To require employers to provide paid annual leave to employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MAGAZINER introduced the following bill; which was referred to the Committee on ________________

A BILL

To require employers to provide paid annual leave to employees, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Protected Time Off Act” or the “PTO Act”.

4 SEC. 2. DEFINITIONS.

5 In this Act:

6 (1) COMMERCE.—The terms “commerce” and “industry or activity affecting commerce” means any
activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act, 1947 (29 U.S.C. 142(1) and (3)).

(2) EMPLOYEE.—The term “employee” means an individual who is—

(A)(i) an employee (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 other provision of this paragraph, including an employee of the Library of Congress, except that a reference in such section to an employer shall be considered a reference to an employer described in paragraph (3)(A)(i)(I);

(ii) an employee of the Government Accountability Office; or

(iii) an employee of a covered employer described in paragraph (3)(B)(i)(IV);

(B) a State employee described in section 304(a) of the Government Employee Rights Act
of 1991 (42 U.S.C. 2000e–16c(a)), other than
an applicant for employment;

(C) a tipped employee, as defined in sec-
tion 3(t) of the Fair Labor Standards Act of
1938 (29 U.S.C. 203(t)), who is not covered
under any other provision of this paragraph;

(D) a covered employee, as defined in sec-
section 411(c) of title 3, United States Code;

(E) a covered employee, as defined in sec-
section 101 of the Congressional Accountability
Act of 1995 (2 U.S.C. 1301), other than an ap-
plicant for employment; or

(F) a Federal officer or employee covered
under subchapter V of chapter 63 of title 5,
United States Code (without regard to the limi-
tation in section 6381(1)(B) of that title).

(3) EMPLOYER.—

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

(i)(I) a covered employer who is not
described in any other subclause of this
clause;

(II) an entity employing a State em-
ployee 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) engaged in commerce (including government), or an industry or activity affecting commerce (including government).

(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 1 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding year;

(II) means the Government Accountability Office and the Library of Congress;
(III) includes—

(aa) any person who acts, directly or indirectly, in the interest of an employer covered by this clause to any of the employees of such employer; and

(bb) any successor in interest of such an employer; and

(IV) includes any carrier (as such term is defined in section 1 of the Railway Labor Act (45 U.S.C. 151)) and any carrier by air (as described in section 201 of such Act (45 U.S.C. 181)).

(ii) PUBLIC AGENCY.—For purposes of clause (i), a public agency, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)), shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(iii) DEFINITIONS.—For the purposes of this subparagraph:

(I) EMPLOYEE.—The term “employee” has the meaning given such
term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(II) PERSON.—The term “person” has the meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (20 U.S.C. 203(a)).

(C) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(4) PAID ANNUAL LEAVE.—The term “paid annual leave”—

(A) subject to subparagraph (B), means paid vacation leave, paid personal leave, paid annual leave (provided under this Act or otherwise), or any other form of paid leave provided to an employee by the employer of such employee to be used on days in which the employee would otherwise work and receive pay, and such days are exclusive of nonworkdays established by State or Federal law; and

(B) does not include—
(i) leave provided under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601, et seq.); or
(ii) any form of sick leave.

(5) RAIL CARRIER.—The term “rail carrier” has the meaning given such term in section 10102 of title 49, United States Code.

(6) SECRETARY.—Unless otherwise specified, the term “Secretary” means the Secretary of Labor.

(7) SICK LEAVE.—The term “sick leave” means leave provided to an employee by the employer of such employee for reasons such as personal medical needs, family care or bereavement, care of a family member with a serious health condition, or adoption-related purposes, including leave required to be provided for such reasons under State or Federal law.

(8) STATE.—The term “State” has the meaning given the term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

SEC. 3. EARNED ANNUAL LEAVE.

(a) EARNING OF PAID ANNUAL LEAVE.—

(1) EARNING OF ANNUAL LEAVE.—An employer shall provide each employee employed by the employer not less than 1 hour of paid annual leave for every 25 hours worked.
(2) LIMIT.—For purposes of complying with paragraph (1), an employer shall not be required to provide more than 80 hours of paid annual leave to an employee during any 12-month period.

