

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1626

To amend the Fair Labor Standards Act of 1938 to provide employees in the private sector with an opportunity for compensatory time off, similar to the opportunity offered to Federal employees, and a flexible credit hour program to help balance the demands of work and family, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2013

Mr. McCONNELL (for himself and Ms. AYOTTE) 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 employees in the private sector with an opportunity for compensatory time off, similar to the opportunity offered to Federal employees, and a flexible credit hour program to help balance the demands of work and family, and for other purposes.

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 and  
5       Workplace Flexibility Act of 2013”.

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 “(s) COMPENSATORY TIME FOR PRIVATE EMPLOY-  
6 EES.—

7 “(1) DEFINITIONS.—In this subsection—

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

10 “(B) the terms ‘overtime compensation’,  
11 ‘compensatory time’, and ‘compensatory time  
12 off’ have the meaning given the terms in sub-  
13 section (o)(7).

14 “(2) GENERAL RULE.—An employee may re-  
15 ceive, in accordance with this subsection and in lieu  
16 of monetary overtime compensation, compensatory  
17 time off at a rate not less than one and one-half  
18 hours for each hour of employment for which over-  
19 time compensation is required by this section.

20 “(3) AGREEMENT REQUIRED.—An employer  
21 may provide compensatory time to an employee  
22 under paragraph (2) only in accordance with—

23 “(A) applicable provisions of a collective  
24 bargaining agreement between an employer and  
25 a labor organization that has been certified or

1 recognized as the representative of the employ-  
2 ees of the employer under applicable law; or

3 “(B) in the case of an employee who is not  
4 represented by a labor organization described in  
5 subparagraph (A), an agreement between the  
6 employer and employee arrived at before the  
7 performance of the work—

8 “(i) in which the employer has offered  
9 and the employee has chosen to receive  
10 compensatory time off under this sub-  
11 section in lieu of monetary overtime com-  
12 pensation;

13 “(ii) that the employee enters into  
14 knowingly, voluntarily, and not as a condi-  
15 tion of employment; and

16 “(iii) that is affirmed by a written or  
17 otherwise verifiable record maintained in  
18 accordance with section 11(c).

19 “(4) HOUR LIMIT.—An employee may accrue  
20 not more than 160 hours of compensatory time  
21 under this subsection, and shall receive overtime  
22 compensation for any such compensatory time in ex-  
23 cess of 160 hours.

24 “(5) UNUSED COMPENSATORY TIME.—

25 “(A) COMPENSATION PERIOD.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), not later than January  
3           31 of each calendar year, the employer of  
4           the employee shall provide monetary com-  
5           pensation for any unused compensatory  
6           time under this subsection accrued during  
7           the preceding calendar year that the em-  
8           ployee did not use prior to December 31 of  
9           the preceding year at the rate prescribed  
10          by paragraph (7)(A).

11          “(ii) ALTERNATIVE COMPENSATION  
12          PERIOD.—An employer may designate and  
13          communicate to an employee a 12-month  
14          period other than the calendar year for de-  
15          termining unused compensatory time under  
16          this subsection, and the employer shall  
17          provide monetary compensation not later  
18          than 31 days after the end of such 12-  
19          month period at the rate prescribed by  
20          paragraph (7)(A).

21          “(B) EXCESS OF 80 HOURS.—An employer  
22          may provide monetary compensation, at the  
23          rate prescribed by paragraph (7)(A), for any  
24          unused compensatory time under this sub-  
25          section of an employee in excess of 80 hours at

1 any time after giving the employee not less than  
2 30 days' notice.

3 “(C) TERMINATION OF EMPLOYMENT.—  
4 Upon the voluntary or involuntary termination  
5 of an employee, the employer of such employee  
6 shall provide monetary compensation at the rate  
7 prescribed by paragraph (7)(A) for any unused  
8 compensatory time under this subsection.

9 “(6) WITHDRAWAL OF COMPENSATORY TIME  
10 AGREEMENT.—

11 “(A) EMPLOYER.—Except where a collec-  
12 tive bargaining agreement provides otherwise,  
13 an employer that has adopted a policy of offer-  
14 ing compensatory time to employees under this  
15 subsection may discontinue such policy after  
16 providing employees notice 30 days prior to dis-  
17 continuing the policy.

18 “(B) EMPLOYEE.—

19 “(i) IN GENERAL.—An employee may  
20 withdraw an agreement described in para-  
21 graph (3)(B) after providing notice to the  
22 employer of the employee 30 days prior to  
23 the withdrawal.

24 “(ii) REQUEST FOR MONETARY COM-  
25 PENSATION.—At any time, an employee

1           may request in writing monetary com-  
2           pensation for any accrued and unused  
3           compensatory time under this subsection.  
4           The employer of such employee shall pro-  
5           vide monetary compensation at the rate  
6           prescribed by paragraph (7)(A) within 30  
7           days of receiving the written request.

