Ohio Legislative Service Commission

Jason Phillips

Fiscal Note & Local Impact Statement

Bill: S.B. 17 of the 128th G.A.

Date: May 6, 2009

Status: As Reported by Senate Insurance, Commerce, & Labor

Sponsor: Sen. Coughlin

Local Impact Statement Procedure Required: No — Minimal cost

Contents: Affords to private sector employers the option to offer and to employees the option to accrue and use compensatory time off

State Fiscal Highlights

STATE FUND	FY 2010 – FUTURE YEARS
General Revenue Fund	
Revenues	Potential minimal loss in income tax receipts annually
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

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

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010 – FUTURE YEARS
Political Subdivisions	
Revenues	Potential minimal loss in income tax receipts annually
Expenditures	- 0 -
County and Municipal Courts	
Revenues	Potential gain in court cost or fine revenue
Expenditures	Potential minimal increase in civil and criminal case adjudication expenses

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- If an employer provides compensatory time and an employee decides to exercise this option instead of receiving overtime pay, the local taxes collected from that individual may be reduced. However, it is not likely that this will have a substantial impact on the tax revenues collected.
- The bill's prohibition against intimidation, coercion, or other threatening actions toward any employee to dissuade any employee from choosing compensatory time

off in lieu of payment of monetary overtime compensation for overtime hours could generate additional criminal or civil cases for county or municipal courts to adjudicate. However, court cost or fine revenue would likely offset some or all of any new costs.

Detailed Fiscal Analysis

Overview

This bill would afford certain private-sector employers the option to offer the accrual and use of compensatory time to their employees. It also requires the Director of Commerce to adopt rules as appropriate to carry out the purposes of compensatory time off for private-sector employees. Under the bill, compensatory time off would be accrued by an employee 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.

The bill also provides certain safeguards for both the employer and employee who enter into a compensatory time off agreement. An employer that has adopted a policy offering compensatory time off may discontinue that policy, but must give employees 30 days' written notice. An employee also has the option to withdraw an agreement or understanding at any time, thereby withdrawing from the compensatory time off program. Any earned compensatory time off accrued and not yet used at that point must be paid by the employer within 30 days of the request to withdraw at the employee's regular rate.

It is important to note that not all employers and their employees would be eligible for these options. The bill appears to apply only to those employers who have annual gross sales between $150,000 and $500,000 (see 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 2008 calendar year, Mary Smith decided 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 began participation in the compensatory time off program on January 1, 2008.

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).[1] As of June 30, 2008, 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 2008, John accrued 150 hours of compensation time, used 80 of those hours and received his normal wages. On January 28, 2009, Mary Smith cuts John a check for $1,050 (70 hours x John's regular salary of $15 per hour). Although Mary incurs a large expense in the first month of 2009, 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 to state or local tax revenues.

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. In such cases, employers found in violation would be guilty of a third-degree misdemeanor and would also be liable for monetary damages. The maximum sentence for a third-degree misdemeanor is 60 days and the maximum fine is $500. As a result, there may 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.

SB0017SR.docx / th

[1] Fifty hours is used as an example. Forty-five hours worked would result in 7.5 hours in compensation time accrued and so on.