

Ins and Outs of an Alternative Workweek



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Commissioner's Office Overview

“The mission of the California Labor Commissioner's Office is to ensure a just day's pay in every workplace in the state and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, we put earned wages into workers' pockets and help level the playing field for law-abiding employers”.





Labor Commissioner's Office

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The Labor Commissioner is Hiring!

Workers

- Learn about [your rights](#) as a worker
- File a [wage claim](#) to recover your unpaid wages
- [File an Equal Pay Act Claim](#)
- [Report a labor law violation](#)
- File a [public works complaint](#)
- File a [retaliation complaint](#) if you're fired, demoted, or punished for reporting labor law violations or workplace safety hazards
- Obtain an [electrician's certification](#)

Employers

- Review requirements before the first employee starts work ([English](#)) ([Spanish](#))
- [Labor Law and Payroll Tax Online Seminars](#)
- Obtain [required notices and posters](#)
- Learn about [Wage Theft Prevention Act](#)
- Obtain [licenses, permits, registrations, and certificates](#)
- Learn about [Piece Rate Compensation \(AB 1513\)](#)
- Learn about [Paid Sick Leave](#)
- Learn about [Domestic Workers Bill of Rights](#)
- List of [Port Trucking Companies with Outstanding Judgments \(SB 1402\)](#)

<https://www.dir.ca.gov/dlse/>



All Workers in California Have Rights

Workers in California have the right to file a wage claim when their employers do not pay them the wages or benefits they are owed. A wage claim starts the process to collect on those unpaid wages or benefits. California's labor laws protect all workers, regardless of immigration status.



Wages – Labor Commissioner’s Definition

- All amounts for labor performed by employees of every description.
- **Labor Code § 200:** “Wages” includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.



What is An Alternative Workweek?

Examples:

- 4 - 10 hour shifts
- 3 - 12 hour shifts (Healthcare Industry)
- 9/80



Cannot Reduce Pay

- An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.



Longer Shifts and Fewer Days

Alternative schedules permit greater flexibility by enabling employees to work longer shifts on a fewer number of workdays and provide related benefits such as decreased commuting time and costs. These schedules also permit nonexempt employees to work more than eight hours in a day without incurring daily overtime.



Does Our Company Qualify?

- Not all IWC orders provide for alternative workweek arrangements. Alternative workweeks are provided for occupations/industries covered by Orders: 1 through 13, 16 and 17.
- An alternative workweek schedule can be created for any readily identifiable work unit, such as a division, department, job classification, shift or separate physical location, with the approval by secret ballot election of at least two-thirds of the affected employees in the work unit.



Alternative Workweek

- No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1 1/2) times the employee's regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay.



Who Can Be On An Alternative Workweek?

- The Alternative Workweek can be used to employ non-exempt personnel – those who aren't administrative, executive, professional or outside salespersons.

***Note: An exempt employee can work 4 – 10 hour shifts but isn't paid overtime for doing so.



Minimum Wage

If you are paid by the piece or unit (sometimes called “by contract”) or paid by the day or week, your wages still must equal at least minimum wage for EACH hour worked.



California Minimum Wage Schedule

Date	Minimum Wage for Employers with 25 Employees or Less	Minimum Wage for Employers with 26 Employees or More
January 1, 2021 January 1, 2022 January 1, 2023	\$13.00/hour \$14.00/hour \$15.50/hour*	\$14.00/hour \$15.00/hour \$15.50/hour*

Note: * On July 27, 2022, the Director of the Department of Finance certified that based on the annual inflation rate from 7/1/21-6/30/22, under Labor Code section 1182.12(c)(3)(A), the state hourly minimum wage must be increased, effective January 1, 2023, to \$15.50 an hour (regardless of the number of workers employed by an employer)..



Overtime

For most occupations, all hours over 8 in one day or over 40 in one week, and for the first 8 hours of work on the 7th day in a work week.

For most occupations, all hours over 12 in one day or over 8 on the 7th day of work in a workweek.



Non-Exempt Employees and Overtime Requirements

“**Non-exempt**” employee, is someone who is not exempt from overtime

- This is usually an employee who is paid hourly, and not a salary.
- *BUT* paying a salary does not mean a worker is exempt from overtime
- Most exemptions from overtime found in the IWC Wage Orders & include salary and duties tests

Overtime requirements:

- **One and one-half times** the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and
- **Double** the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.
- For special rules regarding overtime for agricultural workers, please see **Overtime for Agricultural Workers**



Exempt/Nonexempt/Salary

- Professional – Industrial Welfare Commission (IWC), Section 1
- Administrative - IWC, Section 1
- Managerial - IWC, Section 1
- Outside salesperson - IWC, Section 1
- Salary test
- Duties test



What Is A Workday?

