

July 23, 2018

The Honorable Tim Walberg  
Chairman, Subcommittee on Health, Employment, Labor, and Pensions  
Committee on Education & the Workforce  
U.S. House of Representatives  
2176 Rayburn House Office Building

The Honorable Gregorio Kilili Camacho Sablan  
Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions  
Committee on Education & the Workforce  
U.S. House of Representatives  
2176 Rayburn House Office Building

Dear Chairman Walberg, Ranking Member Sablan, and Members of the Committee:

We write on behalf of the Economic Policy Institute Policy Center to express our strong opposition to H.R. 4219, the so-called “Workflex in the 21<sup>st</sup> Century Act.” EPI is a nonprofit, nonpartisan research organization founded to center the needs of low- and middle-income workers in policy discussions. This misleadingly named bill does not provide any of the arrangements, rights, or modern protections that its title promises workers.

**This bill doesn’t give employees any new rights to flexibility**

This proposed legislation does not actually give employees any new rights to flexibility in their work schedules that are not already available under existing law. The Fair Labor Standards Act (FLSA) already allows for all of the flexible working arrangements that the so-called “Workflex” bill says employers can give their employees. For example, employers can already provide workers with flexible scheduling, defined in the bill as “an arrangement under which an employee’s regular work schedule is altered,” and with predictable scheduling, when an employer gives employees their schedules with “reasonable advanced notice,” or with teleworking arrangements. Nothing in current law is stopping employers from offering those flexible work scheduling options to employees today (though it is [also well-documented that a lack of federal protections for workers against the epidemic of volatile scheduling](#) has real consequences).

The only new working arrangement the “Workflex” bill adds is not an employee right, but an *employer* right—to avoid paying overtime as required for hours over 40 hours per week. The law currently requires employers to pay non-exempt employees overtime pay (time-and-a-half) for any hours worked over 40 per week. The “Workflex” bill’s “biweekly work program” would instead allow employers to avoid paying overtime pay unless an employee worked more than 80 hours in a two week period, and would permit employers to schedule workers for up to 60 hours per week with no overtime pay, as long as the workers only work 20 hours the next week in the 2-week period. But how does a 60 hour/20 hour bi-weekly schedule—without any overtime pay—

promote “flexibility” for working people? How does it help a working parent to work 12 hour days one week, and 4 hour days the next? And, again, if any worker did actually want this, employers could *already* give them that schedule under the FLSA, provided that they pay overtime for the hours an employee works over 40 during the first week. In sum, the only new work scheduling option the “Workflex” bill provides is allowing employers the option of no longer paying overtime pay for overtime work.

### **This bill undermines state and local labor standards**

This bill would also give employers a new right to avoid their obligations under state and local paid sick days and paid family leave laws.

[EPI has documented how state legislatures widely use preemption](#)—passing laws at the state level to nullify local ordinances—to undermine the stronger labor standards passed at the local level. This bill simply spreads that tactic to the federal level, under the guise of promoting flexibility. As of June 2018, [10 states and 32 localities have already won hard-fought victories establishing requirements for workers to have access to paid sick days](#). This bill would reverse those gains in one fell swoop, by giving employers a free pass to ignore any state and local laws that attempt to raise the bar on paid leave protections, so long as they can claim to offer some minimal standard of paid time off (while maintaining full control over when and how employees could even use that time).

While a federal law requiring employers to allow workers to earn much-needed paid sick days and paid family leave would be a big step forward, it should not be at the expense of protections like overtime pay or avoidance of local and state labor protections that may go above the federal floor.

[Rep. Walters’s fact sheet from the introduction of H.R. 4219 claims \(without substantiation\)](#) that state and local paid leave mandates cause burdens on employers that contribute to wage stagnation and decreased investment in the workforce. [Wage stagnation, of course, has been a well-documented issue facing American workers since long before any recently enacted state/local paid leave laws](#). Further, inequality in access to paid leave exacerbates inequality in total compensation (wages and benefits), and paid leave mandates are a crucial remedy. [Moreover, the consequences for working people of the lack of a federal standard for paid sick days are also well-researched](#). But the fact sheet also points out that the workflex options outlined in the bill are voluntary—employers would not be required to adopt any of these provisions if it were to pass. So why is the legislation needed? If it would not provide any new rights or protections to workers, why are the bill’s proponents not just encouraging employers to adopt some of the good models therein on their own, as high-road practices for retaining a happy workforce?

In conclusion, H.R. 4219 follows a trend of bills introduced in this Congress that claim to offer flexibility, innovation, and improvements in work-life balance, but behind the curtain are just handing even more control over employees’ time to employers. Just as the [“comp time” bill \(H.R. 1180\)](#) that passed out of this very Committee in 2017 would threaten employees’ rights to overtime pay, this so-called “workflex” bill would threaten the rights that so many workers have gained at the state and local level to no longer have to choose between putting food on the table and taking care of their health.

Members of Congress and organizations who sincerely want to expand access to paid sick time and schedules that *actually* work for working people should ignore the Workflex in the 21<sup>st</sup> Century Act, and lend their support instead to [H.R. 1516 \(The Healthy Families Act\)](#) and [H.R. 2942 \(The Schedules That Work Act\)](#). Both of these bills would raise the floor on the federal standard, *and* respect the rights of states and localities to go above and beyond in protecting their workers. It is worth questioning why H.R. 4219, if it represents the gains in work-life balance that employees demand for themselves and their families, does not appear to have a single worker-interest or family-interest group speaking out in support.

Sincerely,

Celine McNicholas

*Director of Labor Law and Policy*

Samantha Sanders

*Director of Government Relations*

**Sources/References:**

- [Worker rights preemption in the US: A map of the campaign to suppress worker rights in the states](#) (Economic Policy Institute)
- [Work sick or lose pay?: The high cost of being sick when you don't get paid sick days](#) (Economic Policy Institute)
- [Current Paid Sick Days Laws](#) (National Partnership for Women and Families)
- ['Fair workweek' laws help more than 1.8 million workers](#) (Economic Policy Institute)