

ASSEMBLY, No. 2487

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 7, 1996

By Assemblyman GUSCIORA, Assemblywoman TURNER,
Assemblymen Dalton and Greenwald

1 AN ACT permitting public employees to choose compensatory time in
2 lieu of overtime pay and revising parts of the statutory law.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. (New section) Sections 3 through 7 and 11 of this amendatory
8 and supplementary act shall be known and may be cited as the "Public
9 Employees' Flexibility Act."

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11 2. Section 1 of P.L.1951, c.51 (C.52:14-17.13) is amended to read
12 as follows:

13 1. The work week for basic annual salary for employees in the
14 State service, insofar as practicable and except as provided in section
15 2 of this act, shall not be more than 40 hours; and, notwithstanding
16 any inconsistent provisions of law, any employee in the State service
17 who is authorized or required to work in any week more than the
18 hours of work established as the regular and normal work week for
19 that class or agency shall be eligible to receive, at the employee's
20 discretion [of the department head with the approval of the State
21 Treasurer, the President of the Civil Service Commission and the
22 Director of the Division of Budget and Accounting in the Department
23 of Treasury], either (1) compensation for the hours worked in excess
24 of the established work week for that class or agency at a rate
25 representing 1 1/2 times the individual's hourly rate calculated by a
26 proration of the annual salary rate of the individual employee, or (2)
27 compensatory time off at the rate of 1 1/2 hours for each hour worked
28 in excess of the established work week for that class or agency,
29 pursuant to sections 3 through 7 of P.L. , c. (C.)(pending in
30 the Legislature as this bill).

31 (cf: P.L.1968, c.52, s.1)

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33 3. (New section) a. An employee may elect to receive

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 compensatory time off at a rate of not less than one and one-half hours
2 for each hour of employment for which overtime compensation is
3 required by section 1 of P.L.1951, c.51 (C.52:14-17.13) in lieu of
4 monetary overtime compensation, pursuant to this section and sections
5 4 through 7 of this amendatory and supplementary act.

6 b. Provided that the employee has not accrued compensatory time
7 in excess of the limits applicable to the employee prescribed by
8 subsection d. of section 4 of this act, an employer may provide
9 compensatory time off under subsection a. only:

10 (1) pursuant to applicable provisions of a collective bargaining
11 agreement; or

12 (2) in the case of employees who are not subject to a collective
13 bargaining agreement, if the employee knowingly and voluntarily elects
14 to enter into a written agreement with the employer before the
15 performance of the work.

16 c. For the purpose of this section and sections 4 through 7 of this
17 amendatory and supplementary act, the terms "employer" and
18 "employee" shall have the same meaning as in the "New Jersey
19 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et
20 seq.).

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22 4. (New section) a. Except as provided in subsection d. of this
23 section, an employee may not accrue more than 240 hours of
24 compensatory time in any calendar year. Not later than January 31 of
25 each calendar year, the employee's employer shall provide monetary
26 compensation for any compensatory time off accrued during the
27 preceding calendar year which was not used prior to December 31 of
28 the preceding year at the overtime rate established by section 3 of this
29 act. An employer may designate and communicate to the employer's
30 employees a 12-month period other than the calendar year, in which
31 case such compensation shall be provided not later than 31 days after
32 the end of that 12-month period.

33 b. (1) The employer may provide monetary compensation for an
34 employee's unused compensatory time off in excess of 80 hours at any
35 time after giving the employee at least 30 days written notice. Such
36 compensation shall be provided at the overtime rate.

37 (2) An employee may cancel an agreement for compensatory time
38 off executed pursuant to paragraph (2) of subsection b. of section 3 of
39 this act at any time upon written notice to the employer.

40 c. An employee may at any time request in writing that monetary
41 compensation at the overtime rate be provided for any or all
42 compensatory time accrued which has not yet been used. The
43 employer shall provide monetary compensation at the overtime rate to
44 the employee for unused accrued compensatory time not later than 14
45 days after receipt of the written request.

