Economic Policy Institute
Briefing Paper
1660 L Street, NW • Suite 1200 • Washington, D.C. 20036 • 202/775-8810 • http://epinet.org

FAMILY FRIEND OR FOE?

Working Time, Flexibility, and the Fair Labor Standards Act

By Lonnie Golden

Employers and workers both desire flexibility in working time. Businesses want flexibility to change the number of workers and their hours on short notice and in response to market demand and competition. At the same time, workers and their families want flexibility in allocating their work time—daily, weekly, and over their lifetimes—to balance competing demands on their time.

For almost 60 years, the Fair Labor Standards Act (FLSA) has mediated these differences and provided a standard to which both businesses and workers have had to conform. Its requirement of premium pay for hours over 40 a week was designed as an economic incentive for employers to limit the amount of time most hourly workers were required to work.

Today, despite this economic incentive to limit weekly hours to 40, the demands on U.S. workers for more hours are increasing. As hours per week fall among our major industrialized trading partners (except Canada), average hours in the United States are rising. Overtime hours are rising as well. Moreover, even with the protections of the FLSA, working hours are poorly distributed, with the result that many workers are working longer hours than they desire while others are working too few.

These pressures notwithstanding, legislation has been introduced in Congress to amend the FLSA in ways that would ease the overtime restrictions. The proposals would allow workers to receive compensatory time off in lieu of overtime cash pay in the private sector and would replace the current 40-hour work week with an 80-hour, two-week standard, in which workers would receive overtime pay only for those hours worked in excess of 80 within a two-week period.

These proposed changes to the FLSA threaten to exacerbate the existing labor market problems of rising hours and poorly distributed working time:

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- In the state and local government sector, where comp time arrangements are common, many employees carry a large number of banked comp time hours, and some even approach their maximum of 240 hours (30 days) for most workers and 480 hours (60 days) for police and firefighters. In addition, employees have difficulty obtaining their employers' permission to use their comp time hours when they need them. Thus, employees are "loaning" hours to their employers interest free. Extending comp time to the private sector may create additional problems. Private sector firms are much more likely to shut down, go bankrupt, or relocate, and subsequently employees would lose the value of their accumulated comp time.
- Eliminating the overtime disincentive would reduce employment by approximately 1.1% in manufacturing and 1.8% in nonmanufacturing. In total, approximately 1.4 million jobs would be lost.

Moreover, many of the objectives of both workers and firms can be accomplished without revision of the FLSA:

- The current provisions of the FLSA allow workers and employers much greater flexibility than most are taking advantage of. For example, under current law employers can let employees vary their arrival and departure times and take time off during the day, even while requiring 40 hours to be worked each week. Employers can also offer workers a compressed work week, such as four 10-hour days per week or nine days over two weeks. Flextime options, which allow employees to vary somewhat the start and end times of a given workday around required "core hours" such as 9 a.m. to 3 p.m., are often used to reduce paid overtime. But while many companies say they support such policies, few firms or workers take advantage of them. A survey of private companies found that just 14% routinely made a flextime program available. Only 10% of full-time hourly workers have flexible work schedules.
- Alternative policies can be designed that would improve rather than harm worker and family well-being and enhance productivity, employment opportunities, and macroeconomic performance. Companies should be encouraged to create partnerships with workers in strategic workplace decision making regarding worktime and scheduling. "Best practice" programs instituting short-hour options and flextime schedules should be adopted by more public-sector agencies and should be encouraged, perhaps with preferential tax treatment, in private industry.

The most likely outcome of amending the FLSA in ways recently proposed by Congress is longer hours for workers, because overtime hours will become cheaper for employers. Consequently, many employers may increase overtime hours and selectively schedule workers who have chosen the comp time option. Workers and their families will gain little flexibility in their allocation of time or employment opportunities, the U.S. economy will have fewer jobs to offer, and productivity will be diminished.

The Many Dimensions of Work Hours

Duration of work, or average hours per week, is the main focus of the Fair Labor Standards Act and related economic research on worktime. It is the result of the interplay of three factors: hours per week demanded by the employer, hours per week desired by the worker, and the institutional and legal environment. However, there are four other dimensions of worktime that are central to a worker's well-being, and these would be affected by the FLSA reforms. These are variability, flexibility, interval, and congestion. *Variability* refers to the amount of variation in hours from week to week. For example, if one worked exactly 40 hours every week for a year, variability would be zero and the number of hours would be predictable. If the work week fluctuated each week, unpredictably, variability would be high, even if work hours averaged 40 hours per week.

Flexibility refers to the degree and speed to which work hours respond to a change in hours desired. To workers, "flexibility" means the ability to adjust their own work hours when faced with either anticipated or unanticipated constraints on their time, such as the demands of a college course or the need to stay home with a sick child. Under a flexible schedule, the worker can make up the lost hours at a future time when they do not conflict with other responsibilities and without having pay docked.

The *interval* refers to the daily timing or block of scheduled worktime per day. A common interval is the traditional 9-5 shift. Employers schedule employees to be onsite at the workplace as part of a managerial strategy. Workers may have individual constraints that make them prefer to work during a particular daily time slot.

Congestion refers to the degree of overlap when multiple work or nonwork activities are attempted within the same block of time. If average hours per week lengthen and become more variable while required daily intervals are inflexible, congestion will increase.

Workers' well-being is affected by each of these dimensions of time. Longer average hours cut into available nonwork and leisure time. Even for a fixed average number of work hours, variation in hours from week to week can harm well-being, particularly if take-home pay fluctuates. The absence of flexible daily, weekly, annual, and lifetime work schedules may impede a worker's attempts at lifelong learning, parenting, or phased retirement. Finally, a given amount of leisure time may yield less pleasure than otherwise if it is congested with work or other activities.

Since timing can be everything, there is more to worker well-being than simply the level of income and number of hours worked. Public policy intended to improve the economic well-being of working families should pay attention to all these dimensions of working time. The goal of enlightened policy should be to increase income, leisure, and control over the length and timing of work hours for hourly workers.

Poorly Distributed, Longer, and Inflexible Hours

There are at least three key current trends to take into account when considering policy regarding working hours.

Maldistribution of work hours

Many workers experience overemployment (involuntary long or excessive hours) and are willing to reduce income proportionally for a reduction in hours, but they lack that option in their current jobs. At the same time, despite the reduction in unemployment through the 1990s, stubborn pockets of high unemployment remain by industry, region, and demographic characteristics, and involuntary part-time and temporary employment are growing. When partial unemployment is added to the official unemployment rate, the rate is still over 10%, almost twice as high as the official unemployment rate.

