H. R. ____

To permit employees to request, and to ensure employers consider requests for, flexible work terms and conditions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. MALONEY introduced the following bill; which was referred to the Committee on ____________________________

A BILL

To permit employees to request, and to ensure employers consider requests for, flexible work terms and conditions, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Working Families
5 Flexibility Act”.

6 SEC. 2. DEFINITIONS.

7 In this Act:
(1) EMPLOYEE.—The term “employee” means an individual—

(A) who is—

(i)(I) an employee (including an applicant), as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), who is not covered under any of clauses (ii) through (v), including such an employee of the Library of Congress, except that a reference in such section to an employer shall be considered to be a reference to an employer described in clauses (i)(I) and (ii) of paragraph (2)(A); or

(II) an employee (including an applicant) of the Government Accountability Office;

(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16e(a));

(iii) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);
(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

(v) a Federal officer or employee (including an applicant) covered under subchapter V of chapter 63 of title 5, United States Code; and

(B) who works an average of at least 20 hours per week or, in the alternative, at least 1,000 hours per year.

(2) EMPLOYER.—

(A) IN GENERAL.—The term “employer” means a person who is—

(i)(I) a covered employer, as defined in subparagraph (B), who is not covered under any of subclauses (II) through (V);

(II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(IV) an employing office, as defined in section 411(c) of title 3, United States Code; or
(V) an employing agency covered under subchapter V of chapter 63 of title 5, United States Code; and

(ii) is engaged in commerce (including government), in the production of goods for commerce, or in an enterprise engaged in commerce (including government) or in the production of goods for commerce.

(B) COVERED EMPLOYER.—

(i) IN GENERAL.—In subparagraph (A)(i)(I), the term “covered employer”—

(I) means any person engaged in commerce or in any industry or activity affecting commerce who employs 15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(II) includes—

(aa) any person who acts, directly or indirectly, in the interest of such an employer to any of the employees of such employer; and
(bb) any successor in interest of such an employer; and

(III) includes an agency described in clause (iii) or (iv) of subparagraph (A) of section 101(4) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611(4)), to which subparagraph (B) of such section shall apply.

(ii) Definitions.—For purposes of this subparagraph:

(I) Commerce.—The terms “commerce” and “industry or activity affecting commerce” have the meanings given the terms in section 101 of such Act (29 U.S.C. 2611).

(II) Employee; person.—The terms “employee” and “person” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(C) Predecessors.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.
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(3) SECRETARY.—The term “Secretary” means the Secretary of Labor.

SEC. 3. STATUTORY RIGHT TO REQUEST FLEXIBLE WORK TERMS AND CONDITIONS.

(a) IN GENERAL.—An employee may apply to the employee’s employer for a change in the employee’s terms or conditions of employment if the change relates to—

(1) the number of hours the employee is required to work;

(2) the times when the employee is required to work; or

(3) where the employee is required to work.

(b) CONTENTS.—An application submitted under this section shall—

(1) state that the application is an application described in subsection (a);

(2) specify the change applied for and the date on which the employee requests that the change become effective; and

(3) explain what effect, if any, the employee thinks the change applied for would have on the employer and how, in the employee’s opinion, any such effect might be dealt with.

(c) SUBMISSIONS.—
(1) Period between submissions.—If an employee, who has submitted an application under this section to an employer, submits a further application under this section to the same employer before the end of the period of 12 months beginning with the date on which the previous application was submitted, that further application shall not be covered by section 4.

(2) Form and timing.—The Secretary shall by regulation specify—

(A) the form of applications submitted under this section; and

(B) when such an application shall be considered to be submitted.

SEC. 4. EMPLOYER’S DUTIES IN RELATION TO APPLICATIONS.

(a) In general.—An employer to whom an employee submits an application under section 3 shall consider the application in accordance with regulations issued by the Secretary.

