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April 24, 2017

Regarding: Opposition to the Working Families Flexibility Act, H.R. 1180 / S. 801

Dear Member of Congress:

On behalf of 9to5, National Association of Working Women and our members and constituents across the country, I write in strong opposition to H.R. 1180 / S. 801, the Working Families Flexibility Act. This bill would hurt, not help, working women and families. The Working Families Flexibility Act, a true misnomer if ever there was one, would in reality ensure that workers have less time, less flexibility and less money.

9to5 is a national membership organization of women working in low-wage jobs, founded in 1973. We have members in every state, and have active chapters in California, Colorado, Georgia and Wisconsin. 9to5 works to improve policy on employment and economic security issues that directly affect our members, constituents and their families. Lack of access to family-supporting wages and workplace flexibility are among those issues.

Our members, along with the thousands of women and men who call our toll-free national helpline annually, are desperate for more time with their families, more control over their schedules, and sufficient earnings to be economically secure. They frequently cite the challenge of meeting both their responsibilities at home and on the job as one of the most intractable and stressful that they face.

That's why 9to5 opposes the misnamed Working Families Flexibility Act, which would actually make it harder for our members and other workers to gain the flexibility or time with their families that they need.

Outlined below are our major concerns about this proposal. We follow those with a series of policy recommendations that, unlike this proposal, would actually help support families seeking time, flexibility and fair pay. Working families need change, but not what is being proposed in the Working Families Flexibility Act.

Background

The existing law regarding overtime and family time, the Fair Labor Standards Act (FLSA), puts a 40-hour-a-week limit on how many regular hours employers can require employees to work and puts a time-and-a-half premium on hours over that amount. This overtime provision was enacted to serve as a disincentive to employers

forcing workers to work excessive hours and take extra time away from their families. A much needed update of the FLSA overtime standard has been approved by the U. S. Department of Labor. The updated rules would significantly expand the workforce eligible for overtime pay.

The proposed Working Families Flexibility Act flips the intention of the FLSA on its head, providing an incentive to require workers to endure long hours on the job by making it possible for employers to not pay for overtime and instead offer comp time at some later date convenient for the employer.

Concerns

Workers would have less time, less flexibility, and less money under this proposal, because it would likely result in more overtime hours and less money for workers without any guarantee of time off when they need it. The proposal would likely increase involuntary overtime by making it cheaper for employers. Workers would get to spend more time with their families only after being forced to spend more time away from their families.

Under this proposal, employees would have less flexibility because the employer, not the employee, determines when comp time can be used. Employees wouldn't be guaranteed time when they need it. Employers would be able to deny an employee's request to use earned comp time if they felt it would "unduly disrupt" the employer's business, and employees would be required to make a request in advance without consideration for emergency situations.

Employers currently steal billions of dollars annually from workers in unpaid overtime compensation. This problem would be exacerbated by this proposal because it would become easier for employers to avoid overtime compensation obligations.

Low-wage workers frequently rely on their overtime earnings to make ends meet. Although the bill provides the right to sue in court to workers who face coercion, intimidation or threats, low-wage workers lack the resources necessary to engage in costly and protracted litigation, and they are not in a position to potentially jeopardize their jobs by taking their employers to court.

The bill would also allow employers to "cash out" an employee's comp time over 80 hours or discontinue the comp time program altogether. This means an employee's carefully crafted plan to bank time for a child's birth or surgery could be thwarted by an employer's decision to cash out the employee's time or end the program. Under this proposal, there are also no protections for employees to receive the value of their earned comp time if their employer goes out of business or goes bankrupt.

Employers currently have the ability to offer flexible schedules, including providing unpaid leave to employees who work a lot of overtime and want more time off. Nothing in the FLSA prohibits this.

Recommended Policies

There are several legislative proposals that have been introduced in the former and/or current Congress that would support working families by providing real flexibility, time and fair pay. Legislators who want to support real flexibility for working families should support these pending bills and the additional proposals below.

National paid family and medical leave insurance, like that provided in the FAMILY Act, would allow workers and employers to fund partially paid leaves for employees who need to take a limited amount of time away from work to care for a newborn, newly adopted child or newly placed foster child; care for a family member with a serious health condition; address their own serious health conditions; or deal with exigencies arising from a military service member's deployment.

The Healthy Families Act would provide workers the right to earn up to seven paid sick days each year to recover from short-term illness, to care for a sick family member, to seek routine medical care or to obtain assistance related to domestic violence, sexual assault or stalking.

Expanding the existing Family and Medical Leave Act (FMLA) would extend the 1993 Family and Medical Leave Act's guarantee of job-protection to workers in smaller businesses and to those who work part-time. FMLA leave also needs to be extended to workers who need to care for other family members, such as grandparents, grandchildren, siblings, in-laws, and domestic partners. FMLA's uses should be extended to include a basic number of hours each year that parents can use for their children's school activities, and the law should be available for victims of domestic violence, sexual assault or stalking to seek assistance.

The Paycheck Fairness Act would support fair pay for working women by closing loopholes in our existing equal pay laws, prohibiting retaliation against workers who ask about or share wage information, training women and girls about salary negotiation, and supporting government collection of critical wage data.

Raising minimum wage would provide an updated federal minimum wage for all workers, index it annually to the cost-of-living, and eliminate the sub-minimum wage for tipped workers, especially important for working women who make up the majority of minimum wage and tipped workers.

Fair scheduling practices and policies would protect workers who refuse overtime and create barriers to just-in-time scheduling and on-call shifts, while encouraging predictability and true flexibility in workers' ability to vary their work hours consistent with current FLSA protections.

Conclusion

Workers want more time with their families, more control over their schedules, and sufficient earnings to be economically secure. The Working Families Flexibility Act would make it harder for them to achieve any of those things.

9to5 urges you to oppose this proposal, and instead to support the policies listed above that would help working families by providing the real flexibility, time and fair pay they need. Thank you for your consideration.

Sincerely,


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