



Rhetoric vs. Reality

Working Families Need Real Earned Sick Leave, Not the Comp Time Myth

By Jocelyn Frye April 26, 2016

Millions of women and men are challenged daily by the competing demands of work and family. For most, achieving and maintaining their economic stability depends on having a decent-paying job that can provide a steady income for their families, as well as workplace policies that enable them to fulfill both work and family responsibilities without putting the other at risk. Unfortunately, workplace policies in the United States have not kept pace with these needs, and too many workers are forced to make impossible choices between keeping their jobs and caring for their families.¹

Access to earned sick leave—also called paid sick leave—that enables women and men to take time off from work in order to provide care to a family member or for their own illness is a commonsense workplace policy that is essential to the economic security of families, productivity of workers, and success of businesses. When an emergency arises, earned sick leave may be the difference between a family remaining financially stable and descending into financial ruin. Communities and many employers across the country are increasingly embracing earned sick leave as a critical workplace protection that helps workers make sound decisions about their work and family obligations.²

Despite this growing wave of support, some policymakers have advanced alternative policy ideas that, though cloaked in rhetoric about support for working families, are little more than flawed substitutes. One such idea touted by opponents of earned sick leave is to expand access to compensatory time, often called comp time, as a solution.³ Two pending comp time proposals—the Working Families Flexibility Act and the Family Friendly and Workplace Flexibility Act—would allow workers who are eligible for overtime under the Fair Labor Standards Act to work the additional hours for no pay and instead potentially use those hours later for time off.⁴ These proposals perpetuate the comp time myth, which falls far short of the real-world security that earned sick leave would provide working families. Separating the myth from the reality of these proposals is imperative to holding policymakers accountable and ensuring that they pursue effective workplace policies that will improve the lives of working women and men and their families across the nation—including the more than 40 million workers who lack access to earned sick leave.⁵

Examining the most frequent comp time myths

Myth: Comp time for private-sector workers would give employees the flexibility they need to accommodate their work-family obligations

Reality: Expanding comp time offers only the illusion of flexibility and would do little to ensure that employees can take time off when they need it. The two pending proposals would allow employees to use earned comp time to take time off—but only if their employer agrees.⁶ Rather than having the flexibility, for example, to decide when a sick child needs to be picked up from school or to determine with a doctor how much time is needed to recover from an illness, these comp time proposals put family and personal decisions in the hands of employers, which may limit the flexibility employees need.

Myth: Comp time would ensure that employees get paid time off for family or medical emergencies

Reality: Neither comp time proposal would require employers to provide paid time off for family or medical leave purposes. Indeed, the bills make no mention of any specific type of paid leave. Rather, the bills would allow employees to work overtime for no pay and later take time off that is equal to the amount of overtime earned.⁷ While employees may ask to use the time earned for family or medical reasons, nothing in the pending proposals mandates—or even suggests—that employers would be required to grant such a request.

Myth: Comp time would enable workers to earn as much time off as they need

Reality: Both proposals would cap the amount of comp time that workers could earn each year and would give employers some ability to limit how much of this time could be used for paid leave.⁸ While workers could earn up to 20 days, or 160 hours, of comp time per year, employers would have unilateral authority to cut that number in half to 10 days, or 80 hours, and pay out the difference as compensation.⁹ These limits would do little to help workers with longer-term caregiving or medical needs—such as recovering from major surgery—and would make it harder for employees to plan for the future.

Myth: Comp time would have little cost impact on employees

Reality: The pending proposals would add to the economic challenges that many families already face. Asking employees to work more hours without pay is untenable for many families—particularly low-wage families—and is anything but cost free for those living on the economic margins. The workers who would be covered by these proposals are those eligible to work overtime—typically lower-wage workers who are the least able to afford unpaid work.¹⁰ Moreover, more time away from work can mean more costs for working families, such as the cost of additional child care.

Myth: Comp time is needed to enable employers to offer flexible workplace policies

Reality: Existing employment laws like the Fair Labor Standards Act do not prevent private-sector employers from adopting strong work-family policies.¹¹ Employers currently have considerable discretion to adopt flexible workplace policies, such as earned sick leave,¹² which are wholly consistent with the Fair Labor Standards Act. A comp time policy is not needed to enable employers to accommodate employees' work-family needs.