An alternative estimate of underemployment can be drawn by combining the 3.0 million contingent workers who say they would prefer full-time work[1] with the estimated 4.3 million involuntarily part-time workers. This yields a total of 7.3 million underemployed workers. Adding this to the number of unemployed means that 14.7 million workers, or 11.1% of the labor force, were either unemployed or underemployed in 1995. In addition, the fact that another 7.7 million workers (6.2% of the workforce) work multiple jobs indicates that they are underemployed with their primary employer.

Work hours can be considered to be maldistributed not only because underemployment is high, but also because underemployment co-exists with evidence of overemployment. Cross-sectional samples such as the special supplement to the May 1985 Current Population Survey (CPS) and the Panel Survey of Income Dynamics (PSID) find one-third or more of the workforce dissatisfied with their current work hours. Over a quarter of the workforce is underemployed, wanting to increase its income and willing to work additional hours to do so. An additional 8% of all surveyed workers are overemployed—willing but unable to obtain shorter hours for less pay in their current jobs (Shank 1986; Kahn and Lang 1991). Other workers likely are expressing their dissatisfaction with excessive work hours either by quitting to find an alternative job with shorter hours or by leaving the labor force. Overemployed workers are moderately more likely to be female, in their 30s or 40s, receiving relatively high incomes, and salaried. Underemployment is substantially higher among occupational categories that tend to be paid by the hour. The incidence of underemployment is notably higher and overemployment lower among workers at lower income levels, implying that, while some hourly workers would be willing to sacrifice income for more time off, particularly at critical yet transitory phases in their lives, hourly workers feel so strapped for income that many more would be willing to forego more time to get more income.

Several less scientific, one-time polls show that a good share of the workforce would like shorter working hours but cannot get them in their primary jobs. A February 1994 Pew Foundation poll found that 15% would be willing to trade money for shorter hours. In an August 1994 Gallup poll, 33% "mostly agreed" they would take a drop in their household incomes if they or their spouses could work fewer hours (there was little disparity by sex, age, and education). Among those already working more than 40 hours per week, 69% indicated they "don't want to work more than 40 hours" (Galinsky 1996).[2] Finally, there is an ongoing redistribution of leisure time over the life-cycle, away from the middle years to an ever-earlier age of retirement, particularly among men (Gendell 1992). This shift suggests that leisure time is becoming back-end loaded over workers' lifetimes, often postponed until retirement.

All of these trends suggest that the labor market suffers from an inability to shift the excess hours of those workers who consider themselves overemployed to the relatively larger group in the labor force whose priority is to obtain more income.

Longer hours

In addition to maldistributed hours, another recent trend is an increase in average weekly and annual hours for many if not most employed workers, a reversal of a longstanding trend during this century. Between 1981 and 1993, average hours for full-time workers rose from 42 to 43.7 per week (Rones 1996).[3] For all workers, average work hours rose from 37.4 to 38.8 between 1983 and 1994 (Mishel, Bernstein, and Schmitt 1997). Overtime has climbed higher with each business cycle, peaking at 4.5 hours per week for the first time on record, during 1996 (BLS 1997a). It appears the current increase in hours reflects a structural trend rather than a temporary aberration. Moreover, the upward trend in average hours and overtime is occurring despite a steady upward trend in the proportion of workers on part-time schedules. Average weekly hours have declined since the late 1970s in only one of the eight major industry classifications—retail trade, where part-time jobs are a large proportion of jobs (U.S. Department of Labor 1995, Table 14). In addition, the hours of white-collar workers are probably also rising due to a likely complementarity between production worker and non-production worker hours within each industry.

The recent rise in average hours for employed workers stems from three sources. First, longer hours are requested by employers when fixed costs increase as a share of total labor costs. Fixed costs are those that rise with additional employees but not with additional hours worked; examples are private health insurance, workers compensation, and expenses for hiring and training new employees, particularly in jobs with upgraded skill requirements. Meanwhile, the hourly wage rate, the main variable cost to employers, has risen at a much slower rate relative to the increase in fixed costs, and the overtime premium has remained unchanged. These trends are providing incentives for employers to lengthen hours rather than add jobs and to lay off workers rather than implement work-sharing arrangements.

Second, many workers *need* to work longer hours. Real hourly wage growth has slowed for virtually all male workers and for low-wage female workers.[4] To maintain a rising middle-class standard of living, workers are spending more hours in the labor market and may hold multiple jobs. Despite this greater work effort, households have compiled record levels of debt—about 100% of annual disposable income (Altig, Byrne, and Samolyk 1992). The estimated average monthly balance of credit card debt per household is over $3,900 (Schor 1995). In a poll of employees in a large telecommunications company, 69% said they would like to cut back on their hours but cannot afford to do so mainly because of debt. In the sample, 71% said they carry some credit card balance each month (Schor 1995). In a Merck Family poll of 800 Americans, only one-third were debt free (excluding mortgage debt). Another potential source of workers' needs to work more hours is high instability of income and employment. Workers may be more willing to put in extra hours as a way to demonstrate commitment and promotability, and many workers believe their jobs are at risk if they refuse extra hours or request shorter hours (Bell and Freeman 1996). In the Merck poll, “job insecurity” was the third-most-cited reason surveyed workers said they could not reduce their work hours, after “could not afford it” and “lack of scheduling flexibility in jobs.” Finally, the FLSA overtime pay premium makes working longer hours even more alluring to cash-strapped hourly workers seeking to avoid personal bankruptcy or poor credit ratings.

A third cause of the increase in average hours is the declining presence and bargaining leverage of organized labor. This decline has undercut the ability of workers to attain one of organized labor’s traditional goals—shorter and more predictable hours. Union members have relatively greater access to premium pay for overtime due to better monitoring and employer compliance (Weil 1996). One study showed that, in 1985, 90% of unionized workers received overtime pay for weekly hours in excess of 40, compared to only 73% of nonunionized wage and salary workers; the difference is even larger among hourly wage workers exclusively (Carr 1986; Ehrenberg and Schumann 1982; Trejo 1993, 1991). Unionization has also served to expand the number of employees covered by an overtime premium by requiring premium pay for working more than eight hours a day, as opposed to more than 40 hours in a week (Trejo 1993). Mandatory overtime applies to 20% of the workforce (16% in manufacturing); these workers are unable to refuse overtime hours without facing some penalty, including dismissal.[5] On the other hand, 20% of collective bargaining contracts contain an explicit right to refuse overtime. Unions have provided a localized means of codifying, monitoring, and enforcing the rule that overtime be voluntary and that compensation include a premium.

