



May 2017

House of Representatives Passes Overtime Bill to Give Workers Time Off Instead of Time-And-A-Half Pay

On May 2, 2017, the United States House of Representatives (the House) passed the [Working Families Flexibility Act](#) (the Act), which would give workers the option of receiving paid time off (PTO) instead of time-and-a-half pay currently mandated by the Fair Labor Standards Act (the FLSA). The Act passed 227-197, largely along party lines, with no Democrats in favor of it and six Republicans opposed. The Act will now go to the Senate, where it is expected that the Act will face opposition from Senate Democrats. President Donald Trump has [indicated](#) that he would sign the Act into law if presented to him in its current form.

Under the FLSA, covered, non-exempt employees must receive overtime pay for hours worked over 40 in a workweek, at a rate not less than time and one-half their regular rate of pay. An employee's regular rate of pay is determined on a piece-rate, salary, commission, or other basis, but the overtime pay rate must be calculated using the average hourly rate derived from the employee's earnings. Employers determine the average hourly rate by dividing the total pay received by the employee in any work week by the 40 hours. The employer then pays the employee overtime for each hour over 40 at time-and-a-half of the average rate.

The new Act would give employees the option of receiving PTO for working more than 40 hours in a single workweek instead of time-and-a-half pay. Rather than receiving immediate time-and-a-half pay, employees who work more than 40 hours in a workweek could accrue an hour and a half in a comp time bank for each hour of overtime worked. This comp time would then be usable by the employees as PTO at a later date. As an example, an employee who worked 50 hours one week would receive fifteen hours in PTO at some later point, as opposed to overtime pay (*i.e.*, one and a half hours of comp time for each hour of overtime worked). Employees would still have the choice to receive time-and-a-half pay in their paychecks as they had previously. If the employee chooses comp time and changes their mind, however, employers would have the right to forego paying the comp time until year-end.

House Republicans passed the Act as a way to offer a balance between work and home life for American workers. Opponents of the Act state that although the Act does contain some worker protections, including that the comp time be made available to employees “within a reasonable period,” there are many questions about potential harm to employees. For example, they state under the Act, employers have the final say on when employees can use comp time, and may deny requests that “unduly disrupt the operations of the employer.” Moreover, instead of automatically receiving time-and-a-half pay as they do now, the Act requires employees to elect between receiving time off or time-and-a-half pay, in essence requiring them to ask their employers to be paid the overtime that the employee has already earned. Although coercion is prohibited under the Act, the reality of workplace power dynamics could encourage employers to recommend that employees take comp time, and then defer providing the comp time for as long as possible. Opponents of the Act also note that many American employees rely on the time-and-a-half wage differential to make ends meet. Finally, [various economists have noted](#) that the Act operates as an interest free loan to employers from their employees to the extent employees opt for comp time, rather than immediate payment.

Although similar bills have passed the House in 1996, 1997, and 2013, they were not passed in the Senate. The Republicans’ current control of the House, United States Senate, and the Executive Branch could mean that the Act is closer to passage than ever before. Republicans need at least eight Senate Democrats to vote in favor of the legislation to avoid a filibuster.

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