Alternative Workweeks
Pros & Cons
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Providing guidance on:
- Hiring & Firing Processes
- Paid Sick Leave Laws & FMLA
- Breaks, Lunches & Overtime
- Employee Handbooks
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- Remote Workers

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Our Goals Today…

• AWS - Is it right for you?
• Wage & Hour requirements
• Election process
• Implementation
• Perks and Pitfalls

A Good Fit?

• How regular is your work schedule?
• Can you fill the hours?
• Who will work the schedule?
• Rules for your Wage Order
Minimum Wage Definitions

- **Minimum Wage** $12/hr. (25 or less) $13/hr. (26+)
- **Workday**
  - Any consecutive 24-hour period beginning at the same time each calendar day
- **Workweek**
  - Any 7 consecutive days, starting with the same calendar day each week
- **Importance of Defining Your Workday & Workweek**
- **Regular Rate of Pay includes:**
  - Commissions, production/nondiscretionary bonuses, piece work earnings, and (perhaps) value of meals and lodging

Alternative Workweeks

- **If an alternative work schedule (AWS) is adopted**, employees can work up to ten hours a workday without earning overtime.
- Applies only to non-exempts
- May be single schedule or a menu of schedules
- **Definition**
  - Any regularly scheduled workweek that requires an employee to work more than 8 hours in a 24-hour period.
- Typically 4/10 but can be 9/80 or less than 40 hours a week
Alternative Workweek - Procedure

• Employer proposes written schedule
• Define work unit/affected employees
  – May be single employee
• Meeting 14 days in advance of election
• Who votes?
• Secret ballot approval by 2/3 of affected employees in a work unit

Alternative Workweek – Procedure

• May not implement for 30 days
• Accommodations may be needed
• No coercion
• No pay reduction
• Overtime for hours worked in excess of alternative schedule or more than 40 hours in a workweek
• Must report to Alternative Workweek Election Results of Dept. of Industrial Relations
• Repeals – okay within 60 days with rules
The proposed alternative workweek schedule is not a system of “on-call” employment, but rather is stable, predictable and not subject to continual changes.

For example…
- 4/10’s
- 9/80’s
- A schedule of four 9-hour days and one 4-hour day during the summer months and five 8 hour days during the rest of the year

The Election

Propose a Schedule
- Written proposal of AWS to the affected group
- Employees can not create an AWS without your permission
- Must designate a regularly scheduled AW with regularly occurring work days/hours.
- i.e. 4 / 10 hour days
Disclosure & Meeting

- Provide a written disclosure of how the AWS will affect hours, holidays, etc.
- Meeting – at least 14 days prior to voting
  - Must provide advance notice of meeting
  - Answer any questions/concerns
  - May need to hold more than one
  - Can not coerce, discharge, discipline for disagreement

Secret Ballot

- All affected employees vote
- Must pass by 2/3
- Do not ask for name, position, etc.
- Election during normal work hours
- Employer pays all costs
Sample Ballot

Date: April 19, 2020
To: Landscape Team (affected group: all staff, field crew, etc.)
From: (name)
Re: Secret Ballot election regarding an alternative workweek schedule proposal

(Company name), Inc. proposes that all (ee group) paid hourly work an alternative workweek schedule of:

Four [9] hour days - Monday through Thursday
Four [9] hour days – Tuesday through Friday

☐ Yes, Approve of the Alternative Workweek Schedule
☐ No, Do Not Approve of the Alternative Workweek Schedule

• This schedule will not change an employee’s benefits.
• **Holiday benefits** will be recorded and paid on the basis of [9] hours’ pay. When a holiday falls on a workday, employees will be paid for hours worked, and one day of holiday pay equivalent to [9] hours’ pay.
• **Vacation and sick time accrued benefits** will be paid on the basis of [9] hours’ pay for full days. Otherwise, vacation and sick time accrued benefits may be taken in 30 minute increments.
• **Overtime** worked on any regularly scheduled workday will be paid at the rate of:
  – Time and one-half for all hours over [9] and less than 12 in a day.
  – Double time for all hours over 12 in a day
  – Time and one-half for all hours over 40 in a workweek
  – Hours worked outside of the schedule
    ▪ Note: if scheduled to work less than [9] hours, overtime is due
Sample Ballot

• The company will explore all reasonable alternative ways to accommodate an eligible and covered employee who cannot work the scheduled alternative workweeks, as well as the religious belief or observance of an employee who has conflicts with any adopted alternative workweek schedule.

• The company will notify everyone in the unit of the results of the election, as well as the California Division of Labor Statistics and Research.

