



Alternative Workweek Schedules

Establishing an Alternative Workweek Schedule

There are several steps that you must take before you may implement an AWS legally. If you already have one in place, ensure you have covered all of your bases so that you will be in compliance with the requirements of the State of California.

Step 1 - Propose a Schedule

You must present a written proposal for an AWS to employees in the affected work unit. Employees cannot create an AWS without your proposal or approval. 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 do not need to be specified. The schedule must provide no fewer than two consecutive days off within each workweek. For example, you propose a workweek of Monday through Thursday. Employees will work four 10-hour shifts each workweek. The proposed AWS may not schedule more than 10 hours per day within a 40-hour workweek.

Step 2 - Distribute a Written Disclosure and Hold at Least One Meeting

When proposing an AWS, you must provide a written disclosure of the effects of the proposed schedule on the employees' wages, hours, and benefits. Failure to comply with this requirement invalidates the AWS election.

The written disclosure must be in a non-English language, as well as in English, if at least five percent of the affected employees primarily speak that non-English language. Employees who did not attend the meeting to discuss the alternative workweek must receive a mailed copy of the written disclosure.

You must hold a meeting at least 14 days prior to voting, for the specific purpose of discussing the effects of the AWS. Give employees advance notice of the meeting date and time. You may need to hold more than one meeting if it is not practical or possible for all affected employees to attend at the same time.

You may express your position concerning the alternative workweek but you may not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek. You cannot discharge or discriminate against employees for expressing opinions concerning the AWS election or for opposing or supporting its adoption or repeal.

Step 3 - 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. Do not require employees to put their name or other identifying information on their ballots. You must hold the election during regular working hours at the worksite of the affected employees, and you must pay all the costs. The vote must take place before the employees begin working the AWS. A retroactive vote is not effective. Only those employees affected by the AWS may vote. Exempt employees in the unit do not vote.

Upon receiving a complaint by an affected employee, the Labor Commissioner must investigate, and may require you to select a neutral third party to conduct the election. Do not require employees to work the AWS for at least 30 days after announcing the final election results.

Step 4 - File Election Results with the Division of Labor Statistics and Research

File the results of the election with the Office of Policy Research and Legislation within 30 days of the final election. After, the results become a public document.

Do not send the actual ballots. Election results must be sent to:

Office of Policy Research and Legislation

Attention: Alternative Workweek Election Results

P. O. Box 420603

San Francisco, CA 94142

Step 5 - Create the Schedule

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

You have three obligations when it comes to accommodating employees who cannot or will not work an AWS:

- ◆ Accommodation of employee's religion. 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.
- ◆ Employees who were eligible to vote in the election. You must make a reasonable effort to find a work schedule of no more than eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in the election and who is unable to work the AWS hours. You must make a reasonable effort to accommodate the employee regardless of whether that employee actually voted in the election, as long as the employee was eligible to vote. The regulations do not define what it means to be "unable" to work an AWS. It seems fairly certain that an employee would be unable to work the long hours of an AWS based on a medical restriction. But less clear would be a situation where an employee's child day care situation or college schedule makes it difficult for him/her to work longer hours; and
- ◆ Employees hired after the election. You are permitted to provide a work schedule of no more than eight hours in a workday to accommodate any employee who was hired after the election and who is unable to work the alternative schedule established as the result of that election.

Step 6 - Meal and Rest Periods and Paying Overtime

Employees on AWSs are generally entitled to the same meal and rest periods as employees on traditional schedules. An employee who works ten hours or more in a shift is normally entitled to two half-hour meal periods. However, you and your employee may waive the second with mutual consent, as long as the first meal period was not waived.

On an AWS, overtime is paid as follows:

- ◆ Time-and-one-half -- all work performed in any workday beyond the schedule established by the alternative workweek agreement, up to 12 hours a day; and all work performed beyond 40 hours per week.
- ◆ Double-time -- all work performed in excess of 12 hours per day; and any work in excess of eight hours on those days other than those regularly scheduled by the alternative workweek agreement.

Only hours worked at straight time apply to the weekly 40-hour limit. This prevents "pyramiding" of overtime, where an employee earns overtime on top of overtime already paid. Once an employee is paid daily overtime for hours over those scheduled in the alternative workweek agreement, those overtime hours do not count toward the weekly 40-hour limit.

What Can Go Wrong

You must follow the steps outlined above before you implement your new schedule. Once a schedule is in place and approved, alternative workweeks can be invalidated by the Labor Commissioner for many reasons. Some of the most

common are: the AWS was improperly implemented, not paying overtime properly for the AWS and employees consistently working outside the regular schedule without proper overtime compensation.

I thought we were under an Alternative Workweek?

If you are wondering if your Company is already registered with the state, or you have been operating under an AWS and not sure if the state ever received your results, you can access the state's AWS database at the web address below.

<http://www.dir.ca.gov/databases/dlsr/DLSR-AWE.html>

Eliminating an Alternative Workweek Schedule

Employees working alternative workweeks can get rid of that workweek by holding another election. This election cannot be held until *one year* has passed since the vote to accept the alternative workweek.

One-third (1/3) of the affected employees must ask the employer for an election to eliminate an established alternative workweek schedule and revert to receiving overtime for working over eight hours in a day. Within 30 days of the workers' request, the employer must hold a secret ballot election (this time limit is extended if it has been less than a year since the vote to accept the workweek). The election must be by secret ballot, and two-thirds (2/3) of the affected employees must vote to end the schedule.

If the employer wishes to repeal the alternative workweek schedule, you may do so unilaterally without holding a repeal election, but only after providing reasonable advance notice to your employees.

For more information or assistance please call CEA at 800.399.5331 or visit our website at: www.employers.org