(b) Regulations.—Regulations issued under subsection (a)—

(1) shall include provisions that provide—

(A) that the employer and the employee shall hold a meeting to discuss an application
submitted under section 3 within 14 days after
the date of submission;

(B) that the employer shall give the em-
ployee a written decision regarding the applica-
tion within 14 days after the date of the meet-
ing described in subparagraph (A);

(C) that a decision under subparagraph
(B) to reject the application shall state the
grounds for the decision, including whether
those grounds included—

(i) the identifiable cost of the change
in a term or condition of employment re-
quested in the application, including the
costs of loss of productivity, of retraining
or hiring employees, or of transferring em-
ployees from 1 facility to another facility;

(ii) the overall financial resources in-
volved;

(iii) for an employer with multiple fa-
cilities, the geographic separateness or ad-
ministrative or fiscal relationship of the fa-
cilities;

(iv) the effect of the change on the
employer’s ability to meet customer de-
mand; or
(v) other factors specified by the Secretary in regulation;

(D) that if the employer rejects the employee’s application, the employer may propose in writing an alternative change to the employee’s hours, times, and place of work;

(E) that if the employee is dissatisfied with the employer’s decision under subparagraph (B) and the alternative described in subparagraph (D), the employee has the right to request reconsideration of the decision within 14 days after the later of—

(i) the date on which the employer gives the employee the decision under subparagraph (B); and

(ii) if applicable, the date on which the employer proposes the alternative described in subparagraph (D);

(F) for procedures for exercising the right to request reconsideration described in subparagraph (E), including procedures requiring the employee to set out the grounds for reconsideration, including any inaccuracies or misstatements that the employee contends were in the employer’s decision;
(G) that the decision under subparagraph (B) shall include such information as the regulations shall specify relating to the right to request reconsideration under subparagraph (E);

(H) that the employer and the employee shall hold a meeting to discuss the request for reconsideration described in subparagraph (E) within 14 days after the date on which the employee gives notice of the request for reconsideration to the employer;

(I) that the employer shall give the employee a written decision regarding the request for reconsideration within 14 days after the date of the meeting described in subparagraph (H);

(J) that a decision under subparagraph (I) to deny the request for reconsideration shall state the grounds for the decision, including whether those grounds included the factors described in clauses (i) through (v) of subparagraph (C);

(K) that a statement made under subparagraph (C) or (J) shall contain a sufficient explanation of the grounds for the decision involved;
(L) that the employee shall have a right to be accompanied at meetings described in subparagraph (A) or (H) by a representative of the employee’s choosing with such qualifications as the regulations shall specify; and

(M) that if such a representative of the employee’s choosing is not available to attend a meeting described in subparagraph (A) or (H), the meeting shall be postponed;

(2) may include provisions that provide—

(A) that any requirement of the regulations shall not apply in a case in which such an application is disposed of by agreement or withdrawn;

(B) for extension of a time limit in a case in which the employer and employee agree, or in such other circumstances as the regulations may specify; and

(C) for applications to be treated as withdrawn in specified circumstances; and

(3) may include different provisions for different cases or circumstances.

SEC. 5. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—It shall be unlawful for any employer to interfere with, restrain, or deny
the exercise of, or the attempt to exercise, any right pro-
vided under this Act.

(b) **INTERFERENCE WITH APPLICATION, PRO-
CEEDINGS, OR INQUIRIES.**—It shall be unlawful for any
employer to discharge or in any other manner discriminate
against any individual because such individual—

(1) has submitted (or attempted to submit) an
application under section 3;

(2) has filed an action, or has instituted or
caused to be instituted any proceeding, under or re-
lated to this Act;

(3) has given, or is about to give, any informa-
tion in connection with any inquiry or proceeding re-
lating to any right provided under this Act;

(4) has testified, or is about to testify, in any
inquiry or proceeding relating to any right provided
under this Act;

(5) has opposed any practice made unlawful by
this Act; or

(6) has in any other way exercised or attempted
to exercise any right provided under this Act.

**SEC. 6. ENFORCEMENT.**

(a) **DEFINITIONS.**—Except as provided in subsection
(d), in this section:
(1) EMPLOYEE.—The term “employee” means an employee described in clause (i) or (ii) of section 2(1)(A).

