HR Info Bulletin

Vantaggio
HR ltd.
THE EMPLOYER'S ADVANTAGE

Alternative Workweek Schedules

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California law allows employers to provide an approved Alternative Workweek Schedule (AWS) to certain employees. Generally, an employee who works an approved AWS of not more than 10 hours per day (12 hours in certain circumstances) in a 40-hour workweek is not eligible for overtime. Note that the exact details regarding implementing and maintaining an AWS vary slightly depending upon the specific Wage Order that applies to that employer. Wage Orders 15 and 16 do not permit an AWS.

While Alternative Workweek Schedules may be a valuable option for employers and employees, the implementation process and maintenance requirements are complicated and regimented. An employer's failure to comply with **all** of the requirements would render an AWS invalid and subject the employer to claims of unpaid wages, fines, and penalties that can go back as much as four years. Additionally, once an AWS is implemented, employers lose much of their scheduling flexibility in that all hours worked outside of the new schedule must typically be paid as overtime.

STAGE 1: DEFINITION OF WORK UNIT AND ALTERNATIVE WORKWEEK SCHEDULE

❑ Determine the affected work unit which could be a division; department; job qualification; shift; separate physical location; or a recognized subdivision of any such work unit. A work unit can be a single employee if the criteria are met for establishing a work unit.

❑ Decide if you are going to offer a single schedule or a menu from which the employees would choose.

❑ Present a written proposal for the AWS to employees in the affected work unit. The proposed agreement must designate an AWS in which the specified number of workdays and work hours are regularly recurring. Depending upon the applicable Work Order, there are restrictions about what types of schedule would constitute an acceptable AWS including: the minimum number of hours in a scheduled day, the number of consecutive days off, how employees may be allowed to change from one shift to another, etc.

STAGE 2: INFORMATION AND ELECTION

❑ Provide written disclosure of the effects of the proposed AWS on the employees' wages, hours, and benefits.

❑ Hold at least one meeting at least 14 days prior to voting for the specific purpose of discussing the effects of the AWS. Ensure that employees unable to attend the meeting are provided the written disclosure.

❑ Hold a secret ballot election. All affected employees in the work unit are entitled to vote to approve or reject the proposed schedule in a secret ballot election. A two-thirds vote is required for the schedule to become effective. The election should be held during regular working hours at the worksite of the affected employees. Only non-exempt employees affected by the alternative workweek schedule may vote and affected employees who do not vote must have their votes considered a "no."

STAGE 3: OFFICIAL FILING AND ANNOUCEMENT - NOTE: Even if you take all of the other steps, your alternative workweek schedule will not be legal without filing the results!

❑ File the results of the election within 30 days after the election results are final:
        Division of Labor Statistics and Research (DLSR)
        Attention: Alternative Workweek Election Results
        P.O. Box 420603
        San Francisco, CA 94142

❑ Distribute a copy of the filing document to all employees.

❑ Implement the AWS within 30 days of the announcement of the final election results.

❑ Make a reasonable effort to offer a traditional schedule for any employees in the work unit that cannot work the AWS and explore reasonable alternatives for any employees whose religious beliefs conflict with the AWS.

STAGE 4: RECORD RETENTION

❑ Maintain complete records of the election and any information related to how the schedule is being followed:
- The proposal submitted to all employees;
- The written disclosure distributed to employees;
- Minutes from the meetings held to discuss the proposed schedule;
- Records of the vote procedure;
- Vote records;
- Copy of the memo re the election results submitted to DLSR;
- Documentation showing that the results were properly filed with the DLSR;
- Documentation regarding employees who cannot or will not work the alternative workweek who are being accommodated with another schedule;
- Alternative workweek schedules;
- Documentation of occasional changes of schedule and notices given to employees regarding these changes;
- Records of overtime worked and paid;
- Meal period waivers;
- Requests by employees to change their alternative workweek schedule;
- Makeup time requests;
- Petitions to repeal the alternative workweek schedule.

Employers need to remain aware that employees can vote to rescind an AWS. The employer must hold a new secret ballot repeal election upon petition of one-third of the affected employees. The appeal election must be held within 30 days of the petition provided the AWS has been in place for at least 1 year. A two-thirds vote is necessary for appeal after which a normal schedule would need to be reinstated within 60 days.. An employer can unilaterally rescind an AWS without any election so long as advanced notice is provided to the affected employees.

We can't stress enough how detailed and complex the requirements are to implement and maintain a legal AWS. Employers should get expert guidance from someone with specific expertise in this area of the law. Please contact us should you need help!