• If a two-thirds vote approves of the alternative workweek, the company will implement it as soon as is reasonably possible, but no sooner than 30 days after the election.

Filing Your Results

• Submit the results to the Division of Labor and Statistics & Research (Department of Industrial Relations) w/in 30 days
  Attn: Alternative Workweek Election Results
  PO Box 420603
  San Francisco, CA 94142-0603

• Do not send the actual ballots
What to Include

- Date of letter
- Name of the business
- Address, city, state, zip, county
- Nature of the business
- Date of the election
- Final and full tally of the vote
- Size of the affected work unit
- Work schedule

How to Implement

- Verify your company is registered with the state: [https://www.dir.ca.gov/databases/oprl/DLSR-AWE.html](https://www.dir.ca.gov/databases/oprl/DLSR-AWE.html)
- Create your schedule consistent with ballot
  - Start and end times, breaks, etc.
  - Changes are allowed occasionally
  - Seasonal AWS considerations
    - i.e., M-Th, and then T-Fri
Variables to consider

- Accommodations are required
- Religious / Conflicts
- Just can’t work the schedule
- Employees hired after the schedule is in place

Meal/Rest Periods

- Still have to follow all rules re: rest and meal periods
- Watch the clock carefully
  - Before an ee completes their 5th hour of work
  - i.e. start at 8 a.m., meal period must begin by 12:59 p.m.
Rest Periods

- An employer is to "authorize and permit" an employee to take ten minutes "net" rest time for every four hours worked.
- A rest period is to be in the middle of a work period.
- Rest periods need not be recorded on time cards.
- Do not require employees to stay on premises.

<table>
<thead>
<tr>
<th>Hours Worked</th>
<th>Rest Periods</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 3.5</td>
<td>0</td>
</tr>
<tr>
<td>3.5 – less than 6</td>
<td>1</td>
</tr>
<tr>
<td>6 – less than 10</td>
<td>2</td>
</tr>
<tr>
<td>10 – less than 14</td>
<td>3</td>
</tr>
</tbody>
</table>

Lunches/Meal Periods

- An employer may not permit an employee to work for a period of more than five hours per day without providing a meal period of not less than 30 minutes.
- Employees may waive the first meal period if the total work period is no more than six hours.
- Employees may waive their second meal period only if they took the first one.
- On Duty Meal Periods

<table>
<thead>
<tr>
<th>Hours Worked</th>
<th>Meal Periods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5</td>
<td>0</td>
</tr>
<tr>
<td>Over 5 up to 10</td>
<td>1</td>
</tr>
<tr>
<td>Over 10</td>
<td>2</td>
</tr>
</tbody>
</table>
Overtime Pay

• Standard Rules
  – Must be paid 1-1/2 times regular rate
  – More than 8 hours in a day/40 hours in a workweek
  – For the first 8 hours worked on the 7th day worked in a workweek

With an AWS, OT is paid *beyond* the agreed daily scheduled hours OR if scheduled by the employer for less

What Goes Wrong?

• Don’t really need an AWS
• Don’t follow election process
• Is it really a ‘work unit’?
• Have one, but not recognized by the state
• Not actually following the AWS
• Annual re-election
Best Practices

• Keep all documents in a secure, locked location
  – Discovery, DLSE hearing, etc.
• Schedule change may require another vote
• Talk with your employees
• Follow the rules!

Getting Rid of an AWS

• Employee-initiated
  – Another election after one year
  – 1/3 must ask for a repeal
  – Within 30 days, hold a secret ballot election
  – 2/3 vote to end the schedule
  – Revoke w/in 60 days
• Employer-initiated
  – Provide reasonable notice
Am I Official?

- If you didn’t already do it, check the database
  - http://www.dir.ca.gov/databases/oprl/DLSR-AWE.html
- Update your handbook
- Wage Order #5 – Section 3 (B)
  - https://www.dir.ca.gov/IWC/IWCArticle5.pdf

CEA Website
DIR – Election Database

DLSE Manual - The Real Rules

- DLSE Enforcement Policies and Interpretations Manual (Revised)
  - [http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmmanual.pdf](http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmmanual.pdf)

- Opinion Letters
  - [http://www.dir.ca.gov/dlse/OpinionLetters-bySubject.htm](http://www.dir.ca.gov/dlse/OpinionLetters-bySubject.htm)
DLSE Opinion Letters

Questions on AWS?