(2) EMPLOYER.—The term “employer” means an employer described in subclause (I) or (II) of section 2(2)(A)(i).

(b) GENERAL AUTHORITY.—The provisions of this Act may be enforced pursuant to the following provisions:

(1) INVESTIGATION AND ASSESSMENT.—An employee who is affected by a violation of a right in section 5 (including a violation relating to a right provided under section 3 or 4) may make a complaint to the Administrator of the Wage and Hour Division of the Employment Standards Administration of the Department of Labor, alleging that the employer involved has violated section 5. The Administrator shall investigate, and may issue an order making determinations, and assessing a civil penalty described in section 7(a)(1) or awarding relief described in section 7(a)(2), as appropriate, with respect to the alleged violation.

(2) ADMINISTRATIVE HEARING.—An affected person who takes exception to an order issued under paragraph (1) may request an administrative hearing concerning the order under procedures estab-
lished by the Secretary that comply with the require-
ments of sections 554, 556, and 557 of title 5, 
United States Code, and regulations promulgated by 
the Secretary. Such hearing shall be conducted expen-
ditiously. If no affected person requests the hearing 
within 60 days after the order is issued under para-
graph (1), the order shall be deemed to be a final 
order that is not subject to judicial review.

(3) ENFORCEMENT.—The amount of any pen-
alty assessed against an employer under this sub-
section, when finally determined, may be—

(A) deducted from any sums owed by the 
United States to the employer; or

(B) recovered in a civil action brought 
against the employer by the Secretary in any 
court of competent jurisdiction.

(4) CIVIL ACTION.—An affected person desiring 
review of an order issued under paragraph (2) (other 
than a nonreviewable order) may file a petition for 
review in an appropriate Federal court of appeals.

(5) CIVIL ACTION BY THE SECRETARY FOR IN-
JUNCTIVE RELIEF.—The Secretary may bring an ac-
tion for a violation described in paragraph (1) in a 
district court of the United States to obtain the in-
junctive relief described in section 7(b).
(c) Government Accountability Office and Library of Congress.—Notwithstanding any other provision of this section, the Secretary is authorized to enter into agreements with the Librarian of Congress and the Comptroller General of the United States with respect to individuals employed in the Library of Congress and the Government Accountability Office, respectively, to provide for the carrying out of functions of the Secretary under subsection (b) with respect to such individuals.

(d) Other Employees.—

(1) Employees covered by Congressional Accountability Act of 1995.—Notwithstanding any other provision of this section or section 7, the powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 202(a)(1) of that Act (2 U.S.C. 1312(a)(1)) shall be the powers, remedies, and procedures this Act provides to that Board, or any person, alleging an unlawful employment practice in violation of this Act against an employee described in section 2(1)(A)(iii).

(2) Employees covered by chapter 5 of title 3, United States Code.—Notwithstanding
any other provision of this section or section 7, the
powers, remedies, and procedures provided in chap-
ter 5 of title 3, United States Code, to the Presi-
dent, the Merit Systems Protection Board, or any
person, alleging a violation of section 412(a)(1) of
that title, shall be the powers, remedies, and proce-
dures this Act provides to the President, that Board,
or any person, respectively, alleging an unlawful em-
ployment practice in violation of this Act against an
employee described in section 2(1)(A)(iv).

(3) Employees covered by chapter 63 of
title 5, United States Code.—Notwithstanding
any other provision of this section or section 7, the
powers, remedies, and procedures provided in title 5,
United States Code, to an employing agency, pro-
vided in chapter 12 of that title to the Merit Sys-
tems Protection Board, or provided in that title to
any person, alleging a violation of chapter 63 of that
title, shall be the powers, remedies, and procedures
this Act provides to that agency, that Board, or any
person, respectively, alleging an unlawful employ-
ment practice in violation of this Act against an em-
ployee described in section 2(1)(A)(v).
SEC. 7. REMEDIES.

