

BRIEF ANALYSIS

No. 365

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Labor Law Discriminates Against Women

By Denise Venable

The Fair Labor Standards Act was passed in 1938 to regulate the wages and working conditions of factory workers. It mandated a federal minimum wage and established an eight hour work day with overtime pay for any hours over 40 worked in a week. Overtime pay was set at one and one-half times the rate of regular pay. The law was initially beneficial to workers, but its inflexibility has hindered development of an accommodating workplace. The Fair Labor Standards Act discriminates against lower-income women workers because it has not been adjusted to account for an evolving society. Efforts to reform the FLSA have been made in the past, but opposition from labor unions has prevented improvements. Congress, however, needs to institute specific reforms.

Shifting Demographics. Changing family structures and women's increasing labor force participation rates have contributed to a society vastly different from the one that existed in the first part of the 20th century. According to the U.S. Census Bureau and Department of Labor Statistics:

- In 1940, 67 percent of households were "traditional" family structures in which the father was the main earner and the mother remained at home full time; today only 17 percent of families are "traditional," while a majority of families are dual-earner.
- In 1950, single mothers were less than 3 percent of families; today they make up more than 12 percent of family households.

- Sixty-one percent of women age 20 and over work, and women make up 46 percent of the workforce.
- Between 1976 and 1998, the average weekly hours women worked increased 42 percent, and the proportion of women working overtime rose from 14 percent to 21.6 percent.

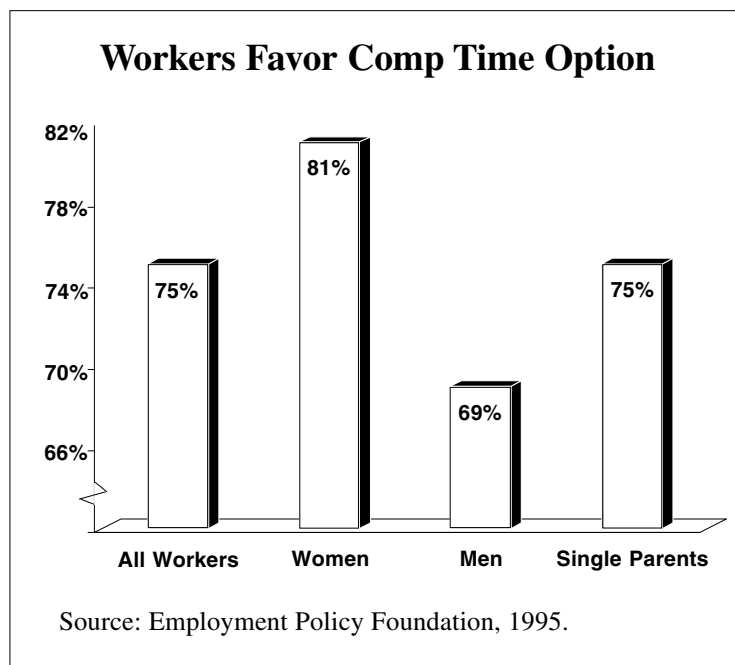
Impact of the FLSA on Women. The FLSA's strict overtime regulations limit work arrangements that will accommodate the diverse needs of workers. Most women continue to be the primary caregivers of a family. The Families and Working Institute reports that working

mothers were 83 percent more likely to take time off to care for a child than working fathers. Studies have shown that women's intermittent departures from the labor force to care for a child or an elderly parent lower average lifetime wages. Women need flexibility in the workplace, but the FLSA bars the way.

In addition, wage and work hour provisions of the FLSA apply generally to hourly workers, thus largely exempting executive, administrative and professional occupations. Given that

most lower-income workers are paid hourly rather than salaried, the FLSA affects a larger percentage of this population. Since 64 percent of minimum wage earners are women, the FLSA especially discriminates against lower-income women workers.

Frustration Over Work/Family Balance. Women in the workplace face immense difficulties in achieving a balance between career and family life. A 1995 National Bureau of Economic Research study examined four cohorts of women college graduates, covering a 60 year period, who attempted to balance careers and families. The study found that no cohort successfully achieved



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this balance; they either had high incidences of childlessness or high rates of childbearing and low rates of labor force participation.

Many women are searching for new ways to balance work and family. Some are more willing to accept positions at lower pay in exchange for flexible work schedules and other benefits. Diana Furchtgott-Roth suggests in her book, *Women's Figures*, that many of the jobs known as "pink-collar jobs" (often those in the service/trade/retail and finance/insurance/real estate industries) contain a larger percentage of women simply because they afford flexibility. Without reform of the overtime provisions of the FLSA, however, women find it far more difficult to achieve a balance of career and family in today's society.

Employees Favor Comp Time Option. Regulatory change has garnered much support among American workers and especially among women. According to a 1995 poll conducted by the Employment Policy Foundation and Penn and Schoen Associates, Inc., a majority of Americans favor having the option of compensatory time off in lieu of overtime wage payments. [See the graphic.]

- Overall, 75 percent favor having a choice between overtime cash wages or paid leave.
- More women than men favor this option: 81 percent versus 69 percent.
- Seventy-five percent of single parents also favor this option.
- If provided with the option, 57 percent of respondents said they would take the paid time off; 73 percent of women and 44 percent of men said they would take paid time off more often than overtime pay.
- Sixty-five percent of respondents favored any change in the laws that would allow more flexible work schedules.

Reform Efforts. In May 1997, the Family Friendly Workplace Act presented Congress with the opportunity to make important changes. Its major provisions included:

- A biweekly work schedule option that would allow employees to work 80 hours over a two-week period in any combination;
- Flexible credit-hours that would allow any hours worked over 40 in one week to be saved and used toward paid leave later;
- Compensatory time and a half off in lieu of overtime pay, but the time off must be taken within the year or the hours revert to overtime rate cash wages.

These arrangements would have required agreement in writing by the employer and employee prior to their application, and the act would have imposed severe penalties for any employer attempting to force employees to choose a specific option or denying compensation previously agreed upon.

Labor unions, however, objected that the wording of the plan would eliminate the time and a half pay guarantee for overtime and allow employers to arbitrarily deny overtime pay to covered employees or postpone requested time off for those who chose comp time payment. Unions also charged that employees dependent on overtime income would be denied the opportunity of earning it. Although the act stipulated otherwise, the National Organization for Women claimed that many workers' pension and health insurance benefits would be slashed because comp time hours would not count as hours worked.

Conclusion. Efforts at improving the workforce for families are still under way. Sens. Judd Gregg (R-N.H.) and Kay Bailey Hutchison (R-Texas) introduced another bill on March 27, 2001. S.624, the Workplace Flexibility Act, attempts to meet the labor unions' objections while providing for the establishment of flextime arrangements. The bill offers Congress another opportunity to modify the antiquated Fair Labor Standards Act and end discrimination against low-income women workers.

Denise Venable is the Intern for Communication Management for the Women in the Economy project, an initiative of the National Center for Policy Analysis.

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