

House Passes Bill To Legalize Comp Time In The Private Sector

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Employers and employees may soon have more flexibility in how and when overtime gets paid. Last week the U.S. House of Representatives passed the Working Families Flexibility Act (WFFA), a law that would amend the Fair Labor Standards Act (FLSA) by allowing employers to offer, and employees to accept, “comp time” instead of cash payment for hours worked over 40 in a workweek. “Comp time” is generally defined as paid time off that is earned instead of receiving cash payment for overtime. It is widely available in the public sector, but the FLSA has long precluded the practice in the private sector. As drafted, the WFFA would allow employers to offer to eligible, non-exempt employees the ability to accrue paid time off at a rate of an hour and one-half for each hour of overtime worked instead of receiving cash payment for overtime hours – and would allow those employees to accrue as much as 160 hours of comp time, or four 40-hour weeks. Under the proposed law, the arrangement could become available to employees who have been employed for at least one year and have worked at least 1,000 hours. Additionally, the arrangement must be completely voluntary, so employees must still be given the option to choose cash payment for overtime hours. Additionally, the law, like other employment laws, prohibits retaliation. If the bill becomes law, it is reasonable to expect that we’ll see a number of lawsuits over whether the decision was “voluntary.” The WFFA would also give employers the chance to revoke their “comp time” offer upon giving employees 30-days’ notice. The fate of the WFFA is now in the hands of the Senate, where it is expected to encounter resistance in the form of a Democratic filibuster. Stay tuned for further updates.

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