The gradual lengthening of work hours poses problems. In four major strikes in the past two years, excessive overtime was a major issue. These include strikes against General Motors in Janesville, Wis., and in Flint, Mich. In the latter, GM eventually agreed to raise employment by 5% in order to ease overtime hours.[6]

Longer hours lead to intensified work-family time conflicts. Polls show that many people feel the negative side effects of longer worker hours on their personal and family lives. Thirty-five percent of likely voters polled in March 1995 by Lake Research believed they or family members were working too many hours to properly attend to family or personal lives. In a 1991 Gallup Poll, 34% of working parents reported “a great deal or a lot” of conflict between demands of work and family or personal relationships. In another survey, 32% of all working adults said they “spend too much time on the job” (Schor 1994, 161). In the Merck Family poll, the three things people said they needed to make their lives more satisfying were spending more time with family and friends, reducing stress, and doing more to make a difference in their communities (Schor 1995, 24). In a Families and Work Institute survey (1993), among those workers working more than 40 hours per week, 58% said they did not have “enough time with their partner/spouse,” while 74% lacked “enough time with children” (Galinsky 1996). Women surveyed ranked “not having enough time together” as a family as a concern higher than either crime, education, or child care (Galinsky 1996). In a 1991 poll of 1,010 people conducted for Hilton Hotel, 21% said they had “no time for fun anymore,” 38% said they “cut back on sleep to make up for lost time,” and 20% admitted they called in sick to work at least once in the past year when they really just needed time to relax (Robinson 1991). Not surprisingly, the feeling of “time crunch” was experienced most by single mothers and those in the age 30-49 bracket, but it was expressed by every age bracket. Americans increasingly feel rushed. The proportion of Americans who say they “always felt rushed” rose to 38% in 1992, up from 32% in 1985 and 22% in 1971 (Godbey and Graefe 1993, 26).[7] Thirty-six percent assigned the blame entirely to work, and an additional 38% said it stems from both work and leisure.

Inflexible work schedules

The third trend in working time, after maldistributed and longer average hours, is inflexibility in work schedules. The PSID revealed that only 15% of workers possess the flexibility to both increase and decrease the number of hours worked per week. In addition, the BLS in 1991 reported that only about 15% of workers had flextime schedules, up only slightly from 12.3% in 1985, when these data were first measured. Among hourly workers, just 10% had flextime. Most workers still work a standard work week and workday, without much flexibility.

The Case for Regulating Working Time

The inability of the labor market to redistribute hours from the overemployed to the underemployed and unemployed represents a classic case of market failure. The market alone cannot achieve the appropriate distribution of working hours. While not perfect, the FLSA has historically provided a “second best” solution to the problem of maldistributed work and hours. Any new amendments to the FLSA need to do at least as well, and should remain true to the original intentions of the law—to protect workers with little bargaining leverage from starvation wages and intolerable hours, as well as from the health and safety risks of excessive work hours; to generate more jobs; and to spread available work more equitably among income earners.

There are many other social benefits of the FLSA as well. When an employer insists on long hours per week, the costs spill over onto family and parenting time, student time, leisure, and volunteer time. In a sense, the overtime premium makes employers bear more of the social spillover costs imposed by their own hours decisions. The FLSA also improves social welfare and equity, on balance. The premium pay deterrent transfers hours and income in such a way as to yield a gain in well-being to the underemployed and unemployed; this gain is arguably larger, on balance, than the well-being lost to those deprived of working longer hours.

Overtime pay provides additional income for workers whose employers schedule overtime hours despite the pay disincentive. A 40-hour standard provides a measure of predictability and stability for both workers and firms. Workers receive predictable blocks of non-work time and a steady stream of income. Firms get a routine schedule of operation or shift-lengths and predictable labor costs. Such stability facilitates the longer-term planning required for increased investment on the part of firms and a smooth path of consumption spending for households. Both stabilize business cycle fluctuations.

Most importantly, the FLSA overtime premium requirement helps create or preserve jobs. The overtime pay deterrent and subsequent shorter work week encourage employers to expand output via hiring new employees because: (1) more workers will be needed if more output is produced via longer hours; (2) more workers will be hired to meet the increased demand in leisure-related services; (3) more workers will be hired if a healthier, more energetic workforce helps reduce unit labor costs through lower rates of absenteeism and accidents; and (4) the escalating fixed costs of adding workers will be offset by higher marginal costs of overtime hours.

There is no single, precise estimate of either the hours reduction or job creation attributable to the FLSA overtime premium. If firms are able to make up for lost output by better rationalizing work or lowering worker fatigue, they need not hire proportionally more workers. In addition, employers may simply be willing to pay for a greater number of average overtime hours. However, evidence from countries that have introduced shorter work weeks demonstrates that some employment is indeed created with a reduction in average hours worked per week. Half of the lost output that would result is offset by productivity growth sparked by the shorter hours. In addition, the evidence shows that firms hire additional workers to replace half the reductions in hours. The various studies show that:

- In France, 208 enterprises adopting agreements to reduce working hours created about 4,500 jobs and preserved another 11,000 jobs (ILO 1995).[8]
- In Germany, the various types of hours-reduction policies produced an estimated 3.3% net gain in employment, after accounting for all offsets such as higher productivity, more overtime, slow pace of implementation, higher wage costs, and dampened economic growth (Mosely 1995; Boesch and Stille 1991). Estimates of the number of jobs created ranged between 300,000 and 1 million (Mosely 1995).
- In Canada, a simulated 10% reduction in worktime phased in over five years lowered unemployment 4.1%, with no harmful effect on either output or inflation (Advisory Group on Working Time and the Distribution of Work 1994).[9]
- In manufacturing in Australia and the United Kingdom, the projected net employment effect of an imposed reduction in hours would be positive in eight of 12 industries. In Finnish manufacturing industries, a reduction in standard hours increased employment over the 1970s (Booth 1993, 434; Ilmakunnas 1995).

Drawing on these studies, we estimate the rate at which a reduction in hours converts into new full-time-equivalent (FTE) jobs. **Table 1** shows the estimated number of FTEs created using a conversion factor of 0.5 and 0.2 and a base of 75 million workers.

The estimates suggest that reduced hours can preserve jobs and longer hours can cost jobs. Assuming symmetry, if weekly hours were to rise by two, to 42 hours (a 5% increase), employment would fall by 750,000 to 1.875 million. These figures also suggest that strict enforcement of the FLSA's overtime provisions can help maintain or raise the number of jobs in the economy.

