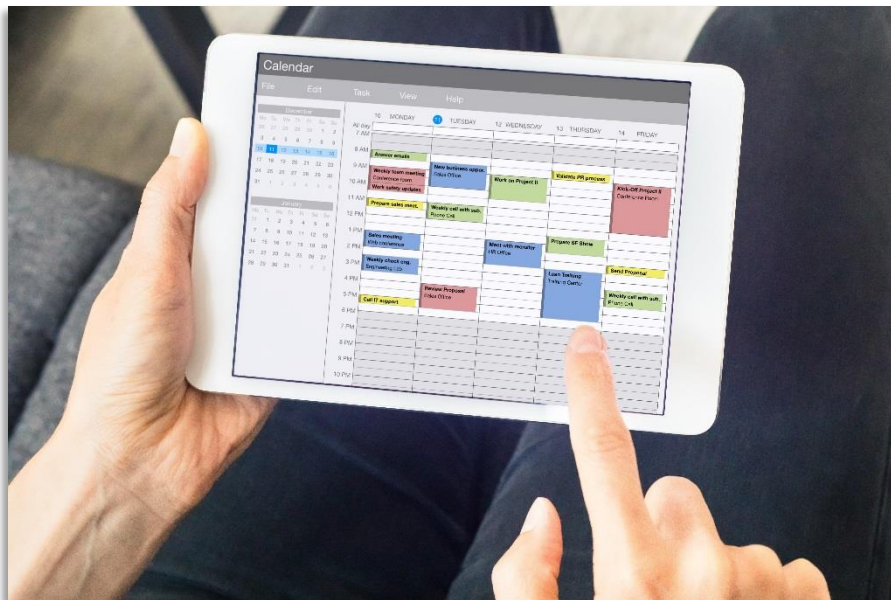


Alternative Workweek Tool Kit



California
Employers
Association TM

ALTERNATIVE WORKWEEK TOOL KIT

This tool kit is designed to help you develop and sustain a compliant Alternative Workweek program for your company or organization.

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Alternative Workweek Schedule (AWS) Overview

An “alternative workweek schedule” means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period. Alternative workweeks apply only to nonexempt employees because properly classified exempt employees do not earn overtime. An AWS should not be confused with a flexible schedule. A flexible schedule is a workweek schedule of eight hours per day where some employees begin their shift early in the day and others begin work later that day. Flexible scheduling does not eliminate your requirement to pay daily overtime for all work in excess of eight hours in each workday.

Not all of the alternative workweek requirements are the same for every employer. Depending on the Industrial Welfare Commission (IWC) Order that applies, you may have different obligations and restrictions concerning an AWS. **Carefully review your order** before beginning the process of establishing any AWS. For example, although not detailed in this toolkit, under Wage Orders 4 & 5, there are special considerations for health care industry employers and licensed hospitals. Wage Order 16 also has special rules for employees working in offshore oil and gas production, drilling, and servicing occupations, and others.

[You can find your IWC order here](#)

[If you don't know which order covers you, click here](#)

You should also consider consulting with your own employment attorney before implementing any AWS. Although we have provided sample forms in this tool kit, you may wish to have your own attorney draft the applicable documents in conjunction with your alternative workweek.

Why employers consider an AWS

An AWS provides employers with the opportunity to schedule longer uninterrupted shifts, allows them flexibility in managing a staggered workforce, and can increase daily productivity and save on costs.

For example, under a properly implemented alternative workweek, nonexempt employees could work four days a week for 10 hours each day, without the employer accruing any overtime liability (generally up to 10 hours per day or 40 hours per week). This allows employees to work a compressed schedule that consists of a fewer number of days. Although each day of work typically exceeds eight hours, employees have more days off, less travel to and from work, and more leisure time for personal interests.

Steps Required to Implement an AWS

Step 1 – Propose a written schedule to the affected work group

After you have reviewed the IWC order that applies to your business or organization, the first step of the process requires a notification to your employees concerning the new work schedule you would like to propose.

Employers must be able to designate a readily identifiable work unit and all employees within that unit would be subject to the AWS. They are not meant just for a handful of employees within the same division or department. This could be a: division, department, job classification, shift, separate physical location, or recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the above criteria for an identifiable work unit are met.