HR Best Practices
Required Hiring Forms

- DHS I-9 Form; W-4 Form
- Lactation Accommodation
- Domestic Violence and Stalking Notice
- Acknowledgement of Receipt of IIPP Manual
- Copy of Employee Rights under Workers’ Compensation
- Personal Physician/Chiropractor Pre-Designation Form
- Form DFEH 185 Harassment and Complaint Procedure
- Form DE 2515 EDD Disability Insurance Pamphlet
- Form DE 2511 Paid Family Leave Brochure
- Form DE 34: EDD Report of New Employee(s)
- Wage Theft Prevention Act Form (Labor Code 2810.5)
- Affordable Care Act notice(s)
- AB1396: Written Commission Agreements

Wage Statement Requirements

- Gross wages earned
- Net wages earned
- Total hours worked (except for exempt)
- Hourly rates of pay + number of hours worked at each pay rate
- All deductions (can aggregate employee authorized deductions)
- Dates of the payroll period
- Employee’s name
- Employer’s legal name and address
- Employee’s SSN -last 4 digits only- or other employee identification
- Paid Sick Leave balance (or on a separate document)
- Piece rate employees: number of piece-rate units earned and any applicable piece rate
### Accurate Wage Statements

**Labor Code § 226(a)**

![Wage Statement Diagram]

- The name and address of the legal entity that is the employer.
- The last 4 digits of the employer’s social security number or an employee ID number.
- The inclusive dates of the period for which the employee is paid.

**Smith and Company, Inc.**

<table>
<thead>
<tr>
<th>Employer</th>
<th>Social Security No.</th>
<th>Pay Rate</th>
<th>Pay Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johnson, Bob</td>
<td>XXX-XX-6789</td>
<td>18.00</td>
<td>2/10/02 to 2/17/02</td>
</tr>
</tbody>
</table>

**Earnings**

- **Regular**: 40.00 hours × 18.00 = 720.00
- **Overtime**: 2.00 hours × 27.00 = 54.00

**Gross Earnings**: 774.00

**Deductions**

- Federal W/H: 60.45
- FICA: 49.67
- Medicare: 12.36
- CA State W/H: 10.04
- CA State DI: 7.12
- 401k: 77.40

**Net Earnings**: 556.06

Paid Sick Leave time here or on separate sheet with check.

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### Payroll Deductions

- Many not allowed in CA
  - Uniforms
  - Lost computers/Phones
  - Business losses

- Options……
Right to Inspect or Copy

- Upon a written request from current or former employee (or representative), employer must provide:
  - A copy of payroll records within 21 days.
  - A copy of personnel records within 30 days.
- Maintain records for minimum of 4 years after termination of employment
- Employer can make the records available for inspection or provide them by mail
- $750 penalty for failure to provide
- LC 1198.5 and LC 226

Termination

- Form DE 2320 EDD Form Your Benefit Unemployment Insurance Pamphlet  (www.edd.ca.gov)
- Notice to Health Insurance Premium Payment HIPP
- Notice to Employee as to Change in Relationship
- Possibly…..
  - Continuation of Coverage Under COBRA and Certificate of Group Health Coverage HIPPA*
  - COBRA Continuation Coverage Election Notice*
  - Acknowledgement of the Receipt of COBRA Rights*
  - Certificate of Group Health Plan Coverage*
Pay at Termination

- Involuntary termination ("You’re fired"): Pay on last day when the words leave your mouth.
- Voluntary quit with more than 72 hours notice: Pay on last day.
- Voluntary quit with less than 72 hours notice: Pay within 72 hours after notice is given.
  - Can mail paycheck in this situation only if employee requests payment by mail in writing and provides mailing address
  - Date of mailing is considered date of payment
- Final pay should be a “live” (aka manual) check
  - Direct deposit agreement ends; need new one

Final Pay

- Final pay is paid at employee's primary work location – not yours.
- If you terminate a remote employee, you must be prepared to deliver the final paycheck at the moment the employee is notified of the termination at the employee's location.
- Include all wages and accrued/unused vacation/PTO.
- Failure? Liable for penalties to the employee up until the date actually receives final pay (up to 30 days).
- Special rule for commissions and expense reports.
Penalties

- Employee may file action with DLSE
  - Unpaid wages up to 3 years back
  - Waiting time penalties up to 30 days wages
  - Interest
  - Employee has up to 4 Years to file claim for unpaid wages from the date the wages were earned

- Failure to pay minimum wage
  - $100 for each pay period and each employee underpaid
  - $250 for similar subsequent violations

- And more…

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SHRM: 20-YTAN3
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Call Today 888.783.4340

For more information email CEAinfo@employers.org or call 800.399.5331

Thank You!