

115TH CONGRESS
1ST SESSION

H. R. 4219

To amend the Employee Retirement Income Security Act of 1974 to include a voluntary option for qualified flexible workplace arrangements.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2017

Mrs. MIMI WALTERS of California (for herself, Ms. STEFANIK, and Mrs. McMORRIS RODGERS) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Employee Retirement Income Security Act of 1974 to include a voluntary option for qualified flexible workplace arrangements.

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 “Workflex in the 21st
5 Century Act”.

6 **SEC. 2. QUALIFIED FLEXIBLE WORKPLACE ARRANGEMENT**
7 **PLAN TREATED AS WELFARE PLAN.**

8 Section 3(1) of the Employee Retirement Income Se-
9 curity Act of 1974 (29 U.S.C. 1002(1)) is amended—

1 (1) by striking “or (B)” and inserting “(B)”;
2 and

3 (2) by inserting before the period at the end the
4 following: “, or (C) any qualified flexible workplace
5 arrangement plan described in part 8 of subtitle B”.

6 **SEC. 3. RELATIONSHIP TO OTHER LAWS.**

7 Section 514 of the Employee Retirement Income Se-
8 curity Act of 1974 (29 U.S.C. 1144) is amended by adding
9 at the end the following:

10 “(f)(1) Subsection (a) shall apply with respect to any
11 and all State laws insofar as they may now or hereafter
12 relate to any qualified flexible workplace arrangement plan
13 described in part 8, except that in the case of workflex
14 options offered under such a plan—

15 “(A) except as provided in subparagraph (B), if
16 only certain employees are eligible to enroll in a par-
17 ticular workflex option under the plan, such sub-
18 section shall apply with respect to any and all State
19 laws insofar as they may now or hereafter relate to
20 the particular workflex option solely with respect to
21 those employees who are so eligible; and

22 “(B) in the case of a workflex option consisting
23 of a biweekly work program or a compressed work
24 schedule program, such subsection shall apply with
25 respect to any and all State laws insofar as they

1 may now or hereafter relate to such workflow option
 2 solely with respect to those employees who enroll in
 3 such workflow option.

4 “(2) For purposes of paragraph (1)(B), a State over-
 5 time law shall be considered to relate to any workflow op-
 6 tion consisting of a biweekly work program or a com-
 7 pressed work schedule program.

8 “(g) Subsection (d) shall not be construed to permit
 9 the application of any State law otherwise permitted under
 10 section 401(b) of the Family and Medical Leave Act of
 11 1993 (29 U.S.C. 2651(b)) that would impose require-
 12 ments relating to a qualified flexible workplace arrange-
 13 ment plan.”.

14 **SEC. 4. REQUIREMENTS OF QUALIFIED FLEXIBLE WORK-**
 15 **PLACE ARRANGEMENT PLAN.**

16 Subtitle B of title I of the Employee Retirement In-
 17 come Security Act of 1974 (29 U.S.C. 1021 et seq.) is
 18 amended by adding at the end the following:

19 **“PART 8—QUALIFIED FLEXIBLE WORKPLACE**
 20 **ARRANGEMENT PLANS**

21 **“SEC. 801. DEFINITION OF QUALIFIED FLEXIBLE WORK-**
 22 **PLACE ARRANGEMENT PLAN.**

23 “(a) IN GENERAL.—A qualified flexible workplace ar-
 24 rangement plan is a plan that—

1 “(1) subject to the requirements of this title, an
2 employer administers in accordance with a written
3 plan document, in accordance with section
4 402(a)(1), which shall—

5 “(A) establish the requirements of the plan
6 (which shall include requirements with respect
7 to accrual of compensable leave, request and
8 use of such leave, withdrawal from or termi-
9 nation of such a plan, determination of an em-
10 ployee’s service, and workflex options); and

11 “(B) as appropriate, incorporate the rights
12 of employees to compensable leave and workflex
13 options pursuant to one or more collective bar-
14 gaining agreements between the employer and
15 the labor organization that has been certified or
16 recognized as the representative of the employ-
17 ees under applicable law; and

18 “(2) provides—

19 “(A) compensable leave in accordance with
20 section 802; and

21 “(B) workflex options in accordance with
22 the requirements of section 803.

23 “(b) RELATIONSHIP TO EXECUTIVE ORDER
24 13706.—A qualified flexible workplace arrangement plan
25 meeting all the requirements of this part shall be deemed

1 to satisfy the requirements established by Executive Order
2 13706.