8           “(7) MONETARY COMPENSATION.—

9           “(A) RATE OF COMPENSATION.—An em-  
10          ployer providing monetary compensation to an  
11          employee for accrued compensatory time under  
12          this subsection shall compensate the employee  
13          at a rate not less than the greater of—

14                 “(i) the regular rate, as defined in  
15                 subsection (e), of the employee on the date  
16                 the employee earned such compensatory  
17                 time; or

18                 “(ii) the final regular rate, as defined  
19                 in subsection (e), received by such em-  
20                 ployee.

21           “(B) TREATMENT AS UNPAID OVER-  
22          TIME.—Any monetary payment owed to an em-  
23          ployee for unused compensatory time under this  
24          subsection, as calculated in accordance with  
25          subparagraph (A), shall be considered unpaid

1 overtime compensation for the purposes of this  
2 Act.

3 “(8) USING COMPENSATORY TIME.—An em-  
4 ployer shall permit an employee to take time off  
5 work for compensatory time accrued under para-  
6 graph (2) within a reasonable time after the em-  
7 ployee makes a request for using such compensatory  
8 time if the use does not unduly disrupt the oper-  
9 ations of the employer.

10 “(9) PROHIBITION OF COERCION.—

11 “(A) IN GENERAL.—An employer that pro-  
12 vides compensatory time under paragraph (2)  
13 shall not directly or indirectly intimidate,  
14 threaten, or coerce, or attempt to intimidate,  
15 threaten, or coerce any employee for the pur-  
16 pose of interfering with the rights of an em-  
17 ployee under this subsection—

18 “(i) to use accrued compensatory time  
19 in accordance with paragraph (8) in lieu of  
20 receiving monetary compensation;

21 “(ii) to refrain from using accrued  
22 compensatory time in accordance with  
23 paragraph (8) and receive monetary com-  
24 pensation; or

1                   “(iii) to refrain from entering into an  
2                   agreement to accrue compensatory time  
3                   under this subsection.

4                   “(B) DEFINITION.—In subparagraph (A),  
5                   the term ‘intimidate, threaten, or coerce’ in-  
6                   cludes—

7                   “(i) promising to confer or conferring  
8                   any benefit, such as appointment, pro-  
9                   motion, or compensation; or

10                   “(ii) effecting or threatening to effect  
11                   any reprisal, such as deprivation of ap-  
12                   pointment, promotion, or compensation.”.

13 **SEC. 3. FLEXIBLE CREDIT HOUR PROGRAM.**

14                   Section 7 of the Fair Labor Standards Act of 1938  
15 (29 U.S.C. 207), as amended in section 2, is further  
16 amended by adding at the end the following:

17                   “(t) FLEXIBLE CREDIT HOUR PROGRAM.—

18                   “(1) DEFINITIONS.—In this subsection—

19                   “(A) the term ‘at the election of’, used  
20                   with respect to an employee, means at the ini-  
21                   tiative of, and at the request of, the employee;

22                   “(B) the term ‘basic work requirement’  
23                   means the number of hours, excluding overtime  
24                   hours, that an employee is required to work or



1 is required to account for by leave or otherwise  
2 within a specified period of time;

3 “(C) the term ‘employee’ does not include  
4 an employee of a public agency;

5 “(D) the term ‘flexible credit hour’ means  
6 any hour that an employee, who is participating  
7 in a flexible credit hour program, works in ex-  
8 cess of the basic work requirement; and

9 “(E) the term ‘overtime compensation’ has  
10 the meaning given the term in subsection  
11 (o)(7).

12 “(2) PROGRAM ESTABLISHMENT.—An employer  
13 may establish a flexible credit hour program for an  
14 employee to accrue flexible credit hours in accord-  
15 ance with this subsection and, in lieu of monetary  
16 compensation, reduce the number of hours the em-  
17 ployee works in a subsequent day or week at a rate  
18 of one hour for each hour of employment for which  
19 overtime compensation is required by this section.

20 “(3) AGREEMENT REQUIRED.—

21 “(A) IN GENERAL.—An employer may  
22 carry out a flexible credit hour program under  
23 paragraph (2) only in accordance with—

24 “(i) applicable provisions of a collec-  
25 tive bargaining agreement between an em-

1            ployer and a labor organization that has  
2            been certified or recognized as the rep-  
3            resentative of the employees of the em-  
4            ployer under applicable law; or

5            “(ii) in the case of an employee who  
6            is not represented by a labor organization  
7            described in clause (i), an agreement be-  
8            tween the employer and the employee ar-  
9            rived at before the performance of the  
10           work that—

11                    “(I) the employee enters into  
12                    knowingly, voluntarily, and not as a  
13                    condition of employment; and

14                    “(II) is affirmed by a written  
15                    statement maintained in accordance  
16                    with section 11(c).

