

Does “Comp Time” Work for You?

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On May 2, 2017, the House of Representatives passed [H.R. 1180](#), also known as The Working Families Flexibility Act. The bill proposes to amend the Fair Labor Standards Act’s overtime protections to permit private sector employers to create compensatory time (“comp time”) programs that allow employees to take paid time off instead of receiving overtime pay. For example, if an employee worked 10 hours of overtime in a week, the employee could be given 15 hours of comp time for later use instead of being paid for those 10 hours at the overtime rate of 1.5 times the employee’s regular rate of pay. The bill includes some restrictions on and qualifications for the use of comp time, including:

- An employee must have worked for at least 1,000 hours during a continuous 12-month period to be eligible for comp time;
- The use of comp time must be voluntary and subject to a written agreement with the employer (or valid collective bargaining agreement for a unionized workforce);
- An employee must be permitted to revoke the agreement at any time and elect to receive payment for any accrued comp time within 30 days of a request;
- An employee must be permitted to use the comp time within a reasonable period after making a request to the employer – so long as the use of the comp time does not “unduly disrupt the operations of the employer”;
- An employee may not accrue more than 160 hours of comp time;
- An employer must pay an employee for any unused comp time at the overtime rate no later than January 31st of each year, and an employer may elect to pay accrued comp time that exceeds 80 hours upon 30 days’ notice; and
- An employer may discontinue its comp time program upon 30 days’ notice.

The bill, passed along party lines, has been met with strong criticism from Democrats and labor organizations as a means for employers to [reduce overtime pay](#) and [delay payments of wages for hourly employees and their families](#). Opponents of the bill argue that: (1) employers will use comp time to the disadvantage of low-wage earners who rely on overtime pay to support their families; (2) there is no guarantee that an employee will be able to use the comp time when the employee wants or needs the time off from work; and (3) the availability of comp time may lead to a decreases in the other paid time off that otherwise would have been given to employees.

The bill prohibits employers from intimidating, threatening, or coercing employees to join a comp time program and provides employees a private right of action in court with double damages for employer violations. But, [given the billions of dollars in wage theft committed annually by employers](#), opponents of the bill claim these protections are not enough. Employees may feel still compelled to participate in a comp time program because they are afraid to lose their job or that overtime opportunities will be given to those employees who are willing to use comp time.

The White House has issued a [statement](#) announcing its support for the bill, claiming that the bill would “help American workers balance the competing demands of family and work by giving them flexibility to

earn paid time off—time that they can later use for any reason, including family commitments like attending school appointments and caring for a sick child.” However, the bill still needs to be passed by the Senate, which may prove difficult since it would need to garner Democratic support to overcome a [filibuster](#). The bill in its current form also would not affect state law overtime requirements, meaning that employers in states with their own overtime laws, including New York, would not be able to offer their employees comp time to meet their obligations under state law.

Wigdor LLP has extensive experience representing both employees and employers regarding wage and hour compliance and violations. If you have any questions, concerns or doubts about whether you are being paid properly or may be entitled to overtime pay, consult with an attorney or the U.S. Department of Labor or New York State Department of Labor. The attorneys and staff at Wigdor LLP would be happy to talk with you about your rights and any questions you may have.

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