

Subject: ALTERNATIVE WORK SCHEDULES

Date: September 4, 2019

Pages: 1 of 4

Replaces Policy Dated: March 28, 2018

PURPOSE: To establish guidelines which ensure compliance with the Fair Labor Standards Act (FLSA) and applicable state law while still offering Department Directors and Elected Officials flexibility in scheduling their employees' hours of work.

SCOPE: This policy applies to all Pinal County employees.

STATEMENT OF POLICY: Alternative work schedules may be established by the Department Director or Elected Official in accordance with the Fair Labor Standards Act. However, care must be taken when considering the implementation of an alternative work schedule. The Fair Labor Standards Act (FLSA) establishes the guidelines under which an employee's work must be scheduled, accounted for and paid.

DEFINITIONS

- A. **4/10 Schedule-** A schedule where the employee works four ten hour days each workweek. The traditional fifth work day is off, and can be scheduled for any day of the week. The day may be either fixed or floating each workweek.
- B. **9/80 Schedule-** A schedule where the employee works eight days of nine hours, one day of eight hours, and has the tenth day off (the "flex" day) in each two week pay period.
- C. **Alternative Workweek-** Any workweek other than a standard workweek consisting of seven consecutive 24-hour periods that equal 168 total hours. An alternative workweek may begin at any point of the calendar week. There may be one defined workweek for all employees of a department/office or different workweeks for different groups of department/office employees or different workweeks for individual employees of the department/office. Once established, an alternative workweek must remain fixed.
- D. **Calendar week-** Sunday through Saturday.
- E. **Flex Day-** The day in the workweek the employee is off when working a 9/80 schedule.
- F. **FLSA-EXEMPT-** Employees who are exempt from the provisions of the Fair Labor Standards Act that obligate employers to pay overtime for time worked in excess of 40 hours in a workweek. An employee who meets the duties tests for the following executive, administrative, professional, or computer employment may be classified as exempt.
- G. **FLSA NON-EXEMPT-** Employees who are subject to the provisions of the Fair Labor Standards Act governing an employer's obligation to pay overtime for time worked in excess of 40 hours in a workweek.
- H. **Overtime-** All time worked by a non-exempt employee in excess of forty hours in a workweek. Overtime is reimbursed at the rate of time and one-half. With limited exceptions, in accordance with County policy, overtime should first be reimbursed in the form of compensatory time accruals.

- I. **Pay Period-** The two workweek cycle consisting of two calendar weeks, beginning at 12:01 a.m. Sunday and extending through midnight Saturday fourteen days later. The Regular Pay Period is used by payroll to consolidate hours worked and generate pay checks.
- J. **Short Day-** The eight hour day of the 9/80 schedule. The standard workweek in Pinal County is the same as the calendar week except for employees on Alternative Work Schedules.
- K. **Standard Workweek-** The standard workweek in Pinal County is the same as the calendar week. The Standard Workweek is used by the County Payroll Department to calculate hours worked.

TECHNICAL COMPLIANCE

The following statutory requirements and records must be maintained and followed under the Fair Labor Standards Act for every non-exempt employee:

- A. Every Department Director or Elected Official shall maintain and preserve payroll or other records, including time of day and day of week on which the employee's workweek begins, hours worked each day and total hours worked each workweek. (29 C.F.R. § 516.2)
- B. The workweek must stand alone. FLSA does not allow averaging of hours over two or more weeks. (29 C.F.R. § 778.104)
- C. The beginning of the workweek may be changed if the change is intended to be fixed long term and is not designed to evade the overtime requirements of the Act. (29 C.F.R. § 778.301)
- D. When the beginning of the workweek is changed, (1) assume first that the overlapping hours worked are to be counted as hours worked only in the "old" workweek and not in the new; compute straight time and overtime due for each of the 2 workweeks on this basis and total the sums. (2) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the computation accordingly. Pay the employee an amount not less than the greater of the amounts computed by methods (1) and (2). (29 C.F.R. § 778.302)

IMPLEMENTING ALTERNATIVE WORK SCHEDULES

A. FLSA NON-EXEMPT EMPLOYEES

1. 4/10 Schedule

Implementation of a 4/10 schedule does not normally conflict with the Fair Labor Standards Act since it is not necessary to change the workweek. A 4/10 schedule may start at the beginning of any regular pay period or on any day in the workweek as long as all four days of work are completed between the hours of 12:01 a.m. Sunday and 12:00 midnight the following Saturday.