17            “(B) HOURS DESIGNATED.—An agreement  
18            that is entered into under subparagraph (A)  
19            shall provide that, at the election of the em-  
20            ployee, the employer and the employee will  
21            jointly designate flexible credit hours for the  
22            employee to work within an applicable period of  
23            time.

24            “(4) HOUR LIMIT.—An employee participating  
25            in a flexible credit hour program may not accrue

1 more than 50 flexible credit hours, and shall receive  
2 overtime compensation for flexible credit hours in  
3 excess of 50 hours.

4 “(5) UNUSED FLEXIBLE CREDIT HOURS.—

5 “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B), not later than January 31 of  
7 each calendar year, the employer of an em-  
8 ployee who is participating in a flexible credit  
9 hour program shall provide monetary com-  
10 pensation for any flexible credit hour accrued  
11 during the preceding calendar year that the em-  
12 ployee did not use prior to December 31 of the  
13 preceding calendar year at a rate prescribed by  
14 paragraph (7)(A)(i).

15 “(B) ALTERNATIVE COMPENSATION PE-  
16 RIOD.—An employer may designate and com-  
17 municate to the employees of the employer a  
18 12-month period other than the calendar year  
19 for determining unused flexible credit hours,  
20 and the employer shall provide monetary com-  
21 pensation, at a rate prescribed by paragraph  
22 (7)(A)(i), not later than 31 days after the end  
23 of the 12-month period.

24 “(6) PROGRAM DISCONTINUANCE AND WITH-  
25 DRAWAL.—

1           “(A) EMPLOYER.—An employer that has  
2 established a flexible credit hour program under  
3 paragraph (2) may discontinue a flexible credit  
4 hour program for employees described in para-  
5 graph (3)(A)(ii) after providing notice to such  
6 employees 30 days before discontinuing such  
7 program.

8           “(B) EMPLOYEE.—

9           “(i) IN GENERAL.—An employee may  
10 withdraw an agreement described in para-  
11 graph (3)(A)(ii) at any time by submitting  
12 written notice of withdrawal to the em-  
13 ployer of the employee 30 days prior to the  
14 withdrawal.

15           “(ii) REQUEST FOR MONETARY COM-  
16 PENSATION.—An employee may request in  
17 writing, at any time, that the employer of  
18 such employee provide monetary compensa-  
19 tion for all accrued and unused flexible  
20 credit hours. Within 30 days after receiv-  
21 ing such written request, the employer  
22 shall provide the employee monetary com-  
23 pensation for such unused flexible credit  
24 hours at a rate prescribed by paragraph  
25 (7)(A)(i).

1           “(7) MONETARY COMPENSATION.—

2                   “(A) FLEXIBLE CREDIT HOURS.—

3                           “(i) RATE OF COMPENSATION.—An  
4                           employer providing monetary compensation  
5                           to an employee for accrued flexible credit  
6                           hours shall compensate such employee at a  
7                           rate not less than the regular rate, as de-  
8                           fined in subsection (e), of the employee on  
9                           the date the employee receives the mone-  
10                           tary compensation.

11                           “(ii) TREATMENT AS UNPAID OVER-  
12                           TIME.—Any monetary payment owed to an  
13                           employee for unused flexible credit hours  
14                           under this subsection, as calculated in ac-  
15                           cordance with clause (i), shall be consid-  
16                           ered unpaid overtime compensation for the  
17                           purposes of this Act.

18                           “(B) OVERTIME HOURS.—

19                           “(i) IN GENERAL.—Any hour that an  
20                           employee works in excess of 40 hours in a  
21                           workweek that is requested in advance by  
22                           the employer, other than a flexible credit  
23                           hour, shall be an ‘overtime hour’.

24                           “(ii) RATE OF COMPENSATION.—The  
25                           employee shall be compensated for each

1 overtime hour at a rate not less than one  
2 and one-half times the regular rate at  
3 which the employee is employed, in accord-  
4 ance with subsection (a)(1), or receive  
5 compensatory time off in accordance with  
6 subsection (s), for each such overtime  
7 hour.

8 “(8) USE OF FLEXIBLE CREDIT HOURS.—An  
9 employer shall permit an employee to use accrued  
10 flexible credit hours to take time off work, in accord-  
11 ance with the rate prescribed by paragraph (2),  
12 within a reasonable time after the employee makes  
13 a request for such use if the use does not unduly  
14 disrupt the operations of the employer.