3 “(c) SUBSTANTIAL COMPLIANCE.—A plan shall not
4 fail to be treated as a qualified flexible workplace arrange-
5 ment plan under this title so long as the plan substantially
6 complies with the requirements of this part.

7 “(d) RULE OF CONSTRUCTION.—Nothing in this part
8 shall be construed—

9 “(1) to relieve an employer that offers a quali-
10 fied flexible workplace arrangement plan from the
11 requirements of this title that are otherwise applica-
12 ble to an employee welfare benefit plan, including
13 the reporting and disclosure, fiduciary responsibility,
14 and enforcement provisions of parts 1, 4, and 5 of
15 this title;

16 “(2) to require an employer to adopt or main-
17 tain a qualified flexible workplace arrangement plan;
18 or

19 “(3) in the case of an employer that has not
20 adopted or is not maintaining such a plan, to require
21 the employer to comply with any requirement under
22 this part with respect to such a plan.

23 **“SEC. 802. COMPENSABLE LEAVE REQUIREMENTS.**

24 “(a) AMOUNT OF COMPENSABLE LEAVE.—

1 “(1) IN GENERAL.—The minimum amount of
 2 compensable leave that shall be provided to an em-
 3 ployee for each plan year under a qualified flexible
 4 workplace arrangement plan shall depend upon the
 5 size of the employer and an employee’s years of serv-
 6 ice with the employer, and shall be not fewer than
 7 the minimum number of days as follows:

“Number of employees employed by an employer	Minimum number of compensable days of leave per plan year	
	Employees with 5 or more years of service with the employer as of the beginning of the plan year:	Employees with fewer than 5 years of service with the employer as of the beginning of the plan year:
1000 or more	20 days	16 days
250 to 999	18 days	14 days
50 to 249	15 days	13 days
less than 50	14 days	12 days.

8 “(2) MINIMUM REQUIREMENTS.—

9 “(A) IN GENERAL.—An employer that pro-
 10 vides an unlimited number of compensable leave
 11 days per year to employees under a qualified
 12 flexible workplace arrangement plan shall be
 13 deemed to satisfy the amount of compensable
 14 leave required under paragraph (1), and noth-
 15 ing in this section shall prohibit a qualified
 16 flexible workplace arrangement plan from pro-

1 viding more than such minimum amount of
2 compensable leave.

3 “(B) TREATMENT OF HOLIDAYS.—An em-
4 ployer that provides paid time off to employees
5 for holidays recognized under Federal or State
6 law may include up to 6 such paid holidays to-
7 wards satisfying the amount of compensable
8 leave required under paragraph (1).

9 “(3) ACCRUAL PERMITTED.—A qualified flexi-
10 ble workplace arrangement plan of an employer
11 shall—

12 “(A) provide all the compensable days of
13 leave available to an employee for the plan year
14 at the beginning of the plan year; or

15 “(B) provide that an employee’s compen-
16 sable leave for a plan year accrue during the
17 plan year on a proportional basis in relation to
18 the number of compensable days provided to
19 such employee, and except as otherwise pro-
20 vided in subsection (b)(4), is available to an em-
21 ployee as the compensable leave accrues.

22 “(4) DETERMINING NUMBER OF EMPLOYEES.—

23 “(A) IN GENERAL.—The number of em-
24 ployees of an employer for a plan year shall be
25 determined by calculating the average monthly

1 number of employees for the preceding plan
2 year in accordance with subparagraph (B).

3 “(B) CALCULATION.—The average month-
4 ly number of employees for a plan year shall be
5 calculated by adding the total number of
6 monthly employees for each month of such pre-
7 ceding plan year and dividing by 12.

8 “(C) SERVICE REQUIREMENT.—An indi-
9 vidual shall be considered an employee for a
10 month if such individual is an employee on at
11 least the first day and last day of the month.

12 “(5) YEARS OF SERVICE.—The determination
13 of an employee’s years of service shall be made by
14 the employer in a manner consistent with section
15 203(b)(2), except that, upon adoption of a qualified
16 flexible workplace arrangement plan, all employees’
17 prior years of service with the employer maintaining
18 the plan shall be taken into account when calcu-
19 lating the employee’s years of service for the purpose
20 of this subsection.

21 “(6) CARRYOVER.—An employer may permit
22 employees to carry over unused compensable leave
23 from one plan year to the subsequent plan year.

24 “(7) CASHOUT.—An employer may permit em-
25 ployees to cash out unused compensable leave after

1 or in connection with the termination of employ-
2 ment.

