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## The Working Families Flexibility Act – Congress's First Step to Helping Employers Manage Overtime Costs

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While President Obama's landmark overtime expansion is pending in a Texas federal court, on May 2, 2017, the Republican House passed the Working Families Flexibility Act (H.R.1180/S.801) by a vote of 229 – 197, which would change overtime pay in the private sector, as we know it. Not one Democrat voted for the bill and Senator Elizabeth Warren called the bill a "disgrace" on Twitter. In opposition to the Act, the National Partnership for Woman & Families calls the Act "harmful, smoke-and-mirrors legislation" as it believes that the Act would set up a false choice between time and money. Why is everyone so up in arms about the Act? Let's take a look . . .

### What Would the Act Provide Overtime Eligible Employees if Enacted?

The House version of the Act would allow employers to offer paid "comp time" to overtime eligible employees (i.e., non-exempt employees) who work more than 40 hours in a workweek in lieu of overtime pay. Eligible employees would receive comp time at a rate of not less than one and one-half hours for each hour of employment for which overtime pay would otherwise have been required.

Employees would have the option of refusing to accept comp time in lieu of overtime, and employers would be prohibited from coercing employees to accept comp time instead of receiving overtime pay. To be eligible for comp time, employees would be required to work at least 1,000 hours in a 12-month period after which they would be able to elect the comp time option. The Act would also allow employees to bank up to 160 hours of comp time.

### Employer Considerations

Two immediate concerns for employers if the Act passes as drafted are: (1) the timing of an employee's use of comp time; and (2) the mandatory payout requirement for unused comp time. The Act permits employees to use comp time "within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer." Employers would have to be on their toes as to what constitutes "undue disruptions" to their operations consistent with that provision so as not to interfere with employee's rights to use available comp time. Likewise, unused comp time must be paid out to employees each year, which means that employers would still have to compensate employees at their the regular rate for purpose of overtime pay if they do not use all accrued comp time in any given year.

No doubt, although the Act intends to provide greater flexibility to employees and help employers manage overtime costs, which would be favorable to both groups, employers will take on significant administrative responsibilities and costs with respect to managing comp time in compliance with the Act, including, without limitation, keeping track of comp time "accrual" and use and accruing the cost of the time on the books. Nonetheless, the current political environment may provide the opportunity for employers to get a helping hand from Congress. That, however, is yet to be determined.