15 “(9) PROHIBITION OF COERCION.—

16 “(A) IN GENERAL.—An employer shall not  
17 directly or indirectly intimidate, threaten, or co-  
18 erce, or attempt to intimidate, threaten, or co-  
19 erce, any employee for the purpose of inter-  
20 fering with the rights of the employee under  
21 this subsection—

22 “(i) to elect or not to elect to partici-  
23 pate in a flexible credit hour program, or  
24 to elect or not to elect to work flexible  
25 credit hours; or

1                   “(ii) to use or refrain from using ac-  
2                   crued flexible credit hours in accordance  
3                   with paragraph (8).

4                   “(B) DEFINITION.—In subparagraph (A),  
5                   the term ‘intimidate, threaten, or coerce’ has  
6                   the meaning given the term in subsection  
7                   (s)(9).”.

8 **SEC. 4. REMEDIES.**

9                   Section 16 of the Fair Labor Standards Act of 1938  
10 (29 U.S.C. 216) is amended—

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

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

15                   “(f) An employer that violates subsection (s)(9) or  
16 (t)(9) of section 7 shall be liable to the affected employee  
17 in the amount of—

18                   “(1) the rate of compensation, determined in  
19                   accordance with subsection (s)(7)(A) or (t)(7)(A)(i)  
20                   of section 7, for each hour of unused compensatory  
21                   time or for each unused flexible credit hour accrued  
22                   by the employee; and

23                   “(2) liquidated damages equal to the amount  
24                   determined in paragraph (1).”.

1 **SEC. 5. NOTICE TO EMPLOYEES.**

2 Not later than 30 days after the date of enactment  
3 of this Act, the Secretary of Labor shall revise the mate-  
4 rials the Secretary provides, under regulations contained  
5 in section 516.4 of title 29, Code of Federal Regulations,  
6 to employers for purposes of a notice explaining the Fair  
7 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to  
8 employees so that the notice reflects the amendments  
9 made to such Act by this Act.

10 **SEC. 6. PROTECTIONS FOR CLAIMS RELATING TO COMPEN-**  
11 **SATORY TIME OFF AND FLEXIBLE CREDIT**  
12 **HOURS IN BANKRUPTCY PROCEEDING.**

13 Section 507(a)(4)(A) of title 11, United States Code,  
14 is amended—

15 (1) by striking “and”; and

16 (2) by inserting “, the value of unused, accrued  
17 compensatory time off under section 7(s) of the Fair  
18 Labor Standards Act of 1938 (29 U.S.C. 207(s)), all  
19 of which shall be deemed to have been earned within  
20 180 days before the date of the filing of the petition  
21 or the date of the cessation of the debtor’s business,  
22 whichever occurs first, at a rate of compensation not  
23 less than the final regular rate received by such indi-  
24 vidual, and the value of unused, accrued flexible  
25 credit hours under section 7(t) of the Fair Labor  
26 Standards Act of 1938 (29 U.S.C. 207(t)), all of



1       which shall be deemed to have been earned within  
2       180 days before the date of the filing of the petition  
3       or the date of the cessation of the debtor’s business,  
4       whichever occurs first, at a rate of compensation de-  
5       scribed in paragraph (7)(A)(i) of such section 7(t)”  
6       after “sick leave pay”.

7       **SEC. 7. GAO REPORT.**

8       Beginning 2 years after the date of enactment of this  
9       Act and each of the 3 years thereafter, the Comptroller  
10      General of the United States shall submit a report to Con-  
11      gress providing, with respect to the reporting period imme-  
12      diately prior to each such report—

13               (1) data concerning the extent to which employ-  
14      ers provide compensatory time and flexible credit  
15      hours under subsections (s) and (t) of section 7 of  
16      the Fair Labor Standards Act of 1938 (29 U.S.C.  
17      207), as added by this Act, and the extent to which  
18      employees opt to receive compensatory time under  
19      subsection (s) and flexible credit hours under sub-  
20      section (t);

21               (2) the number of complaints alleging a viola-  
22      tion of subsection (s)(9) or (t)(9) of such section  
23      filed by any employee with the Secretary of Labor,  
24      and the disposition or status of such complaints;

1           (3) the number of enforcement actions com-  
2           menced by the Secretary or commenced by the Sec-  
3           retary on behalf of any employee for alleged viola-  
4           tions of subsection (s)(9) or (t)(9) of such section,  
5           and the disposition or status of such actions; and

6           (4) an account of any unpaid wages, damages,  
7           penalties, injunctive relief, or other remedies ob-  
8           tained or sought by the Secretary in connection with  
9           such actions described in paragraph (3).

10 **SEC. 8. SUNSET.**

11           This Act and the amendments made by this Act shall  
12           expire on the date that is 5 years after the date of enact-  
13           ment of this Act.

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