TABLE 1
Reduced Hours and Employment Growth

Percentage Decrease in Hours	Conversion Factor	Net Increase in FTEs (Thousands)
10% (Weekly Hours = 36)	0.50	3,750
	0.20	1,500
5% (Weekly Hours = 38)	0.50	1,875
	0.20	750
2.5% (Weekly Hours = 39)	0.50	938
	0.20	375

Source: Author's analysis of Boesch and Stille 1991, Booth 1993, Advisory Group on Working Time 1994, ILO 1995, Ilmakunnas 1995, and Mosely 1995.

The cost of overseeing and enforcing the FLSA is modest. The Wage and Hour Division of the Department of Labor (DOL) is a relatively inexpensive regulatory apparatus in comparison to most other enforcement agencies. A staff of only 800 handles roughly 60,000 complaints per year, one-third of which are alleged overtime law violations. In 1995, the DOL's Employment Standards Administration found that employers with overtime violations owed employees $120 million in back pay for overtime (Hansen 1996). Back in 1986, the Employment Standards Administration found the amount of uncompensated overtime to be $93 million (U.S. DOL 1988). These figures do not include potential violations never filed formally as complaints with the Wage and Hour Division, including the misclassification of employees as exempt. Without an increase in the number of regulators, some employers may perceive little credible threat of being caught violating standards, and thus they may be more tempted to disregard them. Relative to the United States' main trading partners, which rely on statutory mechanisms, regulation through a pay disincentive combined with federal penalties of up to $10,000 per incident may be a relative bargain. Moreover, the proposed new amendments do not necessarily reduce firms' bookkeeping costs, federal regulatory costs, nor litigation costs.

The FLSA also provides working-condition protections for workers lacking union representation. The current climate of private sector deunionization exacerbates employer noncompliance with regulation, given that labor unions exercise workers' statutory or regulatory rights more effectively (Langille 1994, 192; Weil 1996).[10]

Much of the flexibility in working time that employees and employers seek can be accomplished already within the FLSA. Nontraditional work arrangements such as flextime and part-time schedules can provide employers a means by which they can extend operating hours and cope with week-to-week fluctuations in demand. Such options allow firms to avoid costly overtime and require only the upfront cost of improving human resource planning. Also, the FLSA does not prohibit shorter hours, such as work-sharing. Finally, employers are already gaining more flexibility in labor input by increasing their use of temporary help, leased, and on-call employees.

Deregulated working hours would not produce worktime arrangements that better reflected worker preferences. The historical evidence is overwhelming that, both before and under the FLSA, there is a chronic shortage of jobs with individualized work hours. The vast majority of workers are not permitted to temporarily trade income for time, or vice versa, when they need to. No market mechanism currently exists to help redistribute hours from the overemployed to the underemployed.

While regulation of work hours provides many social benefits, it would be misleading to suggest that the benefits come without costs. First, today's flexible production techniques may be hampered by requirements for pay premiums. Mass production and mass consumption markets, with their standardized products and processes, are giving way to cost rationalization and streamlining brought on by the globalization of trade and competition. Firms now more intensely avoid bottlenecks and produce only when there are orders by using just-in-time inventory technologies to lower storage costs. Firms that need more flexible, annualized operating hours to stay competitive incur higher short-run labor costs as a result of the FLSA pay premium on overtime.

Second, firms argue that, to be competitive and offset the cost of expensive capital equipment, they need to more fully utilize their capital capacity by operating equipment on a 24-hour, seven-day-a-week basis.

Third, to the extent that a fixed work week reduces flexibility in the scheduling of production, it may saddle firms with either costly, undesired labor hoarding and inventory or missed sales opportunities. Fourth, the standard work week with overtime pay creates administrative costs by requiring more recordkeeping or more intensified management efforts to avoid overtime. Fifth, it deprives those workers with a relatively strong preference for income and long work hours an opportunity to attain more pay from their current jobs, thus saddling them with the cost of searching for multiple jobs (Rottenberg 1995).[11]

Finally, FLSA regulations may be unwittingly discouraging employers from using nine day/80 hour two-week schedules; creating confusion regarding which employees are exempt; making it difficult to calculate compensation and overtime pay when there are bonuses or incentive pay schemes; creating confusion as to whether voluntary docking of pay, benefits, or accrued leave for partial-day absences makes employers vulnerable to liability;[12] using outdated minimum salary thresholds established in 1975 (1981 revisions were never implemented) to determine exempt status;[13] raising administrative costs for nonexempt employees; and defining too broadly in some cases what constitutes worktime (e.g., commuting in department vehicles, training time, on-call time).

If the FLSA were to be changed, any reforms should be consistent with the modern purpose of the FLSA and should facilitate establishment of working time that:[14]

- maximizes employment opportunities by countering the inherent bias toward long hours per job that is created by rising fixed labor costs;
- protects the incomes of hourly workers, whose real wages have been suppressed for reasons unrelated to their productivity;
- minimizes the incidence of overemployment and its adverse side effects on working families; and
- minimizes unnecessary and costly worker job switching and labor force withdrawals due to the scarcity of short and more flexible work hours and work schedules.

Should Comp Time Be Substituted for Overtime Pay?

The amendments to the FLSA that have been proposed would lead either to a more variable work week or to the substitution of compensatory time off for overtime pay.[15] These changes should be rejected. They will ultimately increase the time pressures on working families, reduce the number of jobs, and reduce the productivity of workers. Because employers will no longer owe overtime pay in those weeks when workers exceed 40 hours, extending hours in a given week would now cost less. One predictable result is that average work hours are likely to increase further as the cost to employers of an additional hour of work relative to adding new employees decreases. Moreover, employers will likely shift overtime hours to those employees preferring comp time.

Most hourly workers, whether represented by a union or not, currently lack sufficient bargaining power to obtain improved working conditions like customized worktime scheduling. If comp time in place of overtime pay becomes an option, workers will likely encounter subtle and informal pressures to sacrifice both premium pay and accumulated comp time. For example, only 3% of eligible workers take leave under the Family and Medical Leave Act, and these workers use an average of only 37 days out of their legally allowed total of 60 (Rankin 1995). While many workers pass up this option because they cannot afford the unpaid leave, others do not participate out of fear of being stigmatized (for example, as being on the “mommy track”), loosing promotion possibilities, or risking job security. It is likely that comp time will also grant workers a “choice” that in reality they cannot truly exercise without suffering an unacceptable penalty.

