

Is It The End Of Overtime As We Know It?

May 4, 2017 | by Andrew Berns

This week, the U.S. House of Representatives passed the Working Families Flexibility Act, a bill that seeks to allow employees to choose paid time off instead of paid overtime. The legislation would amend the Fair Labor Standards Act to allow employees and employers to agree to compensatory time off in lieu of overtime pay at a rate not less than 1 1/2 hours for each hour of employment for which overtime compensation is otherwise required. Employees would be able to accrue not more than 160 hours of compensatory time, but would be entitled to monetary compensation for unused time and in the event of a voluntary or involuntary termination of employment. Only employees who worked at least 1,000 hours during a period of continuous employment with the employer in the 12-month period before the date of agreement would be eligible.

Similar legislation has been introduced, but has faced strong opposition from Democrats. Critics of the legislation argue that employers would be able to manipulate employees by dictating when they could use compensatory time. Presently, employers under the Fair Labor Standards Act have no discretion with regard to the payment of overtime. The Republicans currently control the Senate, and would need at least eight Democrats to vote for the legislation to avoid a filibuster in the Senate. The Trump administration has signaled that it supports the legislation, but even so, the bill faces an uphill battle.

Of course, regardless of the outcome of this legislation, New Jersey state law still requires employers to pay non-exempt employees overtime for hours worked in excess of 40 in a given week. As a result, without a change in New Jersey state law, the impact would be limited. Still, the legislation is worth watching. This blog will be updated as the legislation works its way through Congress, so stay tuned.