

FREE TO CHOOSE: TIME OR MONEY

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According to the U.S. Bureau of Labor Statistics, 59 percent of American workers are paid an hourly wage. Many of these workers are employed by companies that offer little in the way of paid time off such as sick time, vacation or family leave. While most workers in the United States are protected by various laws that guarantee unpaid time off in certain circumstances, relatively few are entitled to paid time off unless the employer simply chooses to make it available.

While laws requiring paid time off are few and far between, the Fair Labor Standards Act (FLSA) at least guarantees hourly paid workers overtime pay when they work more than 40 hours in a workweek. The FLSA generally requires the overtime hours to be paid at time-and-a-half the employee's "regular rate" of pay. Thus, extensive overtime work often significantly supplements an employee's take home pay.

Of course, those long hours mean less time away from work. While all workers, hourly paid or salary paid, typically appreciate an opportunity for a larger paycheck, some workers actually may prefer time off above additional pay.

Ah, the search for the balance between more time and more money. Currently, under the FLSA, employers have no option for compensating hourly paid employees for "excess" work, other than to pay them overtime for more than 40 hours in a workweek. The alternative time off later or "comp time" has long been prohibited by the FLSA, at least for employees in the private sector.

Previously, Congress has considered whether private employers should be allowed to offer employees comp time,

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and this year was no exception. On May 8, the U.S. House of Representatives passed the Working Families Flexibility Act of 2013 by a narrow margin. Currently, the bill has been received in the Senate and referred to its Committee on Health, Education, Labor and Pensions.

Even though ultimate passage of the bill is unlikely, it has triggered a firestorm of discussion about whether it primarily benefits employers or hourly paid employees. Employee advocacy groups argue that comp time will allow employers to save money by not paying overtime and yet ultimately allow the employer to deny the employee the comp time that the employee may accrue.

Employer groups argue that comp time provides an opportunity and the flexibility for employees to choose which is more important: time or money. As you may expect, neither side is entirely accurate.

Until the U.S. Department of Labor issues regulations, many elements of the bill would be unclear. Given that FLSA litigation against employers is rampant, adopting a comp-time program without a clear process to follow and strict compliance with the bill's requirements would be begging for trouble. Further, the record keeping aspects of a comp-time program could be a significant burden for an employer — determining which employees have elected comp time, how much do they have, when will they use it, how do we cover the absence, etc.

In sum, while employees may be skeptical that an employer would comply with the law and provide the benefits required, employers may be skeptical that the law offers any real benefit to them at all.

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