Another proposed amendment is to establish a two-week 80-hour scheduling period. A worker would receive overtime pay only for hours worked in excess of 80 during the two-week period. Suppose an employer schedules work week lengths of 60 and 20 hours. Under both the two-week, 80-hour standard and the comp time proposal, the employer saves 20 hours of premium pay. For a worker paid a base rate of $10 per hour, the employer’s savings would total $100. In addition, under the comp time proposal, employers seeking immediate cost reduction can front load overtime hours and back load the comp time. The result will be longer average weekly and annual hours demanded by employers. (Indeed, this is exactly what has happened in the public sector, where employers can now substitute comp time for overtime pay. The comp time “bank” eventually fills up, and the employer cannot operate with employees using all their earned time off.) Workers who were previously receiving overtime pay experience a drop in their effective average hourly pay rate. Many workers, particularly those carrying debt, may feel compelled to work longer hours than before to make up for their lost income (Blau and Ferber 1992, 98-9; Rothschild 1982).

Another result of the proposed amendments is that employment will be dampened, depending on the extent to which average hours rise and the increase in hours translates into fewer jobs. Ehrenberg and Schumann (1982, 28) estimated slight increases in employment if the overtime pay premium were raised from time-and-a-half to double-time.

Using their analysis, it is possible to estimate the effects of the elimination of the overtime pay premium. There are approximately 12,624,000 production workers employed in manufacturing and another 69,502,000 private production workers outside of manufacturing, about 91% of whom are covered by the FLSA. Manufacturing production workers average 4.5 hours of overtime per week. Applying the Ehrenberg and Schumann analysis to these figures suggests that an end to overtime pay will reduce employment by 0.5% to 2.3%. Using the midpoint of these estimates, employment would fall by 1.1% in manufacturing and 1.8% in the nonmanufacturing sector, or by about 1.4 million jobs in all (see **Table 2**).

Worker and family well-being will suffer if the new legislation reduces worker earnings, leisure time, and the flexibility to balance work and nonwork responsibilities. In a one-week period in 1994, 13% of hourly workers were estimated to have received pay for overtime work (Rasell 1995), up from 10% in 1985.[16] Nearly two-thirds of these hourly workers had family incomes less than $40,000, and 61% earned a wage less than $10 per hour. Thus, workers stand to lose a major source of income.

TABLE 2
Change in Employment Due to Eliminating Overtime Pay Premium

	Percentage Increase in Overtime Hours	Overtime Hours Per Week: Increase	Overtime Hours Per Week: Total	Percentage Decrease In Employment	Number of Jobs Lost
A. Midpoint:	17%	0.78	5.4 Hours	Manufacturing 1.1%	138,864
				Nonmanufacturing 1.8%	1,251,036
				Total	1,389,900
B. Maximum	23.4%	1.08	5.7 Hours	Manufacturing 1.5%	189,360
				Nonmanufacturing 2.3%	1,598,546
				Total	1,787,906

Source: Author's analysis based on Ehrenberg and Schumann (1982).

For at least two reasons, it is unlikely that workers will value future compensatory time, even at the time-and-a-half rate, as much as cash. First, cash payment entails less risk for the worker. Comp time may be lost in the event of a layoff, disability, bankruptcy, administrative malfeasance, or employer noncompliance. Second, even with comp time guaranteed, it usually comes with a longer time lag than do cash payments. Estimates of the rate at which people discount deferred, future compensation are remarkably high. Thus, to compensate workers at a fair value equivalent to time-and-a-half pay in this week's paycheck may require comp time at perhaps double or two-and-a-half time rate to leave worker well-being unchanged. Banked comp time should garner interest, as any creditor would exact, commensurate with the risk borne and term of the "loan."

A more variable work week can also harm worker and family well-being. Some employers currently offer flexible schedules with a regular nine-day/80 hour schedule over two weeks, which may grant a worker a free Friday every other week. This type of "compressed work week" is a fairly popular option among workers and can be accommodated under the current FLSA by starting the work week at midday on the working Friday. The current proposals are very different, however. They would allow employers, if the worker contractually agrees, to use an irregular work week, say 60 hours one week, 20 the next, and so on. The same problems with employee choice arise here as were described above. Unless the number of hours each week is entirely the worker's choice, such irregular work weeks will harm most workers' well-being by reducing worker income, leisure time, or a combination of the two.[17]

Furthermore, labor productivity is likely to be harmed by longer and more variable hours, for three reasons. One is fatigue effects. As the work week lengthens, productivity declines. For example, 55 hours in construction is the limit after which productivity falls dramatically. A second is adverse efficiency-wage effects. If workers interpret the removal of the overtime premium during the long work weeks as a cut in pay, they may respond by reducing work effort, leading to a decline in organizational productivity and, in the long run, to an increase in personnel costs related to turnover, absenteeism, and tardiness. Third, the same threat to productivity is posed by workday intervals and lengths that deviate even more then they do currently from workers' desired daily schedules.

Finally, detrimental effects on macroeconomic performance may ensue if lower or more unpredictable weekly, monthly, or annual earnings undermine household consumption spending. For example, a worker earning $10 per hour and working 44 hours, including four hours paid at the overtime premium, receives a gross weekly income of $460. Dividing by 44 hours yields an effective hourly wage of $10.45. Replacing the overtime pay with future comp time means a cut in hourly pay, even if the worker agrees to the comp time. Thus, there will be less income available to finance consumption spending, at least until some future time when banked comp time can be cashed out. Moreover, if weekly income uncertainty grows, households will be less likely to gain a smooth consumption path and more likely to incur unplanned debt.

In sum, replacing the current FLSA requirements with a variable work week or substituting comp time for overtime pay will have the following deleterious effects: average hours will rise due to pressures from both demand and supply sides of the labor market, job growth will be constrained, and hours will become more variable week to week, although workers will not be compensated for the greater inconvenience and earnings uncertainty they face. Moreover, short-term gains realized by employers will either be offset in the longer run or will come directly at the expense of worker standards of living.

Compensatory time off benefits workers only if they have complete discretion over whether and when they receive the comp time and whether they have the option of cashing it out. Under these circumstances, comp time is an opportunity to reduce overemployment and provide workers with greater flexibility. However, the bargaining leverage of most workers in their workplaces is inadequate to ensure that all workers get to exercise this discretion over comp time.

As noted above, the experiences of public sector workers illustrate what happens when theory meets reality. State and local governments can legally grant comp time instead of cash overtime if employees involved agree in advance to the arrangement. The courts have permitted workers to accumulate up to 240 hours of comp time per year (480 hours for "emergency" personnel). The most common complaints from public sector workers regarding the comp time program are that employees do not get the opportunity to take the time off, and that employees are "loaning hours" to their employers interest free. Extending comp time to the private sector will create two additional problems: private sector firms are much more likely to shut down, go bankrupt, or relocate, so employees lose the value of their accumulated comp time, and private sector employees are far less likely to have union representation, and they are thus relatively more vulnerable to coercion or noncompliance.