3 “(b) FULL-TIME, PART-TIME, AND NEW EMPLOY-
4 EES, AND PRO-RATED CALCULATIONS.—

5 “(1) FULL-TIME EMPLOYEES.—

6 “(A) IN GENERAL.—For any plan year,
7 the requirements described in subsection (a)(1)
8 shall only apply to employees who are full-time
9 employees.

10 “(B) DEFINITION.—The employer, in its
11 qualified flexible workplace arrangement plan,
12 shall reasonably define ‘full-time’, when used
13 with respect to an employee, for purposes of
14 such plan.

15 “(2) PART-TIME EMPLOYEES.—

16 “(A) IN GENERAL.—For any plan year, if
17 an employee was employed by the employer in
18 the preceding plan year, but was not a full-time
19 employee in the preceding plan year, and is not
20 a full-time employee of the employer in the cur-
21 rent plan year, subsection (a)(1) shall apply, in
22 a pro-rated manner to such employee by multi-
23 plying—

1 “(i) the number of days of compen-
2 sable leave required under such subsection,
3 by

4 “(ii) the part-time employee factor de-
5 scribed in subparagraph (B).

6 “(B) PART-TIME EMPLOYEE FACTOR.—For
7 purposes of this paragraph, the part-time factor
8 shall be equal to the result obtained by divid-
9 ing—

10 “(i) the number of hours of service
11 that the employer reasonably estimates the
12 employee had in the preceding plan year,
13 by

14 “(ii) the number of hours that the
15 employer reasonably determines the em-
16 ployee would have had if such employee
17 had been a full-time employee.

18 “(C) HOURS OF SERVICE DETERMINA-
19 TION.—For purposes of this subsection, the de-
20 termination of an employee’s hours of service
21 shall be made in a manner consistent with sec-
22 tion 202(a)(3)(C), except that an estimation of
23 such hours is permitted.

24 “(3) NEW PART-TIME EMPLOYEES.—

1 “(A) IN GENERAL.—For any plan year, if
2 a part-time employee was employed as a full-
3 time employee by the employer in the preceding
4 plan year or was not employed by the employer
5 in the preceding plan year, then subsection
6 (a)(1) shall apply, in a pro-rated manner to
7 such employee by multiplying—

8 “(i) the number of days of compen-
9 sable leave required under such subsection,
10 by

11 “(ii) the new part-time employee fac-
12 tor described in subparagraph (B).

13 “(B) NEW PART-TIME EMPLOYEE FAC-
14 TOR.—For purposes of this paragraph, the new
15 part-time employee factor shall be equal to the
16 result obtained by dividing—

17 “(i) the hours of service that the em-
18 ployer reasonably estimates that the em-
19 ployee will have during the current plan
20 year, by

21 “(ii) the hours of service that the em-
22 ployer reasonably estimates that a full-time
23 employee would have during such plan
24 year.

1 “(4) RESTRICTIONS REGARDING NEW EMPLOY-
2 EES PERMITTED.—In the case of a new employee,
3 the employer may restrict the employee’s right to
4 use compensable leave during the first 90 days of
5 employment with the employer.

6 “(c) USE OF COMPENSABLE LEAVE.—In a qualified
7 flexible workplace arrangement plan the employer may—

8 “(1) determine whether the use of compensable
9 leave at the time requested by an employee would
10 unduly disrupt the operations of the employer; and

11 “(2) determine whether an employee may use
12 compensable leave in full-day or partial-day incre-
13 ments.

14 **“SEC. 803. WORKFLEX OPTIONS.**

15 “(a) WORKFLEX OPTIONS.—

16 “(1) IN GENERAL.—Under a qualified flexible
17 workplace arrangement plan, an employer shall offer
18 each employee meeting the requirements of para-
19 graph (2) at least one of the following workflex op-
20 tions:

21 “(A) A biweekly work program that meets
22 the requirements of section 804.

23 “(B) A compressed work schedule program
24 that meets the requirements of section 805.

25 “(C) A telework program.

1 “(D) A job sharing program.

2 “(E) Flexible scheduling.

3 “(F) Predictable scheduling.

4 “(2) SERVICE REQUIREMENT.—

5 “(A) IN GENERAL.—For purposes of this
6 section, an employee is eligible to participate in
7 a workflex option if such employee—

8 “(i) has been employed for at least 12
9 months by the employer and for at least
10 1,000 hours of service with such employer
11 during such 12-month period, determined
12 by the employer to mean—

13 “(I) the calendar year; or

14 “(II) any fixed 12-month plan
15 year; or

16 “(ii) meets eligibility requirements of
17 the plan that otherwise permit participa-
18 tion prior to the date described in clause
19 (i).