(3) COMMENCEMENT OF EARNING PAID ANNUAL LEAVE.—An employee shall begin to earn paid annual leave at the commencement of employment of such employee.

(4) OVERTIME EXEMPT EMPLOYEE.—For purposes of this section, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)) shall be deemed to work 40 hours in each workweek.

(b) USE OF PAID ANNUAL LEAVE.—

(1) IN GENERAL.—Paid annual leave may be used by an employee for any reason.

(2) TIMING.—Subject to paragraphs (2) and (3) of subsection (c), an employee may use paid annual leave earned by the employee—

(A) beginning on the 60th calendar day after the first date of employment of the employee; or
(B) at any time before such calendar day at the discretion of the employer of such employee.

(3) RATE OF COMPENSATION.—

(A) IN GENERAL.—An employee using paid annual leave shall be compensated, for the period that the employee is using such leave, at the same rate at which the employee would have been paid for such period if the employee were not using paid annual leave.

(B) TIPPED EMPLOYEE.—For the purposes of subparagraph (A), with respect to a tipped employee, such an employee shall be compensated, for the period that such employee is using paid annual leave, at a rate equivalent to the Federal minimum wage, the applicable State minimum wage, or the applicable municipal minimum wage, whichever is higher.

(4) LOANING OF ANNUAL LEAVE.—

(A) LOANED LEAVE.—An employer may loan paid annual leave to an employee for use by such employee in advance of the employee earning such annual leave, including before the 60th calendar day after the first date of employment of the employee.
(B) Reimbursement for Loaned Leave.—An employer may require an employee of such employer to reimburse the employer for any annual leave loaned under subparagraph (A) that such employee has not earned at the time of separation. Such reimbursement will be at the rate described in paragraph (3).

c) Procedures for Use of Paid Annual Leave.—

(1) In general.—Subject to paragraphs (2) and (3), an employee may use paid annual leave upon the verbal or written request of the employee.

(2) Employee notification.—

(A) In general.—An employer may require an employee to provide notice to the employer to use paid annual leave.

(B) Timing of notice.—An employer may not require an employee to provide notice in excess of 2 weeks in advance of the use of such leave.

(C) Emergency.—In the case of an emergency or situation where an employee can not provide timely notice to an employer for the use of paid annual leave, the employer may except
any notice requirement and allow the use of such leave.

(3) Reasonable Restrictions.—An employer may place limited, reasonable restrictions regarding the scheduling of paid annual leave and may reject a scheduling request for such leave for a bona fide business reason, so long as the employer provides other reasonable alternative times for the employee to schedule such leave.

(4) Purpose of Use of Paid Annual Leave.—An employer may not require an employee to disclose the purpose or reason for which the employee is using paid annual leave.

(5) Carryover.—An employer shall permit an employee of such employer to use up to 40 hours of unused paid annual leave provided to the employee during a 12-month period during the following 12-month period.

(6) Prohibition on Finding Cover.—An employer may not require, as a condition of providing paid annual leave, that an employee search for or find a replacement employee to cover the hours during which the employee is using such annual leave.

(d) Procedures Regarding Leave for Employee Separation.—
(1) REIMBURSEMENT.—Upon an employee separating from an employer, the employer shall provide financial reimbursement, at the rate described in subsection (b)(3), to such employee for all unused paid annual leave of the employee.

(2) REINSTATEMENT.—If an employee is separated from employment with an employer and is rehired, within 12 months after that separation, by the same employer—

(A) the employer shall reinstate the employee’s previously earned paid annual leave; and

(B) the employee shall be entitled to use such leave and earn additional paid annual leave at the recommencement of employment with the employer.

SEC. 4. NOTICE REQUIREMENTS.

(a) NOTICE REQUIREMENT.—An employer shall notify each employee about the paid annual leave policy of such employer, which shall include the information described in subsection (b), by—

(1) providing such information, in writing, to each employee on or before the first day of employment of such employee;
(2) including such information in the employee handbook; and

(3) posting a notice containing such information in a physical conspicuous place on the premises of the employer or a virtual conspicuous place, where notices to employees are customarily posted.