2. 9/80 Schedule

When a non-exempt employee goes on a 9/80 schedule, the workweek is changed. It begins every week in the middle of the day of the week which has been designated as that employee's Short Day. This is the period that will be used to calculate whether overtime is worked. The workweek will no longer be the same as the calendar week.

The work schedule must be started at the beginning of a regular pay period. The best time to start the schedule is during a pay period that contains a holiday, especially if the holiday falls during the first week of the pay period.

The first step in developing the schedule is to select the day of the pay period which will be that employee's Short Day.

Once the Short Day is established it cannot be changed because the change is intended to

be fixed long term. Non-exempt employees cannot “switch” or “trade” the regularly scheduled Short Days or Flex Days.

To determine when the new workweek begins, start with the Short Day and count backwards the hours scheduled each day in the new 9/80 schedule until you reach forty hours (this will be in the middle of the same day of the week as the flex-day). Be sure to allow for an unpaid lunch period at the beginning of beginning of the second four hours in the Short Day. This will be the starting time of the new workweek.

NOTE—below is one example of a possible 9/80 schedule, used for demonstration purposes only:

Example Workweek #1

Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday (Short Day) ending at noon
		9	9	9	9	4

Example Workweek #2

Friday (Short Day) starting at noon	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Alternate Friday
4			9	9	9	9	Flex Day

In the above example where a two workweek pay period is shown, the new workweek begins on the first Friday four hours before the end of the work day (plus lunch if an unpaid lunch period is offered). The workweek ends at the same time on the second Friday when the employee is on his/her Flex Day and no hours are worked.

In this example, since the new workweek begins on a Friday of the first week it can be seen that the new workweek will overlap two regular pay periods which usually end at midnight Saturday. It is the Elected Official’s or Department Director’s responsibility to monitor the work schedule to determine whether, and record if, an employee works any overtime. Payroll will not be able to determine whether overtime is worked because the workweek now overlaps two time cards or time sheets.

Time will still be reported to Payroll based upon the regular pay period. This will not change. Overtime worked will be reported in the pay period in which it is worked.

3. Other Alternative Schedules

Elected Officials and Department Directors may establish alternative schedules other than the 4/10 and 9/80 schedule. Other alternative schedules may be based on either the standard workweek or an alternative workweek of no more than seven (7) consecutive 24-hour periods, as long as the alternative workweek, once established, remains fixed. Any proposed alternative workweek schedule is not authorized unless reviewed and approved by the County Manager for proper compliance with applicable law and policy. Schedules proposing a work period of greater than seven days, when permitted by law, may only be implemented with the approval of the Board of Supervisors. Approval by the County Manager or Board of Supervisors, when applicable, is not intended to prevent Elected Officials and Department Directors from making law-and-policy-compliant adjustments to employee schedules within an already-established workweek.

B. FLSA EXEMPT EMPLOYEES

There are no special requirements for implementing a flexible work schedule for employees who are exempt from the overtime provisions of the Fair Labor Standards Act. Since exempt employees are not compensated on the basis of hours worked, they may begin an alternative work schedule at the

beginning of any pay period.

C. SICK AND VACATION DAYS

If the employee takes a sick or vacation day on a regularly scheduled work day, the regularly scheduled hours of sick or vacation time must be recorded for each scheduled work day they are on leave in that workweek.

D. HOLIDAYS

At the discretion of the elected official or department director, and in accordance with applicable law and policy, if a holiday falls on an employee's flex-day, the employee will be given either: the holiday pay attributable to the relevant workweek; or another 8-hour period off during the workweek (usually the day before or the day after the holiday).

For payroll/time off purposes, the holiday is always an eight (8) hour period. If the holiday does not fall during the same week as the employee's eight-hour day (short day), an hour must be made up during the workweek.

E. DOCUMENTATION

Record of the new schedule and the new workweek (Alternative Schedule Work Agreement) must be completed and maintained by the Department Director or Elected Official. If the schedule is changed, a new Alternative Schedule Work Agreement needs to be completed with each employee affected by the change. The Alternative Schedule Work Agreement form is available on the Human Resources Web Site. No employee is permitted to work a schedule under an alternative workweek until the Alternative Schedule Work Agreement is completed. A copy of each Alternative Schedule Work Agreement must be provided to Human Resources.

At the beginning of each calendar year the Department Director or Elected Official will report to Human Resources a list of all employees that are on alternative schedules. The report will specify the alternative schedule (i.e. '4/10 schedule'), employee name and position.