Myth: Forcing workers to choose between earning overtime wages and paid time off is the only cost-effective way to provide workers with work-family balance

Reality: Under the pending proposals, workers would be forced to choose between getting paid for working overtime and working overtime for no pay but with the option of potentially using the overtime earned as paid time off in order to fulfill family obligations.¹³ Pitting employees' work and family responsibilities against each other, however, is counterproductive and unsustainable. Alternative approaches that provide employees with a certain amount of earned sick leave each year would enable workers to address their medical and family needs without jeopardizing their economic stability.¹⁴

Myth: Private-sector workers need comp time in order to ensure fairness and level the playing field so that they have the same benefits as public-sector workers

Reality: Cherry-picking one particular policy from the public sector and injecting it into the private sector would do little to achieve fairness. The pending bills would not require employers to provide their employees with the same benefits or worker protections that public-sector workers have.¹⁵ Moreover, neither of the proposals require an evaluation of how comp time has been implemented in the public sector in order to explore any fairness implications for other workplace settings.¹⁶

Conclusion

Working families need more than rhetoric. They need sound solutions that respond to the real problems that they face. Policies such as comp time would exacerbate rather than remedy the economic and work-family challenges that women and men confront on a daily basis and would ultimately do more harm than good. Families need access to policies—such as the ability to earn paid sick leave—that offer a viable, common-sense approach to the competing demands of work and family.

Endnotes

- 1 Judith Warner, "To Fight Inequality, Support Women's Work" (Washington: Center for American Progress, 2015), available at <https://www.americanprogress.org/issues/women/report/2015/09/29/122152/to-fight-inequality-support-womens-work/>; Sarah Jane Glynn, "Breadwinning Mothers, Then and Now" (Washington: Center for American Progress, 2014), available at <https://www.americanprogress.org/issues/labor/report/2014/06/20/92355/breadwinning-mothers-then-and-now/>.
- 2 U.S. Department of Labor, *Get the Facts On Paid Sick Time* (2015), p. 2, available at <http://www.dol.gov/featured/Paid-Leave/get-the-facts-sicktime.pdf>.
- 3 House Committee on Education and the Workforce, *Working Flexibility Act of 2013: Hearing on H.R. 1406*, 113th Cong., 1st sess., 2013, available at http://edworkforce.house.granicus.com/MediaPlayer.php?view_id=2&clip_id=150.
- 4 *Family Friendly and Workplace Flexibility Act of 2015*, S. 803, 114th Cong., 1 sess. (Government Printing Office, 2015), available at <https://www.congress.gov/bill/114th-congress/senate-bill/803>; *Working Families Flexibility Act of 2015*, S. 233, 114th Cong. 1 sess. (Government Printing Office, 2015), available at <https://www.congress.gov/bill/114th-congress/senate-bill/233>.
- 5 U.S. Department of Labor, *Get the Facts on Paid Sick Time*; Bureau of Labor Statistics, *Employee Benefits in the United States – March 2015* (U.S. Department of Labor, 2015), table 6, available at <http://www.bls.gov/news.release/pdf/ebs2.pdf>.
- 6 The language in the Family Friendly and Workplace Flexibility Act states that the employer shall permit an employee to take time off "within in a reasonable time after the employee makes a request for using such compensatory time if the use does not unduly disrupt the operations of the employer." See *Family Friendly and Workplace Flexibility Act of 2015*, section 2(s)(8). The Working Families Flexibility Act includes similar language stating that an employer shall permit an employee to take time off "within in a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer." See *Working Families Flexibility Act of 2015*, section 2(s)(7). As written and without further definition, the language in both bills effectively empowers employers to determine the timing of the leave by using their own assessments of what constitutes a reasonable amount of time and whether the time off would be disruptive.
- 7 *Family Friendly and Workplace Flexibility Act of 2015; Working Families Flexibility Act of 2015*.
- 8 Ibid.
- 9 Ibid.
- 10 Council of Economic Advisers, *The Economics of Paid and Unpaid Leave* (The White House, 2014), p. 11–12, available at https://www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf. It is worth noting that "many cannot afford to take advantage of the [Family and Medical Leave Act's] guarantee of 12 weeks unpaid leave given the large loss of income it entails" and the "distinction between paid and unpaid leave is important, especially for low wage workers, since although unpaid leave may provide some flexibility, it is not a realistic option if workers cannot afford to take it."
- 11 *Fair Labor Standards Act of 1938*, 29 U.S.C. §201.
- 12 For a description of the current state of flexible work arrangements, see Council of Economic Advisers, *Work-Life Balance and the Economics of Workplace Flexibility* (The White House, 2014), p. 2, available at https://www.whitehouse.gov/sites/default/files/docs/updated_workplace_flex_report_final_0.pdf, which notes that "many employers have adapted to the changing realities of American workers" by adopting some form of flexibility.
- 13 *Family Friendly and Workplace Flexibility Act of 2015; Working Families Flexibility Act of 2015*.
- 14 For example, the Healthy Families Act, introduced by Sen. Patty Murray (D-WA), would enable workers to earn up to seven sick days per year. See *Healthy Families Act*, S. 497, 114th Cong., 1 sess. (Government Printing Office, 2015), available at <https://www.congress.gov/bill/114th-congress/senate-bill/497/text>.
- 15 *Family Friendly and Workplace Flexibility Act of 2015; Working Families Flexibility Act of 2015*.
- 16 Ibid.