20 “(B) HOURS OF SERVICE.—For the pur-
21 poses of this paragraph, the determination of
22 an employee’s hours of service shall be made in
23 a manner consistent with section 202(a)(3)(C),
24 except that the number of such hours may be
25 estimated by the employer.

1 “(3) EMPLOYMENT POSITIONS.—A qualified
2 flexible workplace arrangement plan may specify
3 which employment position or positions are offered
4 participation in a particular workflex option de-
5 scribed in paragraph (1).

6 “(4) CLARIFICATION.—A qualified flexible
7 workplace arrangement plan shall not be required to
8 offer an employee more than one workflex option
9 without regard to whether another employee is of-
10 fered more than one workflex option.

11 “(b) CONDITIONS.—A qualified flexible workplace ar-
12 rangement plan shall offer a workflex option under sub-
13 section (a) to employees pursuant to the following:

14 “(1) VOLUNTARY PARTICIPATION.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B)(i), an employee’s participa-
17 tion in any workflex option offered under a
18 qualified flexible workplace arrangement plan
19 shall be voluntary and the acceptance of a
20 workflex option may not be a condition of em-
21 ployment.

22 “(B) AGREEMENT OR UNDERSTANDING.—
23 A workflex option shall be carried out pursuant
24 to—

1 “(i) applicable provisions of one or
2 more agreements described in section
3 801(a)(1)(B); or

4 “(ii) in the case of an employee who
5 is not subject to an agreement referred to
6 in clause (i), a written agreement—

7 “(I) setting forth the employee’s
8 work schedule;

9 “(II) including a description of
10 the workflex option in which the em-
11 ployee is participating;

12 “(III) executed before the em-
13 ployee begins to participate in such
14 workflex option; and

15 “(IV) entered into knowingly and
16 voluntarily by such employee.

17 “(2) TERMINATION, MODIFICATION, OR WITH-
18 DRAWAL.—

19 “(A) TERMINATION OR MODIFICATION.—
20 Subject to section 803(a)(1), an employer may
21 amend a qualified flexible workplace arrange-
22 ment to eliminate—

23 “(i) any workflex option described in
24 subsection (a)(1); or

1 “(ii) the eligibility of an employee or
2 group of employees to participate in a
3 workflex option after the employer has pro-
4 vided 30-day written notice.

5 “(B) WITHDRAWAL.—An employee may
6 withdraw from a workflex option offered under
7 a qualified flexible workplace arrangement plan
8 at any time, except as otherwise specified for a
9 biweekly work program under section 804(e)(2)
10 or a compressed work schedule program under
11 section 805(d)(2).

12 “(3) RECORDKEEPING REQUIREMENT.—The
13 employer shall maintain—

14 “(A) written descriptions of workflex op-
15 tion offerings made available to employees; and

16 “(B) written agreements described in para-
17 graph (1)(B)(ii).

18 **“SEC. 804. BIWEEKLY WORK PROGRAM.**

19 “(a) IN GENERAL.—Notwithstanding any other pro-
20 vision of law, as part of a qualified flexible workplace ar-
21 rangement plan, an employer may establish a biweekly
22 work program as a workflex option for eligible employees
23 that allows the use of a biweekly work schedule—

1 “(1) that consists of a basic work requirement
2 of not more than 80 hours, over one 2-week period;
3 and

4 “(2) in which more than 40 hours but not more
5 than 60 hours of the work requirement may occur
6 in a week of the 2-week period.

7 “(b) CONDITIONS.—A biweekly work program shall
8 meet the conditions described in section 803(b).

9 “(c) ELIGIBLE EMPLOYEE.—For purposes of this
10 section, an ‘eligible employee’ means an employee who is
11 subject to the minimum wage and overtime requirements
12 of sections 6 and 7 of the Fair Labor Standards Act of
13 1938 (29 U.S.C. 206; 207).

