuous  
21           employment with the employer in the 12-month pe-  
22           riod before the date of agreement or receipt of com-  
23           pensatory time off.

24                   “(3) HOUR LIMIT.—

1           “(A) MAXIMUM HOURS.—An employee  
2 may accrue not more than 160 hours of com-  
3 pensatory time.

4           “(B) COMPENSATION DATE.—Not later  
5 than January 31 of each calendar year, the em-  
6 ployee’s employer shall provide monetary com-  
7 pensation for any unused compensatory time off  
8 accrued during the preceding calendar year  
9 which was not used prior to December 31 of the  
10 preceding year at the rate prescribed by para-  
11 graph (6). An employer may designate and  
12 communicate to the employer’s employees a 12-  
13 month period other than the calendar year, in  
14 which case such compensation shall be provided  
15 not later than 31 days after the end of such 12-  
16 month period.

17           “(C) EXCESS OF 80 HOURS.—The em-  
18 ployer may provide monetary compensation for  
19 an employee’s unused compensatory time in ex-  
20 cess of 80 hours at any time after giving the  
21 employee at least 30 days notice. Such com-  
22 pensation shall be provided at the rate pre-  
23 scribed by paragraph (6).

24           “(D) POLICY.—Except where a collective  
25 bargaining agreement provides otherwise, an

1 employer which has adopted a policy offering  
2 compensatory time to employees may dis-  
3 continue such policy upon giving employees 30  
4 days notice.

5 “(E) WRITTEN REQUEST.—An employee  
6 may withdraw an agreement described in para-  
7 graph (2)(B) at any time. An employee may  
8 also request in writing that monetary com-  
9 pensation be provided, at any time, for all com-  
10 pensatory time accrued which has not yet been  
11 used. Within 30 days of receiving the written  
12 request, the employer shall provide the em-  
13 ployee the monetary compensation due in ac-  
14 cordance with paragraph (6).

15 “(4) PRIVATE EMPLOYER ACTIONS.—An em-  
16 ployer which provides compensatory time under  
17 paragraph (1) to employees shall not directly or indi-  
18 rectly intimidate, threaten, or coerce or attempt to  
19 intimidate, threaten, or coerce any employee for the  
20 purpose of—

21 “(A) interfering with such employee’s  
22 rights under this subsection to request or not  
23 request compensatory time off in lieu of pay-  
24 ment of monetary overtime compensation for  
25 overtime hours; or

1           “(B) requiring any employee to use such  
2           compensatory time.

3           “(5) TERMINATION OF EMPLOYMENT.—An em-  
4           ployee who has accrued compensatory time off au-  
5           thorized to be provided under paragraph (1) shall,  
6           upon the voluntary or involuntary termination of  
7           employment, be paid for the unused compensatory  
8           time in accordance with paragraph (6).

9           “(6) RATE OF COMPENSATION.—

10           “(A) GENERAL RULE.—If compensation is  
11           to be paid to an employee for accrued compen-  
12           satory time off, such compensation shall be paid  
13           at a rate of compensation not less than—

14                   “(i) the regular rate received by such  
15                   employee when the compensatory time was  
16                   earned; or

17                   “(ii) the final regular rate received by  
18                   such employee,

19           whichever is higher.

20           “(B) CONSIDERATION OF PAYMENT.—Any  
21           payment owed to an employee under this sub-  
22           section for unused compensatory time shall be  
23           considered unpaid overtime compensation.

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

1           “(A) who has accrued compensatory time  
2           off authorized to be provided under paragraph  
3           (1); and

4           “(B) who has requested the use of such  
5           compensatory time,  
6           shall be permitted by the employee’s employer to use  
7           such time within a reasonable period after making  
8           the request if the use of the compensatory time does  
9           not unduly disrupt the operations of the employer.

10           “(8) DEFINITIONS.—The terms ‘overtime com-  
11           pensation’ and ‘compensatory time’ shall have the  
12           meanings given such terms by subsection (o)(7).”.

13 **SEC. 3. REMEDIES.**

14           Section 16 of the Fair Labor Standards Act of 1938  
15 (29 U.S.C. 216) is amended—

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

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

20           “(f) An employer which violates section 7(r)(4) shall  
21           be liable to the employee affected in the amount of the  
22           rate of compensation (determined in accordance with sec-  
23           tion 7(r)(6)(A)) for each hour of compensatory time ac-  
24           crued by the employee and in an additional equal amount  
25           as liquidated damages reduced by the amount of such rate

1 of compensation for each hour of compensatory time used  
2 by such employee.”.

3 **SEC. 4. NOTICE TO EMPLOYEES.**

4 Not later than 30 days after the date of the enact-  
5 ment of this Act, the Secretary of Labor shall revise the  
6 materials the Secretary provides, under regulations pub-  
7 lished in section 516.4 of title 29, Code of Federal Regula-  
8 tions, to employers for purposes of a notice explaining the  
9 Fair Labor Standards Act of 1938 to employees so that  
10 such notice reflects the amendments made to such Act by  
11 this Act.

12 **SEC. 5. SUNSET.**

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

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