(b) CONTENTS.—The information provided pursuant to subsection (a) shall include—

(1) any paid annual leave policy of such employer, including any paid annual leave policy that provides paid annual leave in excess of the requirements of this Act;

(2) information pertaining to the filing of an action under section 6;

(3) details of any notice requirement the employer may require, as described in section 3(e)(2);

(4) information regarding—

(A) the protections that an employee has in exercising rights under this Act; and

(B) how the employee can contact the Secretary (or other appropriate authority as described in section 6) if any such rights are violated.
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 provided under this Act, including—

(1) discharging or discriminating against (including retaliating against) any individual for exercising, including a job applicant, or attempting to exercise, any right provided under this Act;

(2) using the taking of paid annual leave as a negative factor in an employment action, such as hiring, promotion, reducing hours or numbers of shifts, or a disciplinary action; or

(3) counting paid annual leave under a no-fault attendance policy or any other absence-control policy.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against (including retaliating against) any individual, including a job applicant, because such individual—

(1) has filed an action under section 6, or has instituted or caused to be instituted any proceeding, under this Act;
(2) has given, or intends to give, any information in connection with any inquiry or proceeding relating to any right provided under this Act; or

(3) has testified, or intends to testify, in any inquiry or proceeding relating to any right provided under this Act.

SEC. 6. ENFORCEMENT AND INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—

(1) DEFINITION.—In this subsection—

(A) the term “employee” means an employee described in subparagraph (A), (B), or (C) of section 2(2); and

(B) the term “employer” means an employer described in subclauses (I) or (II) of section 2(3)(A)(i).

(2) INVESTIGATIVE AUTHORITY.—

(A) IN GENERAL.—To ensure compliance with this Act, or any regulation or order issued under this Act, the Secretary shall have, subject to subparagraph (C), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)), with respect to employers, employees, and other individuals affected by an employer.
(B) Obligation to keep and preserve records.—An employer shall make, keep, and preserve records pertaining to compliance with this Act in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations prescribed by the Secretary.

(C) Required submissions generally limited to an annual basis.—The Secretary may not require an employer to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this Act or any regulation or order issued pursuant to this Act, or is investigating a charge pursuant to paragraph (4).

(D) Subpoena authority.—For the purposes of any investigation provided for in this paragraph, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

(3) Private right of action.—
(A) **IN GENERAL.**—An action to recover damages or equitable relief prescribed in sub-
paragraph (B) may be maintained against any employer in any Federal or State court of com-
petent jurisdiction by an employee or individual or a representative for and on behalf of—

(i) the employee or individual; or

(ii) the employee or individual and others similarly situated.

(B) **LIABILITY.**—Any employer who vio-
lates section 5 (including a violation relating to rights provided under section 3) shall be liable to any employee or individual affected—

(i) for damages equal to—

(I) the amount of—

(aa) any wages, salary, em-
ployment benefits, or other com-
pensation denied or lost by rea-
son of the violation; or

(bb) in a case in which wages, salary, employment bene-
fits, or other compensation have not been denied or lost, any ac-
tual monetary losses sustained as a direct result of the violation up
to a sum equal to 80 hours of
wages or salary for the employee
or individual;

(II) the interest on the amount
described in subclause (I) calculated
at the prevailing rate; and

(III) an additional amount as liq-
uidated damages; and

(ii) for such equitable relief as may be
appropriate, including employment, rein-
statement, and promotion.

(C) FEES AND COSTS.—The court in an
action under this subsection shall, in addition to
any judgment awarded to the plaintiff, allow a
reasonable attorney’s fee, reasonable expert wit-
ness fees, and other costs to be paid by the de-
fendant.

(D) LIMITATIONS.—

(i) IN GENERAL.—Except as provided
in subparagraph (B), an action may be
brought under paragraph (2) or (3) not
more than 2 years after the date of the
last event constituting the alleged violation
for which the action is brought.
(ii) **Willful Violation.**—In the case of an action brought for a willful violation of section 5 (including a willful violation relating to rights provided under section 3), such action may be brought not more than 3 years after the last event constituting the alleged violation for which such action is brought.