- A workday is a set 24 hour period established and maintained by an employer.
- Workday examples are:
 - 12:00 am to 11:59 am
 - 3:00 pm to 2:59 pm



What Is A Workweek?

- A workweek is a set 7 day period established and maintained by an employer.
- Workweek examples are:
 - Sunday - Saturday
 - Monday – Sunday
 - Wednesday - Tuesday



Identify Employee Groups

- The next step is to carefully identify and select which group(s) of employees will be eligible for the alternative workweek schedule. The Labor Code defines a "work unit" as a division, a department, a job classification, a shift, a separate physical location or a recognized subdivision thereof.



Identify Employees Groups – Continued

A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this section are met; for example, only one employee exists in a particular department or job.



Determine Alternate Workweek Days and Hours

The organization may propose a single work schedule that would become the standard schedule for employees in the work unit or a menu of work schedule options from which each employee in the unit could choose. If the organization proposes a menu of work schedule options, the employee may, with the approval of the organization, move from one menu option to another.



Seasonal Schedules

- California's Division of Labor Standards Enforcement (DLSE) authorized a variant on alternative workweek scheduling in DLSE [Opinion Letter 2009.03.23](#), whereby employers could use alternative workweek schedules during particular times of the year (e.g., a summer schedule), provided the schedules were fixed and regularly recurring and the employer adhered to the other requirements for adopting such schedules



Communicate Proposed Schedule Changes

After identifying which groups of employees will be affected and what the proposed alternative schedule will be, the employer must present a proposal in the form of a written agreement describing the proposed schedule's effects on wages, hours and benefits.



Hold Pre-Election Meetings

- Prior to the secret ballot vote, the employer must have held meeting(s) with the affected employees a minimum of 14 days prior to the election to discuss the effects of the proposed alternative workweek schedule on the employees' wages, hours and benefits.



Election Procedures

- Each proposal for an alternative workweek schedule shall 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.



Election Procedures - Continued

- In order to be valid, the proposed alternative workweek schedule 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 shall be held during regular working hours at the employees' work site.



Hold Secret Ballot Elections

- For the alternative workweek schedule to be valid and recognized by the IWC, the proposed schedule must be adopted in a secret ballot election by at least a two-thirds vote of the affected employees in the work unit. The election must be held *before* the implementation of the alternative workweek schedule.



Election Results

- Within 30 days after results of an alternative workweek election are final, please send the results to:
- Attn: Alternative Workweek Election Results
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603
- Please **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



Communicate Election Results

- Election results must be reported by the employer to the DLSE within 30 days of finalizing the results. DLSE instructions request that results be sent to:
- Attn: Alternative Workweek Election Results
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603



Alternative Workweek Agreement

- If an employer, whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.



Put New Workweek in Place

- Employees affected by a change in work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new hours for at least 30 days after the announcement of the final results of the election.



Repeal By Employees

- Any election to establish or repeal an alternative workweek schedule shall be held during regular working hours at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the labor commissioner, the labor commissioner may require the employer to select a neutral third party to conduct the election.
- *** Note: AWS in healthcare industry have different rules governing when overtime is owed.



Maintain Records

- The employer should maintain all copies of alternative workweek schedule proposals, employee meeting communications and election results, as well as other supporting information and documentation, including documentation regarding hours and days worked and overtime pay. Time-keeping and records affecting specific employees can be maintained in individual personnel files;



How To Apply for One

Contact:

The Directors Office of Policy, Research
& Legislation (OPRL) Alternative

Workweek Election Results

Department of Industrial Relations

P.O. Box 420603

San Francisco, CA 94142-0603



Alternative Workweek Database

Welcome to the alternative workweek elections database. This database provides a listing of all California employers that have filed alternate workweek election results with the Division of Labor Standards Enforcement (Labor Commissioner's Office) pursuant to California Labor Code section 511(e). This database contains the following information: company name, address, city, state, zip code, county, date of election, date on letter, date received, vote, work schedule, other description, complete and telephone.



Database Inquiry

- Company Name
- Address
- City
- County
- State
- Zip
- Date of Election



Questions and Answers



Today's Credits

Attendees of today's webinar are eligible for 1 HRCI and/or SHRM Course Credit Hours. Please reference the following event codes:

HRCI: 603111

SHRM: 22-WC3DN

Attorneys are eligible for 1 MCLE credit hour. Please email seminars@calchamber.com with your MCLE requests.



Thank You!

