



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Sub. H.B. 61 of the 129th G.A.](#)

Date: March 7, 2011

Status: As Reported by House Economic & Small Business Development

Sponsor: Reps. Thompson and Martin

Local Impact Statement Procedure Required: No

Contents: Allows certain private sector employers to offer compensatory time off programs to their employees and makes changes affecting township employees who work certain hours

State and Local Fiscal Highlights

- If an employer provides compensatory time and an employee decides to exercise this option instead of receiving overtime pay, the state or local taxes collected from that individual may be reduced. However, it is not likely that this will have a substantial impact on state or local tax revenues collected.

Local Fiscal Highlights

- Under the bill, a township employee is considered part-time if he or she works up to 1,800 hours per year, instead of 1,500 hours per year as under current law. This could result in an increase or decrease in township wage or benefit costs, depending on how townships handle work schedules for full-time employees who work between 1,500 and 1,800 hours per year.

Detailed Fiscal Analysis

Compensatory Time Programs

Overview

The bill affords certain private-sector employers the option to offer the accrual and use of compensatory time to their employees. Under the bill, compensatory time off is only to be paid pursuant to an applicable collective bargaining agreement or pursuant to an agreement voluntarily entered into at the initiation and request of the employee. Compensatory time off would be accrued in lieu of monetary overtime compensation at a rate of at least one hour for each hour of work for which monetary overtime compensation would otherwise have been paid. Employees may not accrue more than 240 hours of compensatory time off. It is important to note that not all employers and their employees would be eligible for this option. The bill appears to apply only to those employers who have annual gross sales between \$150,000 and \$500,000 and employees who are not engaged in interstate commerce or in the production of goods for interstate commerce (see the **Comment** section of the LSC bill analysis for details).

An example of a compensatory time off program

John Doe works for Mary Smith's company in a position not covered under a collective bargaining agreement. Beginning with the 2012 calendar year, Mary Smith decides to offer a compensatory time off program to her employees. This decision was based on the cyclical nature of her business as well as a desire to offer her employees additional benefits at a relatively low cost. John Doe considered such a program to be advantageous and initiated his request to receive compensatory time off in lieu of monetary overtime compensation. He affirmed this in writing. His employer has retained evidence of this agreement. John begins participation in the compensatory time off program on January 1, 2012.

Although John does not work overtime on a regular basis, there are times where he works 50 or more hours each week. During those weeks in which he works 50 hours, John is paid his normal salary but accrues 10 hours of compensatory time. As of June 30, 2012, John has accrued 70 hours of compensation time. The volume of work slows for the next two months and then picks up again in September. At the end of September, John has accrued a total of 100 hours of compensation time. In October, John decides to use 40 hours of his accrued compensation time and adds them to his eligible vacation time, taking his family camping for three weeks. After returning from vacation, John works a regular 40-hour workweek until the end of the year and uses another 40 hours of compensatory time off during the holidays.

Overall, during calendar year 2012, John accrued 100 hours of compensation time, used 80 of those hours and received his normal wages. On January 28, 2013, Mary Smith writes John a check for \$300 (20 hours x John's regular wage of \$15 per hour). Although Mary incurs some additional expense in the first month of 2013, the compensatory time off program has saved her company money. Overtime compensation payments would have cost Mary \$22.50 for each hour worked. At 100 hours of overtime worked, John's overtime compensation would have been \$2,250. John has also benefited from the compensatory time off program, because he was able to take an additional two weeks off without any loss of wages.

Income tax implications

If the employer provides compensatory time and the employee decides to exercise this option instead of receiving overtime pay, the state and local taxes collected from that individual may be affected. The base for income tax is paid wages. If the wages paid to an employee are lower because the person has chosen to receive compensatory time rather than overtime pay, the state and local taxes paid by that employee would be reduced. However, it is not likely that this will have a substantial impact on state or local tax revenues.

Department of Commerce

The bill requires the Director of Commerce, not later than 30 days after the bill's effective date, to revise the printed materials made available to employers and employees regarding the Ohio Fair Minimum Wage Standards Law to include information on compensatory time off in lieu of monetary overtime compensation. According to the Department of Commerce, it is rare for its Wage and Hour Section to be asked for a paper copy of these materials. Rather, most employers access the materials through the Section's web site. As a result, any new costs to revise the materials and provide such paper copies would be negligible, at most.

Civil and criminal penalties

Under the bill, no employer that provides compensatory time off can directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any employee for the purpose of interfering with the rights of the employee to opt for or reject compensatory time off in lieu of overtime pay. Nor can any employer require an employee to use compensatory time off. Violations of the bill would be a third degree misdemeanor. In addition, monetary damages would also be due the aggrieved employee. The maximum sentence for a third degree misdemeanor is 60 days in jail with a maximum fine of \$500. Although employers found guilty could be sentenced to the maximum penalty, the court would presumably exercise discretion and apply a lower sentence for these violations. Overall, there could be a minimal increase in municipal and county court costs for any cases that might arise. However, all or part of any new costs would be offset through court cost or fine revenue.

Part-time township employees

Under current law, townships may obtain and pay all or part of the cost of health, disability, dental care, vision care, prescription drug, and long-term care insurance policies for township officers and employees. The coverage provided must be uniform for township officers and full-time employees and their immediate dependents. However, townships are not required to offer these benefits to part-time employees and their immediate dependents. Under current law, a part-time township employee is one who was hired with the expectation that he or she will work no more than 1,500 hours in any year. The bill raises this threshold to 1,800 hours.

The provision appears to most broadly affect part-time township fire and emergency medical services personnel, some of whom work more than the expected 1,500 hours per year but do not receive the benefits provided to full-time employees, the goal being to retain these employees in part-time status. However, increasing the hours-worked threshold to 1,800 hours for part-time employees could have two potential effects on township costs. On the one hand, some township employees currently working between 1,500 and 1,800 hours per year under full-time status could be reclassified to part-time status under the bill. As a result, they might no longer qualify for their current health insurance benefits as full-time employees. In this situation, a township's benefit costs would decrease. Alternatively, a township could decide to increase the hours of work for some employees working between 1,500-1,800 hours per year to qualify those employees for full-time status. For example, the township could increase the employee's schedule from 32 hours per week (1,664 hours annually) to 35 hours per week (1,820 hours annually). In this case, township wage costs would increase, although benefit expenses would remain the same.