(iii) **Commencement.**—In determining when an action is commenced under paragraph (2) or (3) for the purposes of this subsection, the action shall be considered to be commenced on the date when the complaint is filed.

(4) **Actions by the Secretary.**—

(A) **Administrative Actions.**—The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 5 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(B) **Civil Action.**—The Secretary may bring an action in any court of competent juris-
diction to recover the damages described in subsection (a)(3)(B).

(C) Sums Recovered.—Any sums recovered by the Secretary pursuant to subparagraph (B) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee or individual affected.

Any sums not paid to an employee or individual affected because of the inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(D) Action for Injunction by Secretary.—The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary—

(i) to restrain violations of section 5 (including a violation relating to rights provided under section 3), including the restraint of any withholding of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to employees or individuals eligible under this Act; or
(ii) to award such other equitable relief as may be appropriate, including employment, reinstatements, and promotion.

(E) SOLICITOR OF LABOR.—The Solicitor of Labor may appear for an represent the Secretary on any litigation brought under this subsection.

(b) GOVERNMENT ACCOUNTABILITY OFFICE AND LIBRARY OF CONGRESS.—Notwithstanding any other provision of this section, in the case of the Government Accountability Office and the Library of Congress, the authority of the Secretary under this subsection shall be exercised respectively by the Comptroller General of the United States and the Librarian of Congress.

(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—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(2)(D).
(d) Employees Covered by Chapter 63 of Title 5, United States Code.—The powers, remedies, and procedures provided in title 5, United States Code, to an employing agency, provided in chapter 12 of that title to the Merit Systems 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 employment practice in violation of this Act against an employee described in section 2(2)(E).

(e) Remedies for State Employees.—

(1) Waiver of sovereign immunity.—A State’s receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th Amendment of the Constitution or otherwise, to a suit brought by an employee of that program or activity under this Act for equitable, legal, or other relief authorized under this Act.

(2) Official capacity.—An official of a State may be sued in the official capacity of the official by any employee who has complied with the procedures of subsection (a)(3), for injunctive relief that is authorized under this Act. In such a suit, the court
may to the prevailing party those costs authorized 
by section 722 of the Revised Statutes (42 U.S.C. 
1988).

(3) APPLICABILITY.—With respect to a par-
ticular program or activity, paragraph (1) applies to 
conduct occurring on or after the day, after the date 
of enactment of this Act, on which a State first re-
ceives or uses Federal financial assistance for that 
program or activity.

(4) PROGRAM OR ACTIVITY DEFINED.—In this 
subsection, the term “program or activity” has the 
meaning given the term in section 606 of the Civil 

SEC. 7. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act shall 
be construed to diminish the obligation of an employer to 
comply with any contract, collective bargaining agreement, 
or any employment benefit program or plan that provides 
greater paid annual leave or other leave rights to employ-
ees or individuals than the rights established under this 
Act.

(b) LESS PROTECTIVE.—The rights established for 
employees under this Act shall not be diminished by any 
contract, collective bargaining agreement, or any employ-
ment program or plan.
SEC. 8. AWARENESS CAMPAIGN.

(a) In General.—Not later than 1 year after the date of enactment of this Act, the Secretary shall carry out a public awareness campaign to inform the public about the earned annual leave entitlement established under this Act, which shall include information about—

(1) the rights provided to an employee under this Act; and

(2) resources available to an employee if the employee believes the rights provided under this act have been violated.

(b) Authorization of Appropriations.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 9. EFFECTIVE DATES.

(a) Effective Date.—This Act, and the amendment made by this Act, shall take effect 180 days after the date of enactment of this Act.

(b) Collective Bargaining Agreements.—In the case of a collective bargaining agreement in effect on the effective date prescribed under subsection (a), the Act shall take effect on the earlier of—

(1) the date of the termination of such agreement;

(2) the date of any amendment, made on or after such effective date, to such agreement; or
(3) the date that occurs 18 months after such effective date.