46 d. An employee who has accrued 240 hours of compensatory time

1 off shall, for additional overtime hours of work, be paid overtime
2 compensation; except that if the work for which compensatory time
3 may be provided includes work in a public safety activity, an
4 emergency response activity, or a seasonal activity, the employee
5 engaged in that work may accrue not more than 480 hours of
6 compensatory time each year. An employee who has accrued 480
7 hours of compensatory time off shall, for additional overtime hours of
8 work, be paid overtime compensation.

9 e. Upon the voluntary or involuntary termination of employment,
10 an employee who has accrued compensatory time off authorized to be
11 provided pursuant to this act shall be paid for the unused
12 compensatory time at the overtime rate. Any payment owed to an
13 employee under this section for unused compensatory time shall be
14 considered unpaid overtime compensation.

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16 5. (New section) An employer which provides compensatory time
17 to employees pursuant to section 3 of this act shall not directly or
18 indirectly intimidate, threaten, or coerce, or attempt to intimidate,
19 threaten, or coerce any employee, or take any retaliatory action against
20 an employee because the employee:

21 a. Enters into an agreement to accrue compensatory time in lieu of
22 overtime compensation, or objects, or refuses to enter into such an
23 agreement;

24 b. Uses, objects, or refuses to use, compensatory time in lieu of
25 overtime compensation;

26 c. Requests monetary compensation at the overtime rate in lieu of
27 using accrued compensatory time; or

28 d. Exercises, or attempts to exercise any other right granted under
29 this act.

30 In addition to the penalties and right of action provided in section
31 7 of this act, the Commissioner of Labor shall investigate an
32 employee's claim for accrued compensatory time or monetary overtime
33 compensation as provided in R.S.34:11-58.

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35 6. (New section) An employee who has accrued compensatory
36 time off authorized to be provided pursuant to this act and who has
37 requested the use of that time in writing shall be permitted by the
38 employee's employer to use that time not later than 30 days after
39 making the request.

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41 7. (New section) An employer which violates sections 3 through
42 6 of this act shall be liable to the employee affected for liquidated
43 damages in the amount of three times the overtime rate of
44 compensation, reduced by the monetary amount of compensatory time
45 off used by that employee.

1 8. Section 1 of P.L.1967, c. 216 (34:11-56a25.1) is amended to
2 read as follows:

3 1. No claim for unpaid minimum wages, unpaid overtime
4 compensation, unused compensatory time as provided in section 4 of
5 P.L. , c. (C.)(now pending in the Legislature as this bill), or
6 other damages under this act shall be valid with respect to any such
7 claim which has arisen more than 2 years prior to the commencement
8 of an action for the recovery thereof. In determining when an action
9 is commenced, the action shall be considered to be commenced on the
10 date when a complaint is filed with the Commissioner of the
11 Department of Labor [and Industry] or the Director of the [Wage and
12 Hour Bureau]Division of Workplace Standards, and notice of such
13 complaint is served upon the employer; or, where an audit by the
14 Department of Labor [and Industry] discloses a probable cause of
15 action for unpaid minimum wages, unpaid overtime compensation,
16 unused compensatory time, or other damages, and notice of such
17 probable cause of action is served upon the employer by the Director
18 of the [Wage and Hour Bureau]Division of Workplace Standards; or
19 where a cause of action is commenced in a court of appropriate
20 jurisdiction.
21 (cf: P.L.1967, c.216, s.1)

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23 9. R.S.34:11-58 is amended to read as follows:

24 34:11-58. The commissioner is authorized and empowered to
25 investigate any claim for wages, authorized and accrued compensatory
26 time, or monetary overtime pay due an employee and in such
27 investigation may summon the defendant, subpoena witnesses,
28 administer oaths, take testimony and shall upon such proceeding make
29 a decision or award when the sum in controversy, exclusive of costs,
30 does not exceed \$10,000.00.

31 Such decision or award shall be a judgment when a certified copy
32 thereof is filed with the Superior Court.

33 Such judgment shall be entered in the same manner and have the
34 same effect and be subject to the same proceedings as are judgments
35 rendered in suits duly heard and determined by courts of competent
36 jurisdiction.