14 “(d) COMPENSATION FOR HOURS IN SCHEDULE.—
15 In the case of an eligible employee participating in a bi-
16 weekly work program—

17 “(1) the eligible employee shall be compensated
18 for each hour in such biweekly work schedule at a
19 rate not less than the regular rate at which the eligi-
20 ble employee is employed;

21 “(2) any hour worked in excess of such a bi-
22 weekly work schedule for a week of the 2-week pe-
23 riod, or in excess of 80 hours in the 2-week period,
24 shall be overtime hours; and

1 “(3) the eligible employee shall be compensated
2 for each such overtime hour at a rate not less than
3 one and one-half times the regular rate at which the
4 eligible employee is employed, in accordance with
5 section 7(a)(1) of the Fair Labor Standards Act of
6 1938 (29 U.S.C. 207(a)(1)).

7 “(e) DISCONTINUANCE OF PROGRAM OR WITH-
8 DRAWAL.—

9 “(1) DISCONTINUANCE OF PROGRAM.—An em-
10 ployer who has established a biweekly work program
11 under subsection (a) may discontinue the program,
12 after providing 30 days written notice to the eligible
13 employees who are subject to the employer’s agree-
14 ment or understanding described in section
15 803(b)(1)(B).

16 “(2) WITHDRAWAL.—

17 “(A) IN GENERAL.—An eligible employee
18 may withdraw from an agreement or under-
19 standing described in section 803(b)(1)(B),
20 with respect to a biweekly work program estab-
21 lished under subsection (a), by submitting a
22 written notice of withdrawal to the employer.

23 “(B) EFFECTIVE DATE.—Not later than
24 30 calendar days after receiving an eligible em-
25 ployee’s written notice of withdrawal, an em-

1 employer shall restore the employee to one of the
2 employer's regular schedules.

3 **“SEC. 805. COMPRESSED WORK SCHEDULE PROGRAM.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-
5 vision of law, as part of a qualified flexible workplace ar-
6 rangement plan, an employer may establish a compressed
7 work schedule program as a workflex option for employees
8 that allows the employee to work the equivalent of full-
9 time employment by increasing the number of daily hours
10 worked, such as a four-day workweek.

11 “(b) CONDITIONS.—A compressed work schedule pro-
12 gram shall meet the conditions described in section
13 803(b).

14 “(c) COMPENSATION FOR HOURS IN COMPRESSED
15 WORK SCHEDULE.—In the case of an employee who is
16 participating in a compressed work schedule program and
17 who is subject to the minimum wage and overtime require-
18 ments of sections 6 and 7 of the Fair Labor Standards
19 Act of 1938 (29 U.S.C. 206; 207)—

20 “(1) the employee shall be compensated for
21 each hour in such 40-hour compressed work sched-
22 ule at a rate not less than the regular rate at which
23 the employee is employed; and

24 “(2) the employee shall be compensated for
25 each overtime hour at a rate not less than one and

1 one-half times the regular rate at which the em-
2 ployee is employed, in accordance with section
3 7(a)(1) of the Fair Labor Standards Act of 1938
4 (29 U.S.C. 207(a)(1)).

5 “(d) DISCONTINUANCE OF PROGRAM OR WITH-
6 DRAWAL.—

7 “(1) DISCONTINUANCE OF PROGRAM.—An em-
8 ployer who has established a compressed work sched-
9 ule program under subsection (a) may discontinue
10 the program after providing 30 days written notice
11 to the employees who are subject to an agreement or
12 understanding described in section 803(b)(1)(B).

13 “(2) WITHDRAWAL.—

14 “(A) IN GENERAL.—An employee may
15 withdraw from an agreement or understanding
16 described in section 803(b)(1)(B), with respect
17 to a compressed work schedule program estab-
18 lished under subsection (a), by submitting a
19 written notice of withdrawal to the employer.

20 “(B) EFFECTIVE DATE.—Not later than
21 30 calendar days after receiving a written no-
22 tice of withdrawal, an employer shall restore the
23 employee to one of the employer’s regular
24 schedules.

1 **“SEC. 806. RELATIONSHIP TO FAMILY AND MEDICAL LEAVE**
2 **ACT.**

3 “Consistent with section 102(d)(2)(A) of the Family
4 and Medical Leave Act of 1993 (29 U.S.C.
5 2612(d)(2)(A)), an employee may elect, or an employer
6 may require the employee, to substitute compensable leave
7 for leave provided under subparagraph (A), (B), (C), or
8 (E) of section 102(a)(1) of the Family and Medical Leave
9 Act (29 U.S.C. 2612(a)(1)) for any part of the 12-week
10 period of such leave under such section.

