



Legislation Text

File #: Res 0125-2004, **Version:** *

Res. No. 125

Resolution calling upon the United States Congress to reject the proposed amendments to the Fair Labor Standards Act of 1938, H.R. 1119 and S. 317, which would undermine the ability of workers to earn overtime pay, and calling upon the Department of Labor to refrain from implementing proposed rule changes which would also weaken overtime pay requirements, and to cease publishing materials which advise employers on how to avoid paying overtime to workers.

By Council Members Avella, Clarke, Jennings, Martinez, Nelson, Quinn, Seabrook, Gennaro and Jackson

Whereas, On March 6th 2003, the Family Time Flexibility Act, H.R. 1119, was introduced in the House of Representatives with the purpose of amending the Fair Labor Standards Act of 1938 (“FLSA”), in relation to overtime pay provisions for private sector employees; and

Whereas, Specifically, H.R. 1119, would amend §7 of the Fair Labor Standards Act of 1938, by allowing employers to provide compensatory time in lieu of overtime pay at a rate of one and one-half hours of compensatory time for every hour for which overtime compensation is required; and

Whereas, On February 2, 2002, similar legislation was also introduced in the Senate, S. 317, but no action has been taken on the bill; and

Whereas, H.R. 1119 was passed by the House of Representatives on April 9th, 2003; and

Whereas, On September 10, 2003, the Senate approved an amendment to the fiscal year 2004 Labor, Health and Human Services and Education appropriations bill (H.R. 2660) to ban the Department of Labor (“DOL”) from implementing proposals to administratively change the overtime rules guaranteed under FLSA; and

Whereas, The House version of the bill did not contain these provisions, and after the conference committee merging the Senate and House versions of the bill concluded, the President threatened to veto the

bill if the provisions were not included; and

Whereas, Pursuant to this bill, the employer would be required to pay an employee for unused compensatory time within thirty days of an employee's request, or upon voluntary or involuntary termination of employment, and in any case, no less than once a year; and

Whereas, Despite the putatively optional nature of the proposed compensation time requirements, there is a strong likelihood, given unequal bargaining positions between employers and many employees, that removing the mandatory force of overtime requirements would lead employers to coerce employees into accepting compensatory time in order to save on labor costs through the threat or implication that accepting compensatory time is a condition of employment; and

Whereas, In January 2004, the Senate passed an appropriations bill which would give the President and the DOL the ability to implement rules that would increase employer pressures on employees to work longer hours with no extra pay; and

Whereas, The appropriations bill amendments could increase the amount of overtime employers require their employees to work, thus undermining the forty hour work week; and

Whereas, In addition, the appropriations bill contains changes to the definitions of executive, administrative and professional employees, which conservative estimates from the Economic Policy Institute ("EPI") suggest would deny overtime compensation for between 2.5 and 5.5 million workers; and

Whereas, Rather than restricting coverage under the FLSA, Congress should amend the FLSA to make coverage under this Act available to workers who are not white collar workers or who have no real autonomy or only limited decision making power with respect to the duties of their job; and

Whereas, While the proposed changes would benefit an estimated 1.5 million workers, according to the DOL, by raising the salary minimum for overtime pay eligibility to \$425 per week, EPI maintains that at least that many workers would lose FLSA protection as a result of an exemption from the overtime pay requirements for those employees earning \$65,000 or above; and

Whereas, Many employees count on their overtime pay as a part of their income, and the proposed amendments would likely result in significant financial difficulty for families already struggling to make ends meet; and

Whereas, Despite the bill's goals of allowing parents to spend more time with their children, employees who are forced to accrue compensation time rather than receive overtime pay could find themselves using their compensation time for second and third jobs, thus further restricting time spent with their families; and

Whereas, In addition to the proposed changes to the FLSA, the DOL published suggestions in its March 2002 proposal on how employers can avoid paying overtime through actions such as lowering an employee's base pay, so that when overtime is added employers will not have to pay more than the employee's current base pay; and

Whereas, The DOL has also suggested that employers remove the employee's option of either receiving compensatory time or pay as compensation for overtime as a way to save on overtime pay costs; and

Whereas, The Bush Administration is seeking to radically overhaul and restrict the availability of overtime to the nation's workers under the guise of streamlining and simplifying the regulatory scheme; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Congress to reject the proposed amendments to the Fair Labor Standards Act of 1938, H.R. 1119 and S. 317, which would undermine the ability of workers to earn overtime pay, and calls upon the Department of Labor to refrain from implementing proposed rule changes which would also weaken overtime pay requirements, and to cease publishing materials which advise employers on how to avoid paying overtime to workers.

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