(a) ADMINISTRATIVE PROCEEDINGS AND ACTIONS FOR REVIEW.—

(1) INTERFERENCE WITH EXERCISE OF RIGHTS.—In an action brought under paragraph (1), (2), or (4) of section 6(b), an employer who violates the provisions of section 5(a) (including a violation relating to a right provided under section 3 or 4) shall be subject to a civil penalty of not less than $1000 and not more than $5,000 for each employee who was the subject of such a violation.

(2) RETALIATION.—In an action brought under paragraph (1), (2), or (4) of section 6(b), if an employer violates section 5(b), the employee who is affected by the violation or the Secretary, as appropriate, may obtain an order awarding such equitable relief as may be appropriate, including employment, reinstatement, promotion, back pay, and a change in the terms or conditions of employment.

(b) CIVIL ACTION BY THE SECRETARY FOR INJUNCTIVE RELIEF.—In an action brought under section 6(b)(5), the Secretary may obtain an order—

(1) restraining violations of section 5 (including a violation relating to a right provided under section 3 or 4); or
(2) awarding such other equitable relief as may be appropriate, including employment, reinstatement, promotion, back pay, and a change in the terms or conditions of employment.

SEC. 8. NOTICE.

(a) In General.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary (or the appropriate officer specified in section 12(a), as applicable), setting forth excerpts from, or summaries of, the pertinent provisions of this Act and information pertaining to the filing of a complaint under section 6(b).

(b) Penalty.—Any employer that willfully violates this section may be assessed a civil money penalty not to exceed $500 for each separate offense.

SEC. 9. RECORDKEEPING.

Any employer shall make, keep, and preserve records pertaining to compliance with this Act in accordance with regulations issued under section 12.

SEC. 10. RESEARCH, EDUCATION, AND TECHNICAL ASSISTANCE PROGRAM.

(a) In General.—The Secretary (and each officer specified in section 12(a), as applicable) shall provide in-
formation and technical assistance to employers, labor organizations, and the general public concerning compliance with this Act.

(b) PROGRAM.—In order to achieve the objectives of this Act, the Secretary (and each officer specified in section 12(a), as applicable) shall carry on a continuing program of research, education, and technical assistance, including—

(1) conducting and promoting research with the intent of encouraging flexibility in work terms and conditions;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the various communication media, and the general public the findings of studies and other materials for promoting compliance with this Act;

(3) sponsoring and assisting State and community informational and educational programs; and

(4) providing technical assistance to employers, labor organizations, professional associations, and other interested persons on means of achieving and maintaining compliance with the provisions of this Act.
SEC. 11. RIGHTS RETAINED BY EMPLOYEES.

Nothing in this Act shall be considered to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under a collective bargaining agreement.

SEC. 12. APPLICATION OF PROVISIONS.

(a) Application to Classes of Employees.—Not later than 120 days after the date of enactment of this Act—

(1)(A) except as provided in subparagraph (B), the Secretary shall issue such regulations as are necessary to carry out this Act with respect to employees described in clause (i) or (ii) of section 2(1)(A); and

(B) the Comptroller General of the United States and the Librarian of Congress shall issue such regulations as are necessary to carry out this Act with respect to employees of the Government Accountability Office and the Library of Congress, respectively;

(2) the Board of Directors of the Office of Compliance shall issue (in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384)) such regulations as are necessary to carry out this Act with respect to employees described in section 2(1)(A)(iii);
(3) the President (or the designee of the President) shall issue such regulations as are necessary to carry out this Act with respect to employees described in section 2(1)(A)(iv); and

(4) the Director of the Office of Personnel Management shall issue such regulations as are necessary to carry out this Act with respect to employees described in section 2(1)(A)(v).

(b) TRANSITIONAL PROVISIONS.—A regulation issued under subsection (a) may contain such transitional provisions as the Secretary determines to be appropriate in connection with the application of any of the provisions of this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year.

SEC. 14. EFFECTIVE DATE.

(a) IN GENERAL.—This Act takes effect 6 months after the date of enactment of this Act, except as provided in subsection (b).

(b) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a collective bargaining agreement in effect on the effective date prescribed by subsection (a), this Act shall apply on the earlier of—
(1) the date of the termination of such agreement; or

(2) the date that occurs 12 months after the date of enactment of this Act.