Also in the public sector, concerns about employee discretion over the timing of when they can use "banked" comp time and about the right of employees to cash out their comp time have become major problems. There has been a tendency for comp time banks to build up, and government budgets are often insufficient to allow employees to cash out all their comp time. Some employers have tried to force employees to use their comp time, but the courts have prohibited this practice. *Heaton v. Moore/Department of Corrections for State of Missouri* serves as a case in point. The employer wished to keep comp time balances to a minimum, and it requested that all corrections officers with at least 100 hours of banked comp time use at least 40 hours in the following month. The court ruled that employees have the right to use earned comp time as they choose—to spend banked comp time as if it were wages. Public sector employers are entitled to a forced-use policy only when agency operations would be "unduly disrupted," a situation that does not include budget problems. The court advised that the department either schedule less overtime or hire more officers, "a fundamental purpose of the FLSA" (DiCesare 1995).[18]

Because of strains on public sector budgets, pressure is likely to grow to raise the ceiling from 240 to, say, 360 hours (Leibig 1996).[19]

Employers might limit employee "choice" in a number of ways. To keep workers from cashing out, employers could simply shut down operations near year's end or during slow times and deduct hours from employee comp time accounts Employers could also deny overtime hours to those employees who have expressed their preference for cash, allocate the comp time (or premium pay) option with favoritism, or begin to deduct from comp time accounts hours that were previously taken off informally. Thus, it is likely that workers may not get time off when they need it most. In addition, those most needing income from overtime might be those least able to obtain it from their employers, thus intensifying those workers' underemployment. The proposed legislation falls far short in the area of worker "choice."

In addition, it is likely that average hours worked will not be reduced, even with comp time granted at time-and a-half. Suppose the worker works an average of 42 hours per week for 50 weeks per year. The annual total of 2,100 hours entitles the worker to 150 hours of comp time for the 100 hours of overtime. If comp time were usable and desired immediately, the worker could reduce his or her annual hours of work to 1950. But suppose that the average balance of comp time used over the year sums to half the total, 75 hours. Because the use of comp time is delayed, effectively the worker may work 2025 hours annually and will not receive premium pay for the 25 hours of overtime worked during the year. Thus, if employees do not use all of their banked comp time during the year, it is likely that they will have worked longer annual hours.

Employers in Western Europe are increasingly instituting annual hours systems to replace traditional weekly hours as a method of obtaining more worktime variability. In return, however, employees accepting annual-hours contracts typically are "compensated" with either higher hourly pay, shorter annual hours, a limit narrowing the range of hours per week (e.g., between 37 and 40), or input allowed from worker councils at the enterprise level (Boesche and Stille 1991). A recent poll found that 52% of workers in the European Union would accept more variable hours within a narrow band if they were accompanied by a reduction in hours (and did not involve weekend work). On the other hand, 44% were against it. In addition, 61% were willing to start work earlier or finish later (Hoffman 1993). A 1989 survey found that German employers had much more say than workers in deciding when comp time off is granted. Employers were the decisive factor in 45% of the cases and individual workers in only 17%—for women workers the proportion was only 10% (Bosch 1995, 11)[20] Case studies show the recipe for success in annualized hours programs is predictable output demand, time to consult, and a financially secure workforce. Annual hours can be mutually beneficial when workers have advance notice of the days and hours they will be working, when larger blocks of time off are available, and when future raises in pay are more predictable in size (Pickard 1991). However, in the United States, given the absence of universal child care, even predictably variable hours would likely create serious problems for families, particularly working women with children.

In light of these likely outcomes, it seems safe to conclude that the proposed changes to the FLSA substituting comp time for overtime pay are too one-sided in favor of the employer. They may also be perilous for workers, particularly if they are not accompanied by sufficient resources for the already underfunded U.S. Department of Labor Wage and Hour Division to enforce the new law and successfully process the complaints that are likely to arise.

Increasing Work Time Flexibility Within the FLSA

An alternative to amending the FLSA is to adopt other measures to increase flexibility in scheduling hours of work. The structure of contributions to private and some social insurance programs poses unintentional structural impediments to the spread of shorter work weeks. These impediments can be overcome by transforming fixed labor costs into variable labor costs. For example, by prorating private health insurance costs, employers would realize larger savings from reducing average weekly hours.

Companies should be encouraged to take the "high road" by creating partnerships in strategic workplace decision making regarding worktime and scheduling. "Best practice" programs instituting short-hour options should be adopted by more public sector agencies and should be encouraged throughout private industry.

Flextime, which allows employees to vary the start and end times of the workday around "core hours" such as 9 a.m. to 3 p.m., is an important best practice option. A Coopers and Lybrand 1993 survey of 480 large companies found that 71% allowed flexible start and end times, and 33% allowed shorter hours or weeks, compressed work weeks, or job sharing. A Work-Family Directions 1994 survey found that 85% of companies surveyed allowed flexible working arrangements. The Conference Board found that about half of its large-company members used flextime. A BLS special survey in 1987 found that 43% of establishments offered flextime (Hayghe 1988).

The reality, however, is that only a minority of workers—about 15%—actually have flexible work schedules. The proportion is considerably lower for hourly occupations (10%) than for professional and executive occupations (22%) (BLS 1992). In fact, only 14% of 121 private companies surveyed confirmed they use flextime programs (Kush and Stroh 1994; Mellor 1986). In addition, 92% of those not having them say it is unlikely they will adopt them in the future. Moreover, BLS found that only 3% of full-time blue-collar and service workers in medium and large private establishments are on flexible, as opposed to fixed, work schedules (BLS 1994, Table 8). The proportion of workers desiring such schedules is much higher: in one survey, 78% of employees favored flexible work schedules so that they could spend more time with family, even if the flexibility meant slower career advancement (Denton 1993, 29).

Currently, according to a national survey conducted by the Families and Work Institute, 31% of workers have "no control" over the scheduling of work; an additional 40% have "little" or "some" control. Only 29% have "a lot" or "complete" control. Moreover, about 30% of workers currently without access to flextime would trade job advancement altogether to obtain the flexibility to set their own daily start and end times; an equal percentage would actually switch jobs to obtain this. The proportion willing to sacrifice advancement or their current jobs rises to almost 45% for workers with children younger than 13 years old (Families and Work Institute 1993, 19, 79-80). In addition, among employers in the Work-Family Directions survey, half of the 85% that offered some form of flexible work arrangements did so not as a formal policy available to all employees but instead subject to managerial discretion (Romano 1994). Thus, it would be naive to believe that, in the current U.S. workplace, the introduction of comp time will grant most workers, particularly hourly employees, flexibility in allocating their own work hours.

