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# Alternative Workweeks

## Pros & Cons

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California Landscape Contractors Association



California Employers Association



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## Stuff Our Lawyers Make Us Say

This presentation should not be relied upon as legal advice. Consult an attorney about any issues of legal significance to you & your company.



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## Our Goals Today...

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



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## A Good Fit?

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



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## 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



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## 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



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## 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



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## 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



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## Schedule - Menu Options

- 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



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## 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



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## 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



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## 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



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# 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



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# Sample Ballot

- 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



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## 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.



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## 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



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## 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



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## How to Implement

- Verify your company is registered with the state:  
<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



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## Variables to consider

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



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## Meal/Rest Periods

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



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## 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.

Hours Worked	Rest Periods
0 – 3.5	0
3.5 – less than 6	1
6 – less than 10	2
10 – less than 14	3



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## Lunches/M 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

Hours Worked	Meal Periods
Less than 5	0
Over 5 up to 10	1
Over 10	2



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## 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 7<sup>th</sup> 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



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## 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



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## 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!



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## 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



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## Am I Official?

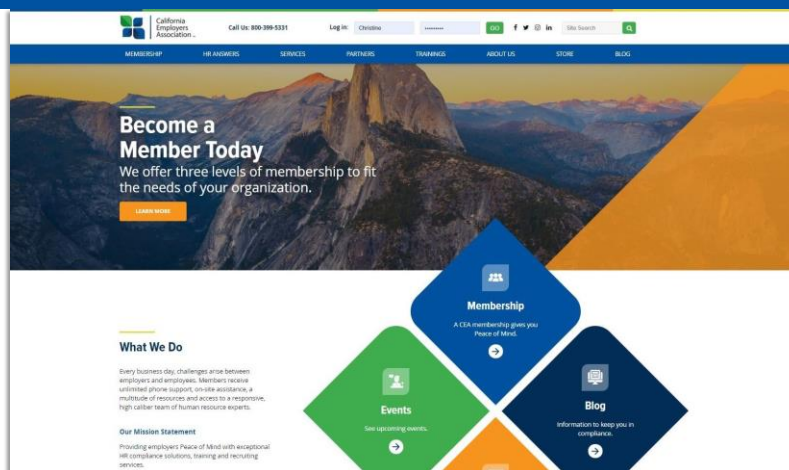
- If you didn't already do it, check the database
  - <http://www.dir.ca.gov/databases/oprl/DLSR-AWE.html>
- Update your handbook
- Wage Order #5 – Section 3 (B)
  - <https://www.dir.ca.gov/IWC/IWCArticle5.pdf>



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## CEA Website



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# DIR – Election Database



State of California  
Department of Industrial Relations

Office of Policy, Research, and Legislation (OPRL)

## Alternative Workweek Elections

**Alternative Workweek Elections 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 5116. 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. The database is searchable on the following fields: company name, address, city, county, state, zip code, and date of election. To search the database, fill in one or more fields. For more detailed search specifications, see [instructions for searching](#).

Company name:  (All or part)

Address:

City:

County:

State:

Zip:  (e.g. 93722)

**Quick Links**

- Alternative workweek
- Consumer Price Index
- Prevailing wage determinations
- Labor compliance
- Public Works
- Fatality statistics

**External Resources**

- California Labor and Workforce Development Agency
- Federal Bureau of Labor Statistics
- Employment Development Department

**About Labor Research and Statistics Office**

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## DLSE Manual - The Real Rules

- DLSE Enforcement Policies and Interpretations Manual (Revised)
  - [http://www.dir.ca.gov/dlse/DLSEManual/dlse\\_enfcmanual.pdf](http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmanual.pdf)
- Opinion Letters
  - <http://www.dir.ca.gov/dlse/OpinionLetters-bySubject.htm>



# DLSE Opinion Letters



The screenshot shows the website of the State of California Department of Industrial Relations (DIR). The page is titled "DLSE opinion letters: by subject". It features a table with columns for "Letter No.", "Manual Section", and "Description". The table lists various opinion letters and their corresponding manual sections and descriptions. A sidebar on the right contains "Quick Links" to various resources. The footer includes the California Employers Association logo and contact information.

Letter No.	Manual Section	Description
1991 06 19	56 7.3.1	Alternative workweek: 9/80 schedule
1991 03 31		Alternative workweek: "Affected employees"
2009 03 23		Alternative Workweek: During Summer Months
1992 01 21		Alternative workweek: Healthcare registry workers (Order 5)
1992 02 28		Alternative workweek: Identifiable work unit
1990 07 06		Alternative workweek: Part-time employees
2002 05 22	56 11	Alternative workweek: Reduction of pay not allowed
1988 03 21	56 11.1	Alternative workweek: Substitute employees
1991 04 19		Alternative workweek: Temporary placement in multiple settings
1991 10 07		Alternative workweek: Work beyond regular schedule
2000 09 29	48 1.6	Beta contracts
1994 01 07	19 3.5	Bonus: Banquet service charges, overtime Overtime: Banquet

Quick Links:

- Bureau of Field Enforcement
- Wage Claim Adjudication
- Retaliation (RC)
- Permits, Licenses, Certifications, and Registrations
- Public Works
- Electrician Certification Unit
- Frequently asked questions
- Legislative reports
- Labor Commissioner's Databases
- Private Attorney General Act (PAGA)

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## 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



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## Wage Statement Requirements

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



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# Accurate Wage Statements Labor Code § 226(a)

The name and address of the legal entity that is the employer

Name of the employee

SMITH AND COMPANY, INC.  
123 West Street Smalltown, CA 98765

Last 4 digits of the employee's social security number or an employee ID number

EMPLOYEE  
Johnson, Bob

SOCIAL SECURITY NO.  
XXX-XX-6789

PAY RATE  
18.00 regular  
27.00 overtime

PAY PERIOD  
2/11/02 to 2/17/02

All applicable hourly rates

The inclusive dates of the period for which the employee is paid

Total hours worked

EARNINGS	HOURS	AMOUNT
Regular	40.00	720.00
Overtime	2.00	54.00

Gross wages earned

DEDUCTIONS	AMOUNT
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

All deductions

GROSS EARNINGS:	774.00
TOTAL DEDUCTED:	217.04
NET EARNINGS:	556.96

Net wages earned

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.....



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## 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



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## Termination

- Form DE 2320 EDD Form Your Benefit Unemployment Insurance Pamphlet ([www.edd.ca.gov](http://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\*



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## 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



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## 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.



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# 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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**Thank  
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