

June 9, 2015

**Re: Working Families Flexibility Act**

Dear Member of Congress,

As an organization dedicated to promoting fairness in the workplace and economic security for all workers, we write to express our opposition to the Working Families Flexibility Act of 2015, H.R. 465/ S. 233, introduced by Representative Martha Roby in the House and Senators Mitch McConnell and Mike Lee in the Senate. Too many people today are struggling to meet the demands of work and family, as well as to make ends meet. America needs legislation that supports working families, but this legislation does not achieve that goal. Although the bill's proponents assert it would provide workers with much needed flexibility, in reality it would offer a pay cut for workers without any guaranteed flexibility or time off to care for their families or themselves. We oppose this legislation out of concern for its impact on all workers, and in particular, its impact on women workers, who still shoulder the majority of caregiving responsibilities and make up a disproportionate share of workers in low-wage jobs. We urge Congress to instead pass legislation that provides real workplace protections, including ensuring that workers have a say in their schedules.

**The Working Families Flexibility Act makes false promises.** The bill permits workers to choose paid time off, rather than time-and-a-half wages, as compensation for working more than 40 hours in one week ("comp time"). Although the bills' supporters claim this choice would give hourly workers more flexibility, the legislation does not actually guarantee that workers will be able to take the accrued time off when they actually need it. In reality, this legislation would result in cash-strapped and time-strapped workers forfeiting the overtime pay that is crucial to the economic security of working families in order to earn comp time, and then in many instances being denied the choice of *when* to take that paid time off.

**The Working Families Flexibility Act does not give workers a meaningful say in their work schedules.** Like the public sector comp time law, which permits state and local government employers to provide comp time in lieu of overtime pay, the proposal gives the employer, not the employee, the "flexibility" to decide if and when accrued comp time can be used. An employer may deny the request entirely if that employer deems it would "unduly disrupt" operations. The bill only requires the employer to permit the use of comp time within a "reasonable period" after receiving the request. When an employee needs a day off, it is usually for a specific purpose such as going to a doctor's appointment, caring for a sick child or relative, or attending a parent-teacher conference. The loose requirements that the legislation would place on employers, together with lower-court precedent on comp time in the public sector that gives employers significant leeway to refuse requests for particular days off, leaves little hope that employees will be able to rely on comp time when they need time off on a particular date.

**Workplace realities mean that many workers won't feel that comp time is a choice.** Despite the bill's provision that employers can only provide comp time in lieu of overtime pay when employees voluntarily agree, many workers—particularly workers in low-wage jobs—are likely to view comp time as a non-negotiable term of employment. Private sector unionization hovers around 6.6 percent, meaning that most low-wage workers will not have the benefits of union representation when it comes time to negotiate a comp

time agreement with their employers. Low-wage workers with little bargaining power are unlikely to feel empowered to say no to their employers requests that they accept comp time in lieu of overtime pay. Because it is cheaper to provide comp time than to pay overtime wages, employers would be incentivized to hire fewer people and rely on overtime hours—paid for in future comp time. Employees who do not accept comp time could be penalized with reductions in hours or bad shifts.

**Employees already have too few tools to fight back against rampant wage and hour violations in the private sector.** Violations of existing wage and hour laws are already rampant in the private sector, and these violations routinely go unchecked. In one study of workers in low-wage jobs in Chicago, Los Angeles, and New York City, researchers found that 76 percent of workers who worked more than 40 hours in a week were not paid the legally required overtime rate. The bill would amount to weakening existing overtime protections and does not provide for additional funds for the education and enforcement efforts the new provisions would require. It also leaves workers with few remedies in cases of employer misconduct or bankruptcy. The Department of Labor simply does not have the resources to prosecute all of these violations, and low-wage workers often cannot afford to retain counsel. This bill would likely give rise to yet another form of wage theft that would go unchecked.

**Congress should instead focus on workplace legislation that truly gives workers the flexibility they need.** Workers should not be forced to choose between earning enough to provide for their families and receiving time off to care for them. To address the needs of workers and their families, Congress should instead pass:

- The Schedules That Work Act, which gives workers a say in their work schedules and begins to curb the most abusive unpredictable and unstable scheduling practices that threaten working families' financial security;
- The Healthy Families Act, which makes earned paid sick days available to millions of workers;
- The FAMILY Act, which provides paid family and medical leave, modeled on successful state programs;
- The Raise the Wage Act, which brings the minimum wage back to a reasonable level, and, in so doing, provides business with customers, improves our economy, and helps communities thrive;
- The Paycheck Fairness Act, which helps close the gender-based wage gap.

**Workers should not have to work extra time and forgo pay in order to manage their responsibilities at home and at work.** If Congress wants to act to support working families, there is a clear policy agenda to follow. Comp time in lieu of overtime pay is not part of the solution.

Sincerely,



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