Each proposal for an AWS must be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The actual days worked within that AWS need not be specified. You may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. But if employees wish to switch to a schedule not included on the original notice, then you will have to go through the election process again, so it's important to carefully construct the units of employees that you provide notice to. You may use this sample: [Proposal to Adopt Alternative Workweek Schedule](#).

Examples of common AWS include:

- 4-10s: A workweek in which employees work four 10-hour shifts.
- 3-12 and 1-4: A workweek in which employees work three 12-hour shifts and one 4-hour shift.
- 9-80: 80 hours worked over the course of 10 days, with one day off each two-week period.

Review additional information on these and other work schedules under [Acceptable Alternative Workweek Schedules](#) below.

Step 2 – Hold at least one meeting and provide a written disclosure

You must advise the affected employees, at a meeting held at least fourteen (14) days prior to the voting, of the effects on the wages, hours, and benefits adoption of the alternative workweek will have up on the affected employees. In addition, you must provide that disclosure in a written form in both English and, if more than five percent of the affected employees primarily speak a language(s) other than English then in that/those language(s) as well. This written disclosure must include the effects of the proposed arrangement on the employees' wages, hours, and benefits. You must mail the written disclosure to affected employees who do not attend the meeting referred to above. You can use this sample: [Alternative Workweek Disclosure](#).

You may not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek nor may you reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an AWS. Additionally, you may not discharge or discriminate against any employee for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal.

Step 3 – Hold a secret ballot election

In order to be valid, the proposed AWS must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election must be held during regular working hours at the employees' work site and you must bear the costs of conducting this election. Only secret ballots may be cast by the non-exempt affected employees in the work unit. Any blank returned ballot or a ballot not cast is counted as a vote of "no." You can use this sample: [Alternative Workweek Secret Ballot](#).

Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require you to select a neutral third party to conduct the election.

Step 4 – Report your election results

The results of any election must be reported by you to the Office of Policy, Research, and Legislation within 30 days after the results are final, and the report of election results becomes a public document. Send the results of your election to:

Attn: Alternative Workweek Election Results
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603

Do not include the election ballots or any records that identify individual workers who voted in the election. You do not need to report information about how an individual voted but you must maintain records of all schedule proposals, meeting communication, supporting information and documentation and election results.

Include the following information in your submission: Name of the business, street address, city, county, state, zip code; nature of the business; date of election; date of letter; final and full tally of the vote; size of the affected work unit; work schedule. You can use this sample: [Alternative Workweek Schedule DLSR Notice](#).

Once you have registered your AWS, you can verify that your elected schedule is on file by checking the [alternative workweek elections](#) database. It provides a listing of all California employers who have filed alternate workweek election results with the state.

Step 5 – Prepare to implement the new schedule

Employees affected by a change in the work hours resulting from the adoption of an AWS may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election. Employees may voluntarily agree to begin work on the new schedule sooner if they wish. However, it is recommended to check the [alternative workweek elections](#) database prior to implementing the new schedule.

Step 6 – Create the schedule

Remember, you do not need to specify the actual days worked within the AWS before employees vote but, in *advance of beginning* to work the schedule, you must schedule the actual workdays and the starting and ending time of the shifts. Remember, occasional changes to the schedule are acceptable as long as you provide employees with reasonable notice.

Acceptable Alternative Workweek Schedules

There may be work schedule restrictions based on your wage order. In order to take advantage of the different overtime and double time requirements under an AWS, the length of schedules you propose may be limited.

AWS restrictions include:

- No single workday schedule can be less than four hours per day (except under Wage Order 16)
- No single workday schedule can exceed ten hours per day (except as noted in the overtime section)
- No single workday can exceed 12 hours
- No single workweek schedule can exceed a total 40 hours
- No schedule can provide less than two consecutive days off within a workweek (except Wage Orders 4, 5, 9, 10, 14, 15, and 16)
- Other exceptions may apply based on Wage Order

An AWS may be any combination of hours up to 12 hours per day within a workweek as long as the overtime premium is paid for all hours over ten in a day and over 40 in a workweek. For instance, a workweek of four days of nine hours and one day of four hours would be valid. Also valid would be a workweek of three days of 12 hours and one day of six hours as long as the employer paid time and one-half overtime premium pay for six hours each week (i.e., two hours of overtime on each of the three 12-hour days).

