

117TH CONGRESS  
1ST SESSION

# S. 247

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 SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

Mr. LEE (for himself, Mr. SCOTT of South Carolina, Mr. RISCH, Mr. BAR-  
RASSO, Mr. ROMNEY, Mr. CRAMER, Mrs. CAPITO, Mr. WICKER, Mr.  
INHOFE, Mr. GRASSLEY, Mr. CRAPO, Mr. CORNYN, and Mr. LANKFORD)  
introduced the following bill; which was read twice and referred to the  
Committee on Health, Education, Labor, and Pensions

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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 “Working Families  
5 Flexibility Act of 2021”.

6 **SEC. 2. COMPENSATORY TIME.**

7 Section 7 of the Fair Labor Standards Act of 1938  
8 (29 U.S.C. 207) is amended by adding at the end the fol-  
9 lowing:

1       “(t) COMPENSATORY TIME OFF FOR PRIVATE EM-  
2 PLOYEES.—

3           “(1) GENERAL RULE.—An employee may re-  
4 ceive, in accordance with this subsection and in lieu  
5 of monetary overtime compensation, compensatory  
6 time off at a rate not less than one and one-half  
7 hours for each hour of employment for which over-  
8 time compensation is required by this section.

9           “(2) CONDITIONS.—An employer may provide  
10 compensatory time to employees under paragraph  
11 (1) only if such time is provided in accordance  
12 with—

13           “(A) applicable provisions of a collective  
14 bargaining agreement between the employer  
15 and the labor organization that has been cer-  
16 tified or recognized as the representative of the  
17 employees under applicable law; or

18           “(B) in the case of employees who are not  
19 represented by a labor organization that has  
20 been certified or recognized as the representa-  
21 tive of such employees under applicable law, an  
22 agreement arrived at between the employer and  
23 employee before the performance of the work  
24 and affirmed by a written or otherwise

1 verifiable record maintained in accordance with  
2 section 11(c)—

3 “(i) in which the employer has offered  
4 and the employee has chosen to receive  
5 compensatory time in lieu of monetary  
6 overtime compensation; and

7 “(ii) entered into knowingly and vol-  
8 untarily by such employee and not as a  
9 condition of employment.

10 No employee may receive or agree to receive com-  
11 pensatory time off under this subsection unless the  
12 employee has worked at least 1,000 hours for the  
13 employee’s employer during a period of continuous  
14 employment with the employer in the 12-month pe-  
15 riod before the date of agreement or receipt of com-  
16 pensatory time off.

17 “(3) HOUR LIMIT.—

18 “(A) MAXIMUM HOURS.—An employee  
19 may accrue not more than 160 hours of com-  
20 pensatory time.

21 “(B) COMPENSATION DATE.—Not later  
22 than January 31 of each calendar year, the em-  
23 ployee’s employer shall provide monetary com-  
24 pensation for any unused compensatory time off  
25 accrued during the preceding calendar year that

1 was not used prior to December 31 of the pre-  
2 ceding calendar year at the rate prescribed by  
3 paragraph (6). An employer may designate and  
4 communicate to the employer's employees a 12-  
5 month period other than the calendar year, in  
6 which case such compensation shall be provided  
7 not later than 31 days after the end of such 12-  
8 month period.

9 “(C) EXCESS OF 80 HOURS.—The em-  
10 ployer may provide monetary compensation for  
11 an employee's unused compensatory time in ex-  
12 cess of 80 hours at any time after giving the  
13 employee at least 30 days notice. Such com-  
14 pensation shall be provided at the rate pre-  
15 scribed by paragraph (6).

16 “(D) POLICY.—Except where a collective  
17 bargaining agreement provides otherwise, an  
18 employer that has adopted a policy offering  
19 compensatory time to employees may, upon giv-  
20 ing employees 30 days notice, discontinue such  
21 policy and provide monetary compensation to  
22 each employee with accrued compensatory time  
23 that has not yet been used for all such compen-  
24 satory time. Such compensation shall be pro-  
25 vided at the rate prescribed by paragraph (6).

