Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 61 of the 129th G.A.

Date: February 7, 2011

Status: As Introduced

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

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.

Detailed Fiscal Analysis

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 1.5 hours 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 15 hours of compensatory time (10 hrs. x 1.5). As of June 30, 2012, John has accrued 105 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 150 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 150 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 $1,050 (70 hours x John's regular wage of $15 per hour).

Although Mary incurs a large 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.