There are many advantages of flextime that improve the bottom line for firms:[21]

- reduced turnover, which is probably the result of improved morale and job satisfaction (Denton 1993; Ezra 1996);
- heightened individual productivity (particularly among working mothers), with little if any drop in organizational productivity. For example, flexible schedules improve productivity in the pharmaceutical industry by 10% (Shephard and Clifton 1996). Even in manufacturing, flexible scheduling lowers production costs without harming customer service (Puntenney 1994);
- reduced costs of overtime while extending operating hours;
- reduced paid absences, sick and personal days, tardiness, and nonwork activities (Moss and Curtis 1985);
- reduced stress and reduced stress-related maladies, such as heart attacks;
- increased quality and quantity of applicants in the recruitment pool (Denton 1993; Ezra 1996);
- improved quality of work, because workers are able to work more in line with their circadian rhythms; and
- reduced commuting time and fuel expenses of employees who work at off-peak times.

Paid time-off (PTO) banking and voluntary reduced working time (VRWT) programs are other options for achieving flexibility in scheduling hours of work. A PTO banking program replaces a specified number of various types of days off with a total balance of time to be used for vacation and sick time and often for holiday and personal days. The advantage to employees is increased work-life flexibility if they are permitted to use time off at their own discretion. Employees are not constrained in the timing of PTO use, nor must they work overtime first or relinquish pay. The advantage to employers is that they incur only a slight administrative expense while reducing other costs such as absenteeism. At the Chubb Group, both full-time and part-time employees get an annual PTO account that includes vacation, sick time, and personal days. PTO days may be taken in increments as small as half-days and as large as four weeks, with appropriate advance notice. Contrary to managers' prior fears, employees actually took off less time during the year than under the less flexible, previous system of personal days (Graham 1996, 105-8; Flynn 1994).

VRWT programs allow employees to take unpaid time off or leave for an extended, pre-established period of time. Service Employees International Union employees of Santa Clara County in California receive this option. New York State offers a Take-Off-the-Summer (TOTS) program for nonmanagerial employees, allowing them a reduction in work hours of 5-30%. These programs were initiated by employers to address temporary reductions in the need for workers; volunteers are chosen on the basis of seniority. Finally, 260 of Deloitte and Touche's client service professionals were granted reduced workloads at reduced hours to reduce client dissatisfaction.

Some European companies have experimented with two six-hour shifts per day and shorter shift lengths. The two, shorter shifts per day may be consecutive or overlapping. The system has the dual advantage of creating more jobs while delivering shorter hours to workers who would choose such an option over the less convenient eight or 12-hour shifts with evening and night shifts. Workers on both the six-hour shifts are more likely to have an actual work interval that better suits their desired schedule. For employers, the two six-hour shifts reduce break time, absenteeism, overtime, and, thus, production costs while they boost the capital utilization rate, average productivity of labor per hour, and the rate at which new technology is adopted. United Auto Workers agreements with Chrysler in St. Louis established six-and-five-sixths-hour shifts. Workers were so satisfied with the arrangement that they turned down an option to work an additional half-hour a day even for time-and-a-half premium pay, which would have increased their paychecks by $100 per week. Over 300 additional workers have been hired. Volkswagen's new 29-hour standard work week in Germany has also increased employment.

Short-time compensation (STC) programs that subsidize work-sharing through state unemployment insurance systems ought to be made available to employers and workers in all states, rather than just a selected few. If employers enroll in an STC program, state unemployment insurance funds can be used to supplement the lost earnings of employees placed on work-sharing. STC promotes more downward flexibility of work hours to absorb declines in the demand for labor. Employees get a much-reduced risk of layoff and more leisure time with only a marginal decline in pay, thus limiting the underemployment impact caused by work-sharing. In addition, employers gain an ability to reduce their total payroll in a way that reduces their hiring and training expenses in the future.[22]

Another alternative policy is to amend the Family and Medical Leave Act (FMLA).[23] The Clinton Administration has embraced Senate and House bills that propose to allow employees 24 hours total of annual unpaid leave. With some advance notice, workers would be permitted to devote time off (in two-hour increments) for particular uses such as attending parent-teacher conferences and educational functions or accompanying children and elderly relatives to get medical care. Legislators need not alter the FLSA in order to deliver these flexibility options to working families.

Conclusion

Increased flexibility in worktime is a laudable policy goal. However, the legitimate desire for greater flexibility among both employers and workers can be achieved within the current confines of the FLSA. Moreover, other policy changes could provide additional possibilities for flexibility. Given the scarcity in the U.S. of structures for employee input into workplace decisions, the congressional proposals to alter the FLSA will further weaken the ability of most workers to attain the work hours and periodic time off they need to balance competing demands on their time. Moreover, the proposals are likely to result in longer average work hours, fewer jobs, and hampered productivity. Ultimately, workers and their families stand to lose income and employment opportunities without gaining any flexibility in the allocation of their time. Thus, the FLSA ought to be preserved as is and complemented by a variety of alternatives that are friendly to working families. These include spreading the use of short-term, personal leave time through Family and Medical Leave, flextime and other such daily schedule and shift arrangements, a shorter standard work week, and nonexempt status for more jobs. Promoting these options is more likely to improve productivity, increase employment, and enhance flexibility for working families.

March 1997

Endnotes

1 Polivka (1996) estimates that 60% of the 4.9 million contingent workers would prefer full-time or year-round work.

2. Other polls find widespread although possibly exaggerated indicators of overemployment. In a *U.S. News & World Report* survey, 51% of respondents said that, given the choice, they would prefer more time off over more money. In August 1991, a *Wall Street Journal* poll found that 50% of respondents would opt for an extra day off per week in exchange for a day's pay. A survey of Hilton Hotel found that 50% would sacrifice a day's pay for an extra day off each week. An additional 16% would give up a day's pay for a reward of two days off per week (also see Robinson 1991; Landers and Rebitzer 1994).

3. Using March Current Population Survey data for 1976 and 1993 for employed workers age 16 and over, Rone found that men's weekly hours rose over the period from an average of 41.7 to 42.7. Women's hours rose from 34 to 36 per week. Among full-time workers (age 25 and older), which largely abstracts from the gradual rise in part-time work as a percentage of all employment, men's hours rose from 44 to over 45, while women's rose from 40 to over 42. In annual hours, men's hours thus rose by 3% and women's by 15%. In addition, the redesigned CPS found that fewer workers than previously thought were working exactly 40 hours per week and that the lion's share of these workers were actually working in the 41- 48 hours range, reinforcing findings of Hedges (1994) and Coleman and Pencavel (1993). Schor and Leete-Guy (1994) find that hours of paid market work from 1969 to 1989 grew by considerable amounts—138 hours per year for a typical household.