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

11          “(4) PRIVATE EMPLOYER ACTIONS.—An em-  
12          ployer that provides compensatory time under para-  
13          graph (1) to employees shall not directly or indi-  
14          rectly intimidate, threaten, or coerce or attempt to  
15          intimidate, threaten, or coerce any employee for the  
16          purpose of—

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

22                 “(B) requiring any employee to use such  
23                 compensatory time.

24          “(5) TERMINATION OF EMPLOYMENT.—An em-  
25          ployee who has accrued compensatory time off au-

1       thorized to be provided under paragraph (1) shall,  
2       upon the voluntary or involuntary termination of  
3       employment, be paid for the unused compensatory  
4       time in accordance with paragraph (6).

5           “(6) RATE OF COMPENSATION.—

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

10           “(i) the regular rate received by such  
11       employee when the compensatory time was  
12       earned; or

13           “(ii) the final regular rate received by  
14       such employee,

15       whichever is higher.

16           “(B) CONSIDERATION OF PAYMENT.—Any  
17       payment owed to an employee under this sub-  
18       section for unused compensatory time shall be  
19       considered unpaid overtime compensation.

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

21           “(A) who has accrued compensatory time  
22       off authorized to be provided under paragraph  
23       (1); and

24           “(B) who has requested the use of such  
25       compensatory time,

1 shall be permitted by the employee’s employer to use  
2 such time within a reasonable period after making  
3 the request if the use of the compensatory time does  
4 not unduly disrupt the operations of the employer.

5 “(8) DEFINITIONS.—For purposes of this sub-  
6 section—

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

9 “(B) the terms ‘overtime compensation’,  
10 ‘compensatory time’, and ‘compensatory time  
11 off’ shall have the meanings given such terms  
12 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), in the first sentence, by  
17 striking “(b) Any employer” and inserting “(b) Ex-  
18 cept as provided in subsection (f), any employer”;  
19 and

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

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

1 as liquidated damages reduced by the amount of such rate  
2 of compensation for each hour of compensatory time used  
3 by such employee.”.

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

5 Not later than 30 days after the date of enactment  
6 of this Act, the Secretary of Labor shall revise the mate-  
7 rials the Secretary provides, under regulations published  
8 in section 516.4 of title 29, Code of Federal Regulations  
9 (or any corresponding similar regulation or ruling), to em-  
10 ployers for purposes of a notice explaining the Fair Labor  
11 Standards Act of 1938 (29 U.S.C. 201 et seq.) to employ-  
12 ees so that such notice reflects the amendments made to  
13 such Act by this Act.

14 **SEC. 5. GAO REPORT.**

15 Beginning 2 years after the date of enactment of this  
16 Act and each of the 3 years thereafter, the Comptroller  
17 General shall submit a report to Congress providing, with  
18 respect to the reporting period immediately prior to each  
19 such report—

20 (1) data concerning the extent to which employ-  
21 ers provide compensatory time pursuant to section  
22 7(t) of the Fair Labor Standards Act of 1938, as  
23 added by this Act, and the extent to which employ-  
24 ees opt to receive compensatory time;



1           (2) the number of complaints alleging a viola-  
2           tion of such section filed by any employee with the  
3           Secretary of Labor;

4           (3) the number of enforcement actions com-  
5           menced by the Secretary or commenced by the Sec-  
6           retary on behalf of any employee for alleged viola-  
7           tions of such section;

8           (4) the disposition or status of such complaints  
9           and actions described in paragraphs (2) and (3); and

10          (5) an account of any unpaid wages, damages,  
11          penalties, injunctive relief, or other remedies ob-  
12          tained or sought by the Secretary in connection with  
13          such actions described in paragraph (3).

14 **SEC. 6. SUNSET.**

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

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