Compliance Corner: Distinguishing "Flextime" from "Alternative Workweeks"

The complexity of California's wage and hour regulations causes many employers to confuse "flextime" and "alternative workweek" programs, often to the detriment of the company. When attempting unique staffing arrangements outside the standard eight-hour day and 40-hour workweek, employers need to be careful to comply with a relatively complex set of requirements, largely unique to California. This includes an understanding that under California law there is a clear distinction between "flextime" and "alternative workweek" programs.

In California "flextime" refers to allowing non-exempt employees to vary the time they report to and leave work, but it is assumed that the work day will only consist of eight hours. An example would be allowing an employee to begin work at 8:00 a.m. one day, while allowing them to begin working at 9:00 a.m. on another day. In either case, that employee is expected to work no more than eight hours without their employer bearing an overtime burden.

When attempting to compress a 40-hour workweek into a fewer number of days (often done by employers to provide an additional day-off during the week), and to do so without paying overtime on days longer than eight hours, we enter the realm of "alternative workweek" schedules. California regulations regarding permissible alternative workweeks are complex. They must be followed closely to ensure that the employer does not trip over the overtime obligation. Highlights of the requirements that apply to permissible programs include the following:

- Alternative workweeks must be established for identifiable groups of employees (not single individuals) and the alternative workweek option must be made available to all employees within that identified group.

- In no instance can an alternative workweek program be adopted requiring employees to work in excess of 10 hours per day or 40 hours in a workweek without incurring the overtime requirement.

- Proposed programs must be clearly written and presented to the group of employees in a manner that allows for questions and discussion. *If more than five percent of the work group has a primary language other than English, the proposal must be presented in an alternative language version(s) appropriate to that group.*

- Employees within the identified group can either accept or reject the proposal through a "secret ballot" election; approval of any proposal requires a 2/3rds majority vote. This election must occur at least 14 days after presentation/explanation of the proposal to employees within the identified group.

- If the proposal is not accepted by a 2/3rds majority then the program will not be valid for any members of the work group.

- All election proceedings and outcomes must to be recorded with the Division of Labor Statistics and Research (DLSR) within 30 days following the election.

- Employers must make reasonable efforts to accommodate employees either not able or unwilling to participate in the alternative workweek program.

- Acceptable alternative workweek programs must also include accommodations for the employee's religion and religious observances.

Again, this is a partial list of requirements for acceptable **Alternative Workweek Programs** within California. The complete list is longer and more complicated. If this discussion has spurred interest, you may find additional information at http://www.dir.ca.gov, or contact JTSA for more information.

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