4. For lesser-skilled hourly workers, technological advance, global competition, work reorganization, deunionization, the declining real value of the minimum wage, and top-heavy compensation strategies are its sources. Even college-educated males have suffered real earnings losses (Mishel and Bernstein 1994, 136).

5. See Trejo (1993), Ehrenberg and Schumann (1984), Idson and Robbins (1991), and Smith (1996). This inability to refuse overtime is an important source of employee grievance filings.

6. The intensified drive on the part of employers for short-run labor-cost reduction and increased capital operating time is also creating more inconvenient work schedules and more around-the-clock shifts. With organized labor focusing on preserving union wage gains and job security, it has had to make substantive concessions on the number, scheduling, and remuneration of nonstandard work hours. After a prolonged strike in 1990, the United Mine Workers agreed to give Pittstown Coal Co. the right to schedule around-the-clock shifts virtually all week long and the right to implement conventional five-day, four-day compressed, or 28-day rotating shift options. The United Rubber Workers agreed to similar arrangements with Bridgestone Tire Co. (Rosenberg 1993, 557; 1996).

7. Based on the 1992 National Recreation and Park Survey, 1985 Americans' Use of Time Project in 1985 and 1971.

8. Of these agreements, 60% involved measures reducing weekly hours and 40% shortened annual hours. A small but nonnegligible proportion, 7%, involved comp time for overtime. The motivation behind the measures were either "defensive" (job-saving), "voluntarist" (providing more freely chosen lifetime hour arrangements), or improved plant capacity utilization. Because many of the agreements were adopted as defensive measures to cut wage costs, 40% of the agreements were accompanied by a wage loss proportional to the decline in hours and 30% a less-than-proportional wage loss. The remaining 30% involved no wage change. Thus, jobs were created despite, on the average, a less-than-proportional reduction in weekly pay. Moreover, 55% of those agreements shortening annual work hours included compensation increases connected to the resulting productivity gains.

9. Productivity and wages will be 5.7% higher. Disposable income will be 0.7% lower, but this is offset by a 2.6% gain in leisure time.

10. Unions more effectively enforce compliance with regulations.

11. Rottenberg's theoretical analysis of overtime regulation argues that long work hours do not create negative externalities. However, he provides no evidence for his assertion that real world "market processes...cause labor contracts of diverse durations in any time period to be transacted."

12. The law has been narrowly construed so that employers have a very limited "window of correction" and are not permitted even a one-time error, even if employees have been reimbursed and if the pay docking was part of official personnel policy.

13. There are three regulating institutions regarding work hours in the U.S.—the common law of the employment relationship—employment-at-will, collective bargaining, and FLSA overtime provisions, monitored and enforced by the U.S. Department of Labor Wage and Hour Division and interpreted by the courts system (See Langille 1994, 191-2). The FLSA overtime provisions cover all employees of firms that are engaged in any form of interstate commerce, whose staff is two or larger, and whose volume of business exceeds a threshold of $500,000 per year (upped from $250,000 in 1989). For an employee to be considered exempt from FLSA coverage, he or she must pass the "salary test" and the "duty test." Under the salary test, the employee must be paid, on a salaried basis, a predetermined, agreed-upon amount that cannot vary with either the quantity or quality of work performed in the actual pay period (e.g., the month). Under the duty test, the employee must be a bona fide manager-executive, administrative, professional, or sales employee. This is defined by their job responsibilities. To be considered a manager or administrator, an employee must supervise two or more full-time employees and have the authority to hire, fire, or train employees. In addition, they must devote at least 80% of their time to their managerial/administrative/professional responsibilities (60% if they are in retail). To be classified as exempt, employees with these responsibilities must have a minimum salary of $250 a month ($12,000 a year). For certain positions, e.g., professional, the minimum salaries are between $155 and $175 a week.

14. The current FLSA covers at least 65 million and perhaps as much as 75 million workers, or about three-quarters of all nonsupervisory workers and 60% of all wage and salary workers. The main categories of employees exempt from coverage are professional, executive, management, and administrative personnel; outside salespersons; seasonal employees such as agricultural workers; state and local government employees; employees in small retail and service establishments; and some household workers (Ehrenberg and Schumann 1982; Rosenberg 1989, 16).

15. The bills from the 104th Congress would curb overtime pay for newly hired trainees by "allowing" them to donate free time to private employers; allow pay-docking of exempt, salaried employees for partial-day absences without reclassifying them as nonexempt employees entitled to overtime pay; remove nondiscretionary performance bonuses from the pay on which employee overtime is calculated; expand the existing FLSA exemption for inside sales personnel to wholesale establishments; eliminate the salary basis test for determining overtime exemption status of employees; and exclude from calculated work hours the time an employee with a company-owned vehicle spends commuting to the office or first business stop. In the bill regarding compensatory (comp) time, if employees agree (verbally) to the arrangement, they can accumulate up to 240 hours (30 days) per year in comp time. Employees must provide "reasonable" advance notice of their time off request, although "reasonable" is not defined. The bill permits employers to control the timing of taking future time off by allowing employers to refuse the use of comp time if it unduly "disrupts business" operations. The bill contains a provision allowing employees to file a complaint with the U.S. Department of Labor if they were coerced into substituting comp time for overtime. The bill was amended in the House to require employers to give at least 30 days advance notice before discontinuing the program or cashing out employees' comp time accrual, and to impose double damages on employers who coerce workers attempting to leave the program.

16. Author's analysis based on Trejo (1993).

17. The hazards of fluctuating pay are already apparent, as evidenced by workers whose wages have been made more volatile (Uchitelle 1996). The percentage of wage and salary workers whose pay fluctuates in excess of 5% a year already is about 54%, up from 49% in 1984. (See also Martin, Aalberts, and Clark 1993.)

18 In North Carolina, an estimated one-third of municipalities offer comp time only, another third offer cash only, and the final third offer a combination of the two (O'Connor 1993).

19. Receiving comp time for overtime frees up time, making it easier for public sector workers to take on second jobs. Thus, average hours worked do not decrease.

20 Note that in Europe, comp time off in lieu of overtime is a precursor to adopting annualized working hours systems.

21. See Denton (1993) regarding advantages of flextime for business, and Ezra (1996) regarding advantages for government.

22. Appelbaum and Schettkat (1994, 130), Abraham and Houseman (1993), Fuchs and Jacobson (1991), Advisory Group on Working Time and the Distribution of Work, Canada (1994).

23. Nine of 10 employers report "no or little" additional cost incurred with FMLA (Rankin 1995).

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