11 **“SEC. 807. REINSTATEMENT RIGHTS.**

12 “(a) IN GENERAL.—Except as provided in sub-
13 sections (b) and (c), an employee who uses compensable
14 leave under a qualified flexible workplace arrangement
15 plan shall be entitled—

16 “(1) to be restored to the position of employ-
17 ment held by the employee when the leave com-
18 menced; or

19 “(2) to be restored to an employment position
20 equivalent to the employment position described in
21 paragraph (1), with equivalent employment benefits,
22 pay, and other terms and conditions of employment.

23 “(b) LIMITATIONS.—An employee shall be entitled to
24 such reinstatement after using compensable leave even if
25 the employee has been replaced or the employee’s employ-
26 ment position has been restructured to accommodate the

1 employee's absence, except that the reinstatement rights
2 shall not apply—

3 “(1) to an employee who uses more than 12
4 workweeks of compensable leave during a 12-month
5 period; or

6 “(2) to an affected employee, as defined under
7 section 104(b)(2) of the Family and Medical Leave
8 Act (29 U.S.C. 2614(b)(2)).

9 “(c) REINSTATEMENT OF LEAVE.—In the case of an
10 employee who is rehired following termination of employ-
11 ment, any compensable leave that has not been used prior
12 to such termination may be reinstated by the employer.

13 **“SEC. 808. RELATIONSHIP TO AMERICANS WITH DISABIL-**
14 **ITIES ACT AND THE REHABILITATION ACT OF**
15 **1973.**

16 “Nothing in this part shall be construed to modify
17 or relieve an employer from any obligation imposed by the
18 Americans with Disabilities Act (42 U.S.C. 12111 et seq.)
19 and the Rehabilitation Act of 1973 (29 U.S.C. 791 et
20 seq.).

21 **“SEC. 809. EDUCATION AND TECHNICAL ASSISTANCE; LIM-**
22 **ITATION ON RULES.**

23 “(a) EDUCATION AND TECHNICAL ASSISTANCE.—
24 The Secretary shall provide education and technical assist-
25 ance to employers and employees with regard to qualified

1 flexible workplace arrangement plans, and shall maintain
 2 an electronic database available online consisting of exam-
 3 ples of workflex options.

4 “(b) LIMITATION ON RULES.—

5 “(1) IN GENERAL.—No regulation or other
 6 guidance issued by the Secretary to carry out this
 7 part may result in new restrictions with respect to
 8 the establishment or administration of a qualified
 9 flexible workplace arrangement plan under section
 10 801.

11 “(2) INVALIDATION.—Any rule or regulation
 12 issued in contravention of paragraph (1) shall have
 13 no force or effect.

14 **“SEC. 810. DEFINITIONS AND OTHER SPECIAL RULES.**

15 “For purposes of this part:

16 “(1) COMPENSABLE LEAVE.—The term ‘com-
 17 pensable leave’ means paid leave to be used for—

18 “(A) paid time off, sick leave, personal
 19 leave, or vacation, the use of which is subject to
 20 the terms of a qualified flexible work arrange-
 21 ment plan; and

22 “(B) paid holidays provided in accordance
 23 with section 802(a)(2)(B).

1 “(2) WORKFLEX OPTION.—The term ‘workflex
2 option’ means any of the programs described in sec-
3 tion 803(a)(1).

4 “(3) EMPLOYER.—For purposes of determining
5 whether an employer is maintaining a qualified flexi-
6 ble workplace arrangement plan, sections 210(c) and
7 210(d) shall apply.

8 “(4) JOB SHARING PROGRAM.—The term ‘job
9 sharing program’ means an arrangement under
10 which an employer approves the sharing of one em-
11 ployment position amongst two or more employees.

12 “(5) PLAN YEAR.—The term ‘plan year’ means
13 any 365-day period designated in a qualified flexible
14 workplace arrangement plan.

15 “(6) FLEXIBLE SCHEDULING.—The term ‘flexi-
16 ble scheduling’ means an arrangement under which
17 an employee’s regular work schedule is altered.

18 “(7) PREDICTABLE SCHEDULING.—The term
19 ‘predictable scheduling’ means an arrangement
20 under which an employer provides a work schedule
21 to an employee—

22 “(A) with reasonable advanced notice; and

23 “(B) that is subject to as few alterations
24 as are reasonably possible.

1 “(8) TELEWORK PROGRAM.—The term
2 ‘telework program’ means an arrangement under
3 which an employee performs the duties and respon-
4 sibilities of such employee’s employment position,
5 and other activities authorized by the employer, from
6 a worksite approved by the employer other than the
7 location from which the employee would otherwise
8 work.”.

○