

# ISSUE BRIEF

## Compensatory Time Off

**Compensatory time legislation purports to give workers more flexibility and control over their busy schedules by allowing employers to offer compensatory time off instead of time-and-a-half overtime pay to employees covered by the Fair Labor Standards Act (FLSA).** To the contrary, current comp time proposals would undermine the 40-hour workweek—resulting in more workers working longer hours for less pay—and give flexibility and control to employers rather than workers. Congress should instead promote greater work schedule flexibility for workers without loss of pay and without undermining the 40-hour workweek.

The FLSA requires employers to pay a time-and-a-half cash premium for work performed in excess of 40 hours per week. Comp time legislation would remove this obligation from private-sector employers who offer workers compensatory time off. Comp time proposals would allow employers to reject comp time requests that are not made “within a reasonable period” or would “unduly disrupt” the employer’s operations. Comp time legislation may also include a proposal to replace the 40-hour workweek with an 80-hour, two-week work period.

**Comp time legislation would lead to longer hours by undermining the 40-hour workweek.** The overtime cash premium is the only protection workers have against excessive work hours. Comp time legislation would free employers from paying the cash premium, thereby reducing their incentive to adhere to a 40-hour workweek.

**Comp time legislation would lead to longer hours by exacerbating FLSA noncompliance.** As the General Accounting Office has reported, the failure of employers to pay cash overtime properly is a serious problem across many industries, and existing tools for FLSA enforcement are grossly inadequate. Comp time legislation would make overtime enforcement far more difficult, resulting in more workers working longer hours for less pay.

**Comp time legislation would cut worker pay.** Millions of workers depend on cash overtime to make ends meet. Under comp time proposals, workers would forfeit cash overtime, often against their will. Comp time legislation would force these workers to take an unaffordable pay cut.

**Comp time legislation would give flexibility to employers, not employees.** Unlike cash overtime, use of comp time would be left to the employer’s discretion. Workers would have little recourse against employers who reject requests for comp time or who force them to take comp time against their will. Comp time loses value when workers have no control over its use.

**Comp time legislation would deny worker choice.** The inherent inequality in the employment relationship makes it hard for workers to refuse comp time. Employers would be free to assign overtime only to workers who agree to accept comp time or to retaliate against workers who refuse. Unenforceable prohibitions against employer coercion afford workers no real protection.

**Comp time legislation would rob workers.** The banking of overtime earnings would amount to an interest-free loan from workers to employers. Workers would lose their banked overtime earnings if the employer goes bankrupt. And comp time legislation would create opportunities for employers to reduce costs by cutting back on paid leave.

**Private and public sectors are not comparable.** Though public-sector employers already offer comp time, there are important differences between the two sectors. Public employees are more likely to enjoy civil service protection and union representation. Public employers lack a direct profit motive to minimize overtime pay. And forced overtime, improper payment for overtime and bankruptcy are all less prevalent in the public sector. Yet even public employees have experienced problems with comp time.

**The 80-hour two-week work period is unfair.** Under an 80-hour, two-week work period, employees who work 50 hours in one week and 30 hours in the following week would lose 10 hours of time-and-a-half overtime pay. This blatant attempt to do away with the 40-hour workweek would lower overtime pay for workers and thereby encourage employers to require more mandatory overtime.

**How do we achieve real flexibility?** Workers who choose to work overtime should be able to continue earning a cash premium and use that premium to take more unpaid or paid leave, with more control over when leave is taken.

**Employers should provide more flexible schedules within the existing FLSA.** The FLSA already allows for a wide variety of flexible work arrangements, including flextime, compressed workweeks and split shifts. Yet employers are failing to take advantage of flexibility in the FLSA. In 2001, only 28.8 percent of workers had schedules that allowed them to vary their work hours, according to the Bureau of Labor Statistics. Employers could also give workers more paid or unpaid leave.

**Congress should prohibit excessive involuntary overtime.** Workers should have the right to refuse excessive overtime that overwhelms their family schedule.

**Congress should strengthen the Family and Medical Leave Act (FMLA).** To give workers additional flexibility without loss of overtime pay, Congress should strengthen the FMLA (see “Family and Medical Leave”).

**Congress should raise the minimum wage.** Raising the minimum wage would reduce workers’ economic need to take overtime.

**Congress should strengthen FLSA enforcement.** Better enforcement of wage and hour protections would reduce workers’ need and employers’ demands for overtime.