The schedules must be consistent but may differ from one workweek to the next if the schedule is a regularly recurring one. For instance, an AWS which provides that in the first week the employee works Monday through Thursday, and in the second week works Tuesday through Friday would be ok so long as the schedule is regular and recurring.

Examples of common AWS are:

- A workweek in which employees work **four 10-hour shifts**. These are known as a 4-10 workweek.
- A workweek in which employees work **three 12-hour shifts and one 4-hour shift**. These are known as the 3-12 and 1-4 workweek.
- Four and one-half day week. Employees are scheduled for **four nine-hour shifts and one four-hour shift** each workweek.
- A **nine-eighty schedule** across a two-week period. These are known as a 9-80. It consists of a total of eight nine-hour days, one eight-hour day, and one day off spread over a two-workweek period. Stated another way, this results in 80 hours worked over the course of 10 days.

- A common 9-80 AWS involves a workweek that runs from **Friday at noon to the following Friday at noon**, with the daily schedule 8 a.m. to 5:30 p.m. (with a half hour meal period at noon). The employee is scheduled for nine (9) hours per day on Monday through Thursday and eight hours on every other Friday (8:00 a.m. to 4:30 p.m. with a half hour meal period at noon).
- **Note:** To remain in compliance under a 9-80 schedule, how you define your workweek is extremely important to ensure employees do not end up working 44 hours in a “workweek.” Employers with 9-80 schedules are encouraged to consult legal counsel.
- A menu of options. Employers with a large number of employees and multiple shifts have the freedom to propose a workweek schedule to be voted on which provides a menu of options outlining the number of days and the hours in the work shift in the proposed alternative workweek *“from which each employee in the unit would be entitled to choose. Such choice may be subject to reasonable nondiscriminatory conditions, such as a seniority-based system or a system based on random selection for selection of limited alternative schedules, provided that any limitation imposed upon an employee’s ability to choose an alternative schedule is approved as part of the two-thirds vote of the work unit.”* The menu of options can include a regular schedule of eight hour days. Additionally, if you propose a menu of work schedule options, the employee may, with your approval, move from one menu option to another on a weekly basis.

Whichever alternative workweek you decide upon, your proposal for an AWS must designate the number of days in the workweek and the number of hours in the work shift. You **are not** required to include the starting and ending time of the shifts, which will be available during the alternative workweek. A proposed AWS stated as a 3-12 and 1-4 workweek or a 4-10 workweek would be considered acceptable.

Once established, employers must schedule the actual work days and the starting and ending time of the shift in advance providing the employees with reasonable notice of any changes. Reasonable notice is considered to be advance notice of at least one week. Even with that allowance, in order not to lose the overtime exception provided under an AWS, any changes made to the schedule must be occasional. In other words, you may not use an AWS to create a system of on-call employment in which the days and hours of work are subject to continual changes, depriving employees of a predictable work schedule.

Schedule Substitutions

At the request of the employee, you may allow them to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime, but again it should be allowed only occasionally. You can use this sample: [Alternative Workweek Schedule Request to Substitute Days](#).

Accommodations

You must explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted AWS.

You must make a reasonable effort to find a work schedule not to exceed eight (8) hours in a workday, to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the AWS established as the result of that election.

You are allowed, but not required, to provide a work schedule not to exceed eight (8) hours in a workday to

accommodate any employee who is hired after the date of the election, and who is unable to work the AWS established by the election.

Wage & Hour Considerations

While the AWS may change the employee's schedule and when they are paid daily overtime, it does not change your meal and rest break requirements. You still must authorize and permit the proper rest breaks and meal periods. That includes a second 30-minute meal period if your employees work more than 10 hours.

Although you can still require employees on an AWS to work overtime, your overtime and double pay obligations are somewhat different than the traditional schedule of five eight-hour days. Under an AWS, you are required to pay one and one-half times an employee's regular rate of pay for:

- All work performed in any workday in excess of the regularly scheduled hours established by the alternative workweek agreement, up to 12 hours a day.
- All work performed beyond 40 hours per week.

