

Questions & Answers on the Comp Time bill (H.R. 1180/S. 801, “Working Families Flexibility Act”)

What does the bill do?

Right now, if an eligible employee works overtime, overtime rates must be paid. This misleadingly-named bill ends overtime as we know it. According to this bill, individual employees would now have a “choice” to take compensatory time off (hours that can be taken off later) instead of the extra pay.

Who is backing this bill?

Supporters include business and corporate groups like the U.S. Chamber of Commerce. For reference, other recent priorities of the Chamber include supporting the health care bill that removes coverage from 24 million Americans, advocating for a resolution that rolled back employers’ requirement to report five years’ worth of injury and illness incidents to OSHA (it now makes our work to build safe workplaces harder), encouraging states to pass right to work laws, and pushing every trade deal that comes along.

Who is opposing this bill?

Unions, religious organizations that focus on economic fairness like Interfaith Worker Justice, organizations that advocate for families and family-friendly workplace policy like the National Partnership for Women and Families, pro-worker economic groups like the Economic Policy Institute, and many others.

Can employers manipulate comp time?

Of course! Does your employer manipulate anything now? For instance, do they cut corners on safety and health concerns? Does your employer ever try to get away with violating your contract? Does your employer attempt to demand more and more from your members at the bargaining table, no matter their financial situation? If there’s a profit to be squeezed from us, they’re likely to try it. Comp time can mean more money in the CEO’s pocket – that’s why they’re backing the bill.

The majority of American workers are non-union and therefore “at will” employees, meaning they can be fired at any time without cause. If an employer wants workers to take comp time, it’s easy to imagine the ways they can do it: moving workers who refuse comp time into lousy jobs or shifts, denying opportunities for advancement, only offering comp time to those they know will take it, etc.

The more common comp time becomes in non-union workplaces, the more pressure we’ll see at the bargaining table. For instance, it’s not hard to imagine a scenario where employers would try to eliminate vacation or sick pay, or other time off that’s currently paid, and make us earn that back through comp time.

The Department of Labor (DOL) would be in charge of enforcing this law. Currently, the DOL receives thousands of complaints annually for various types of wage theft, including overtime violations. With limited investigators and a small budget, they are already stretched. The Administration has proposed severe cuts to the DOL, so if that happens, it will be even easier for companies to rip off their workers and get away with it.

Could mandatory overtime and unpredictable schedules get worse under comp time?

Yes. If employers no longer have a financial incentive to avoid excessive overtime, we can expect even less control over our working lives. With many USW members already working mandatory overtime and having schedules that are tough to predict, there is a lot at stake.

Can you take comp time when you want it, like to take care of a sick child or for time off during hunting season?

You can take comp time when your employer allows it. Employers can reject any requests for time off that “unduly disrupt the operations of the employer” or that are not made “within a reasonable period.” They get to decide what those terms mean.

What if comp time can't be used?

If someone took comp time and wasn't able to use it, the employer would eventually have to pay it back at overtime pay rates, without interest. The bill has no language guaranteeing that a worker's compensatory time would be paid out in the event of bankruptcy or if a business shuts down.

If we'd make less, what else could be impacted?

This is pretty straightforward, and varies from workplace to workplace. Many USW members depend on overtime pay to make ends meet, or simply to earn more money at the times when it's needed or wanted, like when helping a child through college or to pay for a new vehicle. Some benefits are dependent on annual pay (ex: an employer 401k contribution that's based on gross pay would go down). Each workplace is different, and could have different implications. Think through what yours might be.

How did we get our current overtime protections?

Through their unions, men and women marched, protested and fought to make it happen over decades. Some even died to win these rights. Ultimately we got overtime protections in the Fair Labor Standards Act of 1938. At first it was a 44-hour week, then not long after we were successful in lowering that to 40 hours. The law discourages employers from overworking employees by making it more expensive for them to do so. This new bill represents fundamental change to that nearly 80-year-strong law.

Have we seen similar comp time bills before?

Yes, multiple times. We first helped stop comp time through Rapid Response back in 1996 as one of our very earliest actions. Most recently we worked against it in 2013. That year it passed in the House but was killed in the Senate.

Where does this bill stand?

It passed in the U.S. House of Representatives on May 2, 2017 by a vote of 229-197 and now goes to the Senate. All Democrats voted RIGHT (against the bill). All Republicans voted WRONG (for the bill) except for Fitzpatrick (PA-8), Joyce (OH-14), LoBiondo (NJ-2), MacArthur (NJ-3), Meehan (PA-7) and Smith (NJ-4). The following

Representatives did not vote: Chaffetz (UT-3), Meng (NY-6), Reed (NY-23) and Slaughter (NY-25). The full vote is available at <http://clerk.house.gov/evs/2017/roll244.xml>

The bill now moves to the Senate. We do not yet know how the Senate will address the issue. It's key to stop this in the Senate given that the Administration has indicated the President will sign the bill if it gets to his desk.

Can't something be done to make our workplaces and schedules better?

There are bills waiting to be acted on right now that would give workers more protection and make a work-life balance better. This bill isn't one of them.

I'm a public employee and currently receive comp time. Does this bill directly impact me?

This bill only impacts the private sector. The nature of public and private sector employment are very different. According to the Economic Policy Institute, comp time is much riskier for private sector employees: "Public-sector workers can't be fired except for good cause, they have administrative appeal rights, and they have significantly higher rates of union representation. These considerations make them more likely to challenge an employer's decision denying them the use of comp time and less likely to be coerced into agreeing to comp time in lieu of overtime pay."

Sources:

Text of the "Working Families Flexibility Act" (H.R. 1180/S. 801) <https://www.congress.gov/bill/115th-congress/house-bill/1180/text?q=%7B%22search%22%3A%5B%22HR+1180%22%5D%7D&r=1>

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