37 The commissioner is authorized to supervise the payment of
38 amounts due to employees under an award made pursuant to this
39 section, and the employer may be required to make these payments to
40 the commissioner to be held in a special account in trust for the
41 employees, and paid on order of the commissioner directly to the
42 employee or employees affected. The employer shall also pay the
43 commissioner an administrative fee equal to not less than 10% or more
44 than 25% of any payment made to the commissioner pursuant to this
45 section. The amount of the administrative fee shall be specified in a
46 schedule of fees to be promulgated by rule or regulation of the

1 commissioner in accordance with the "Administrative Procedure Act,"
2 P.L.1968, c.410 (C.52:14B-1 et seq.). The fee shall be applied to
3 enforcement and administration costs of the Division of Workplace
4 Standards in the Department of Labor.
5 (cf: P.L.1991, c.205, s.4)

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7 10. R.S.34:11-59 is amended to read as follows:

8 34:11-59. An employee may file a written claim for wages,
9 authorized and accrued compensatory time, or monetary overtime pay
10 against an employer in the wage collection division of the department
11 which shall be entered in a book to be called the wage collection
12 docket.

13 Upon the filing of claim, the department shall issue a summons
14 returnable between the hours of nine o'clock in the forenoon and three
15 o'clock in the afternoon, both inclusive, which shall also specify a
16 certain time and place for the appearance of the defendant, not less
17 than five nor more than fifteen days from the date of such process,
18 which summons shall be served at least five days before the time of
19 appearance mentioned therein, by reading the same to the defendant
20 and delivering to him a copy thereof if he shall be found and if not
21 found by leaving a copy thereof in his house or with some other person
22 of his family over the age of fourteen years. Such persons being
23 served with summons and complaint shall be informed of the contents
24 thereof and the person serving the summons shall indorse thereon a
25 return of the time and manner he executed the same, and sign his name
26 thereon. At the time and place specified in the summons, the
27 commissioner shall inquire in a summary way into the merits of the
28 employee's claim and defenses of the defendant, if any.

29 (cf: R.S.34:11-59)

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31 11. (New section) The Commissioner of Labor shall promulgate
32 rules and regulations pursuant to the "Administrative Procedures Act,"
33 P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of this
34 amendatory and supplementary act.

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36 12. This act shall take effect immediately, and the Commissioner
37 of Labor shall take such actions as may be necessary to effectuate the
38 provisions of this act, except that sections 1 through 10 shall remain
39 inoperative until 180 days after the date of enactment.

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STATEMENT

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44 This bill, the "Public Employees' Flexibility Act," allows public
45 employees to elect whether to receive compensatory time off in lieu of
46 overtime pay. It is intended to give working families time off to meet

1 with their children's teachers, attend school functions, care for sick
2 children or elderly relatives, in short: to give working parents the
3 flexibility they need to cope with the exigencies of family life.

4 Public employees may receive up to 240 hours per year of
5 compensatory time off in lieu of monetary overtime compensation.
6 Only the employee may elect to choose this form of overtime
7 compensation, which election would be memorialized in the form of a
8 written agreement. An employee may cancel such an agreement at any
9 time. Also, an employee may elect at any time to receive monetary
10 compensation in lieu of compensatory time. Compensatory overtime
11 for employees already represented by a union will be governed by the
12 collective bargaining agreement. An employee will receive any unused
13 compensatory time at the regular overtime rate of compensation upon
14 the voluntary or involuntary termination of employment.

15 The bill contains anti-coercion provisions to prevent employers
16 from interfering with their employees' decision to receive or use
17 compensatory time off or monetary overtime payments. If the
18 employer violates any provision of the bill, it will be liable to the
19 employee for three times the monetary value of the compensatory time
20 off due to the employee. The Commissioner of Labor is authorized to
21 investigate claims and pursue payment for the employee for accrued
22 compensatory time and monetary overtime compensation valued at less
23 than \$10,000.

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28 "Public Employees' Flexibility Act."