Under an AWS, you would pay two times their regular rate of pay for:

- All work performed in excess of 12 hours per day.
- Any work over eight hours on days other than those regularly scheduled by the alternative workweek agreement.

If an employee is *required* to work fewer hours than they would normally be scheduled under an AWS, you must pay overtime after eight hours in a workday. If an employee is provided the scheduled alternative workweek hours and *chooses* to clock out early, only straight-time wages for time worked are owed, even if they surpass eight hours. The best practice is to have the employee put their request to leave early in writing (even by email) to avoid disputes later as to whether it was voluntary. You can use this sample [Alternative Workweek Waiver](#).

If an employee is asked to work a shift outside of their regular AWS, all hours they work on that day would be considered overtime. For example, if an employee works a 4-10 AWS, assigned Monday through Thursday, and you additionally schedule them to work a ten-hour shift on Friday, the entire shift on Friday would be overtime. The employee would get 1.5 times their regular rate of pay for the first eight hours, and double their regular rate of pay for two hours.

If an employee is not subject to an AWS and is asked to work on a day they are not normally scheduled, but at a different location that has an AWS, they would not be subject to the AWS and you would follow regular normal overtime rules, unless the employee is told that the different location has an AWS; and the employee works at the different location for one or more full workweeks (as defined under the AWS). If both conditions are met, the employee's overtime can be calculated the same as other employees who are subject to the AWS for each full workweek the employee works at that location.

If an employee who is subject to an AWS works in the same workweek at his normal location *and* at a location that is also subject to an AWS, the time the employee works at his normally assigned location would be paid according to his AWS at that location. The time he works at the *second* location would be treated as overtime

(time and a half for the first eight hours in a workday, as long as the employee hasn't yet exceeded 40 hours for the workweek, and double time after eight hours in a workday or for all hours beyond 40 in a workweek). If the two locations have different workweeks, use the workweek at the location to which the employee is normally assigned.

And just like traditional schedules, overtime hours do not pyramid under an AWS. This means that hours paid at one and one-half or double the regular rate of pay are not included in determining when 40 hours have been worked to compute overtime compensation.

Best Practices

Consistency is key when adopting an alternative workweek. Provide the selected schedule to employees consistently year over year to avoid the risk of noncompliance with overtime law. If a practice does not consistently follow the submitted schedule, employees *may* be owed overtime.

Here are the best practices for being consistent:

- Plan carefully and retain detailed records.
- Follow all applicable meal- and rest-break laws. Alternative workweek employees are generally entitled to the same meal and rest breaks as those on a traditional schedule.
- Reasonably accommodate an employee whose religious beliefs conflict with the schedule.
- Create a work schedule (up to eight hours per workday) to accommodate employees who are unable to work the alternative schedule.
- When hiring new employees, discuss the AWS before the onset of employment to ensure they understand the extended work hours. An employer is permitted but not required to provide a work schedule of up to eight hours per day to accommodate someone hired after the election who cannot work the alternative schedule.
- Periodically audit the practice schedule to ensure that the submitted AWS is provided to affected employees. If a new schedule is necessary, repeal by election and hold a new election to adjust the AWS.
- Occasional changes to the schedule are acceptable with a reasonable one-week notice.

Revoking an Alternative Workweek Schedule

Any type of AWS that is authorized may be repealed by the affected employees. Upon a petition of one-third (1-3) of the affected employees, a new secret ballot election must be held and a two-thirds (2-3) vote of the affected employees is required to reverse the AWS.

The election to repeal the AWS has to be held not more than 30 days after the petition is submitted to the employer. However, an interval of at least 12 months is required between adoption and repeal elections. The repeal election must occur during regular working hours at the employees' work site. If the AWS is revoked, you have to comply within 60 days unless you can show undue hardship to the Division of Labor Standards Enforcement who may grant an extension of time for compliance.

By contrast, you may dismantle an AWS anytime without advance notice and without employee approval. You must simply provide employees with advance notice of the termination and then begin paying daily overtime when it's required. The law doesn't specify how much notice you must provide, but it is recommended you give employees at least 30 days to adjust to the change.