AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2870

OFFERED BY MRS. MILLER OF ILLINOIS

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Working Families Flexibility Act of 2025".

SEC. 2. COMPENSATORY TIME.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

"(t) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

"(1) GENERAL RULE.—

"(A) IN GENERAL.—During the 5-year period beginning on the date of enactment of the Working Families Flexibility Act of 2025, an employee described in subparagraph (B) may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

"(B) ELIGIBLE EMPLOYEE.—An employee described in this subparagraph is an employee who—

"(i) is not an employee of a public agency; and

"(ii) works at least 1,000 hours for the employee's employer during a period of continuous employment with the employer in the 12-month period ending on the date—

"(I) on which the agreement under paragraph (2)(B) is entered into by the employee and the employee's employer; or

"(II) of receipt of compensatory time off under this subsection.

"(2) CONDITIONS.—An employer (other than an employer that is a public agency subject to subsection (o)) may provide compensatory time to employees under this subsection only if such time is provided in accordance with—

"(A) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

"(B) in the case of employees who are not represented by a labor organization that has been certified or recognized as the representative of such employees under applicable law, an agreement arrived at between the employer and such an employee before the performance of the work and affirmed by a written or otherwise verifiable record maintained in accordance with section 11(c)—

"(i) in which the employer has offered and the employee has chosen to receive compensatory time in lieu of monetary overtime compensation; and

"(ii) entered into knowingly and voluntarily by such employee and not as a condition of employment.

"(3) HOUR LIMIT.—

"(A) MAXIMUM HOURS.—An employee may accrue not more than 160 hours of compensatory time under this subsection.

"(B) COMPENSATION DATE.—

"(i) IN GENERAL.—An employer shall provide to the employee, not later than 31 days after a covered period, monetary compensation for any unused compensatory time accrued during such covered period.

"(ii) COVERED PERIOD.—For the purposes of clause (i), a covered period means—

"(I) a calendar year; or

"(II) another 12-month period determined by the employer and communicated to the employees of the employer.

"(C) EXCESS OF 80 HOURS.—An employer may provide monetary compensation for the employee's unused compensatory time in excess of 80 hours at any time after giving the employee at least 30 days notice of the provision of such monetary compensation. Such compensation shall be provided at the rate prescribed by paragraph (6).

"(D) DISCONTINUATION OF COMPENSATORY TIME POLICY.—Except where a collective bargaining agreement provides otherwise, an employer that offers employees compensatory time in accordance with this subsection may, upon giving the employees notice of at least 30 days, stop offering such compensatory time and provide monetary compensation to each employee with accrued compensatory time that has not yet been used for all such accrued, unused compensatory time. Such compensation shall be provided at the rate prescribed by paragraph (6).

"(E) WRITTEN REQUESTS.—

"(i) IN GENERAL.—An employee who has an agreement described in paragraph (2)(B) with an employer may, in writing, at any time—

"(I) withdraw from such agreement; or

"(II) request that monetary compensation be provided for all compensatory time accrued that has not yet been used.

"(ii) MONETARY COMPENSATION.—Not later than 30 days of receiving a written request as described in clause (i)(II), the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

"(4) PRIVATE EMPLOYER ACTIONS.—An employer that provides compensatory time under this subsection to employees shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce any employee for the purpose of—

"(A) interfering with such employee's rights under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours; or

"(B) requiring any employee to use such compensatory time.

"(5) TERMINATION OF EMPLOYMENT.—An employee who has accrued compensatory time off authorized to be provided under this subsection shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time in accordance with paragraph (6).

"(6) RATE OF COMPENSATION.—

"(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off under this subsection, such compensation shall be paid at a rate of compensation not less than—

“(i) the regular rate received by such employee when the compensatory time was earned; or

“(ii) the final regular rate received by such employee,

whichever is higher.

“(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time shall be considered unpaid overtime compensation.

“(7) USE OF TIME.—An employee—

“(A) who has accrued compensatory time off authorized to be provided under this subsection; and

“(B) who has requested the use of such compensatory time,

shall be permitted by the employee’s employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer.

“(8) DEFINITIONS.—For purposes of this subsection, the terms ‘overtime compensation’, ‘compensatory time', and 'compensatory time off' have the meanings given such terms in subsection (o)(7).''.

SEC. 3. REMEDIES.

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

(1) in subsection (b), in the first sentence, by striking ''(b) Any employer'' and inserting ''(b) Except as provided in subsection (f), any employer''; and

(2) by adding at the end the following:

''(f) An employer that violates section 7(t)(4) shall be liable to the employee affected in the amount of the rate of compensation (determined in accordance with section 7(t)(6)(A)) for each hour of compensatory time accrued by the employee and in an additional equal amount as liquidated damages reduced by the amount of such rate of compensation for each hour of compensatory time used by such employee.''.

SEC. 4. NOTICE TO EMPLOYEES.

Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published in section 516.4 of title 29, Code of Federal Regulations, and any corresponding similar regulations or rulings (or any successor regulations or rulings), to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to employees so that such notice reflects the amendments made to such Act by this Act.

SEC. 5. GAO REPORT.

Not later than 2 years after the date of enactment of this Act and annually thereafter for 4 years, the Comptroller General shall submit a report to Congress providing, with respect to the 1-year period preceding each such report—

(1) data concerning the extent to which employers provide compensatory time pursuant to section 7(t) of the Fair Labor Standards Act of 1938, as added by this Act, and the extent to which employees opt to receive compensatory time;

(2) the number of complaints alleging a violation of such section filed by any employee with the Secretary of Labor;

(3) the number of enforcement actions commenced by the Secretary or commenced by the Secretary on behalf of any employee for alleged violations of such section;

(4) the disposition or status of such complaints and actions described in paragraphs (2) and (3); and

(5) an account of any unpaid wages, damages, penalties, injunctive relief, or other remedies obtained or sought by the Secretary in connection with such actions described in paragraph (3).