



# COMPLIANCE BULLETIN

## HIGHLIGHTS

- Compensatory time off in lieu of overtime pay is currently not allowed for private employers.
- H.R. 1180 would allow private employers to offer compensatory time for eligible employees.
- H.R. 1180 would need to pass the Senate and be signed by the president to become law.

## IMPORTANT DATES

### May 2, 2017

The House of Representatives approved H.R. 1180 and sent it to the Senate for review.

## House Passes Changes to Overtime Rules

### OVERVIEW

On May 2, 2017, the House of Representatives passed the Working Families Flexibility Act (also known as [H.R. 1180](#)). If approved, H.R. 1180 would authorize private employers to offer compensatory time instead of overtime pay for nonexempt employees who work more than 40 hours per week. H.R. 1180 still needs approval from the Senate and the executive branch before it becomes law.

Compensatory time off is already a common practice for many federal and state employers, but it is not currently allowed by the Fair Labor Standards Act (FLSA) for private employers. H.R. 1180 would amend the FLSA to allow this practice, if certain conditions are met.

### ACTION STEPS

**Because H.R. 1180 is not yet law, no action steps are currently required of any employers.**

This Compliance Bulletin is provided for informational purposes only, to assist employers in understanding the changes H.R. 1180 would bring to current overtime compensation practices in the private sector.

**Provided By:**

Touchstone Consulting Group

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## Compensatory Time Off

Currently, the FLSA requires employers in the private sector to pay overtime wages to nonexempt employees for all hours of overtime worked. If approved, H.R. 1180 would amend the FLSA to allow private sector employers to provide either overtime pay or compensatory time off to nonexempt employees who work overtime hours.

H.R. 1180 is proposing that compensatory time off be calculated at the rate of **1.5 hours** of compensatory time off for every hour of overtime work. As it stands, H.R. 1180 would expire within **five years** of its enactment. In addition, the bill would limit the amount of compensatory time off eligible employees may receive to **160** hours.

H.R. 1180 would only apply to private sector employers, meaning that if it were to be adopted, it would not affect current compensatory time off requirements for public sector employees.

## Voluntary Agreement and Usage

Under H.R. 1180, both employers and employees would have to agree to compensatory time off instead of overtime wages. In unionized environments, compensatory time off would have to be allowed by any applicable collective bargaining agreement. The agreement would need to be preserved in writing and take place before any compensatory time off begins to accrue.

Finally, the language of H.R. 1180 would prohibit employers from coercing or forcing employees to agree to receive or use compensatory time off instead of overtime wages. This means that employers would not be allowed to directly or indirectly intimidate, threaten or coerce (or attempt to intimidate, threaten or coerce) employees to agree to receive or use any accrued compensatory time off.

## Eligibility

Under H.R. 1180, employees would be eligible to receive compensatory time off after **1,000 hours** of continuous employment during the **previous 12 months**.

## Payment for Unused Compensatory Time

H.R. 1180 would require employers to allow employees to use any earned compensatory time off within a reasonable period, as long as this does not unduly disrupt the employer's operations.

However, employers would be required to provide monetary compensation to their employees for any compensatory time off that is not used by the end of the calendar year, although employers would be able to determine a different 12-month period as long as it remains consistent.

Unused compensatory time would need to be paid at a rate that would at least be equal to the employee's regular wage rate. The employee's regular rate would be **the higher of:**

- ✓ The regular wage rate at the time the overtime work was performed; or

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- ✓ The regular wage rate at the time the unused compensatory time off must be paid.

Payment for unused compensatory time off would be required within a month of the end of the 12-month period.

## More Information

We will continue to monitor the progress of this bill through the legislative process and update you as more information becomes available. In the meantime, contact Touchstone Consulting Group for more information regarding the FLSA and overtime wage payment requirements.