



May 5, 2025

Dear Employer,

The Alaska Department of Labor and Workforce Development, Wage and Hour Office, has carefully prepared this letter as a comprehensive resource to enhance understanding of flexible work hour plans, commonly referred to as flex plans. This initiative is a response to several inquiries that our office has received concerning the details and implementation of flexible plans, with the objective of addressing public needs and inquiries.

The Purpose of Flex Plans

The objective of the flexible work plan is to enable full-time employees to adopt alternative work schedules and to facilitate the completion of weekly work hours in a reduced number of days by alleviating specific daily overtime obligations for employers. This arrangement benefits employees without penalizing employers with overtime.

Requirements

The base requirements of the flex plan are as follows:

- Flexible work-hour plans must be voluntary for both the employer and employee; the employer cannot require participation.
- The employer must keep copies of the approved plan on file, signed and dated by each participating employee.
- A flexible work hour plan must consist of a minimum of four workdays and 33 hours per workweek.
- A flex plan schedule may not exceed ten hours in a single day or 40 hours in a workweek, and overtime compensation must be paid for any work in excess of 10 hours in a day or in excess of 40 hours a week.
- A voluntary flexible work-hour plan is valid only if the employee is offered an equivalent weekly schedule with overtime pay for hours over eight in a workday.

- Flex plans do not allow an employer to routinely impose a work schedule that deviates from the hours specified and agreed to by the employee in the plan. Only occasional deviations up to 20 percent of the weeks worked (one in five weeks) are allowed.

Department Approval

The employer must submit and receive an approved flex plan from the Department before it can be offered to the employee. The signed and approved flex plan must be kept in the employee's personnel file.

The plan must be submitted on the form provided by the Department, found at <https://labor.alaska.gov/lss/forms/flexplan.pdf>.

Plans Must Be Voluntary

Each employee participating in the flex plan must do so voluntarily and cannot be made a condition of employment. The Flexible Work Hour form outlines employer requirements and employee rights and protections and contains a bolded statement above the employee's signature clarifying, "Employee participation must be voluntary and uncoerced.". Both the employer and the employee must sign the agreement. An employer coercing any employee to participate in a flex plan is prohibited and may result in the invalidation of the plan.

For example, if an employer's business is only open four days per week and the employee cannot work on days that the business is closed, no alternative schedule exists, and the plan cannot be approved by the Department.

Opt-Out Periods

After a plan has been approved by the Department and voluntarily agreed to by the employee, either at the time of initial employment or at any other time during employment, the employee may only opt-out of participation from November 1 through December 31 each calendar year.

Termination of an employee, regardless of the cause, eliminates the employee's participation. An employee whom the employer rehires must again voluntarily choose to participate in the flex plan in order to be included in the approved plan.

Nothing prohibits the employer from terminating the flex plan based on business needs or entering a mutual agreement with the employee to withdraw the employee from an approved plan at any time. It is not necessary for the employer to wait until the employee opt-out period.

Weeks When the Exemption Is Not Used

The flex plan is a partial exemption from the Alaska *Wage and Hour Act*'s daily overtime requirements. As such, an employer and employee choose to use the exemption when agreeing to enter into the plan. Likewise, an employer can choose not to use the exemption when they believe it is prudent to do so. This means that they must revert to applying overtime as required

by the *Alaska Wage and Hour Act*'s standard overtime requirements for any work performed for over 8 hours in a workday and/or over 40 straight-time hours in a workweek.

Each week stands alone for the calculation of overtime, thus if an employer finds that in any given time period they cannot adhere to the requirements of the plan, they may choose not to apply the exemption afforded to them under the plan for those weeks and opt to pay the employee overtime for hours worked in excess of 8 hours in a day and/or 40 straight time hours in a workweek.

While not working under the exemption, the employer is not required to provide the approved schedule. The employer should notify the employee of any periods during which the exemption is not being used and document in the employee's records when they are not working under the plan.

Deviations

Occasional deviations are recognized as something that can happen in the normal course of business. The law allows for a threshold of 20% of all weeks (one in five weeks) wherein a deviation can occur. Deviations exceeding the 20% threshold can result in the invalidation of the plan.

The employee is expected to be provided with the work hours agreed to in the plan each week. If the employee's work schedule varies substantially from the approved flex plan in such a way that the hours identified in the plan are not provided, the entire plan may be invalidated. Again, employers must be mindful of the 20% deviation threshold.

The examples of deviations reported to Wage and Hour are as follows:

1. The employee is ready, willing, and available to work the hours identified in the plan, and the employer does not make those hours available for more than 20% of all weeks worked.
2. The employer regularly sends the employee home early on workdays approved under the plan, then has them work on a day they are not normally scheduled to work, maintaining the employees' weekly hours, but eliminating the need to pay overtime.

Absences by the employee, such as sick days or requested days off, are not counted as a deviation. These absences are outside the employer's control, as the work is made available, and the employee is simply unavailable to perform the work. Additionally, as considered the normal course of business, holidays or closures for inclement weather would also not be counted.

Nothing prohibits an employer from requiring an employee working under a flex plan to work hours beyond those specified in the approved plan, as long as overtime compensation is received.

If employers anticipate being unable to provide the approved hours under the plan for a period resulting in a deviation of more than 20%, they should consider not using the exemption for that time, as previously addressed, to avoid invalidating the plan. The employer should notify the employee and document any instances where the exemption is not used.

9/80 Plans

9/80 plans establish a short work week with an extra day off for the employee every other week. This is accomplished by shifting the workweek to start halfway through the alternating day off, most commonly noon on Monday or Friday. This is done to ensure the two work weeks contain 40 hours. For further information on how to establish a 9/80 flex plan, please contact Wage and Hour.

Penalties for Flex Plan Violations

If the department determines that an employer has made the flex plan agreement mandatory, used coercion, deviated from the approved schedule, regularly reduced hours, or manipulated the plan to avoid overtime, the plan could be invalidated. Invalidation of a flex plan would result in the employer owing up to two years of back overtime wages for all hours worked over 8 hours a day, plus an equal amount of liquidated damages.

Resources

In conclusion, a business that is involved in practices that are not consistent with Alaska wage and hour laws must correct the discrepancies immediately to avoid future liabilities. We hope that your organization takes this opportunity to review your internal policies and voluntarily make any wage adjustments. For your reference, we have included relevant statutes and regulations. Employers are encouraged to thoroughly review Alaska's wage and hour laws published in Pamphlet 100, available at: <https://labor.alaska.gov/lss/forms/pam100.pdf>. Our website can be found at: <https://labor.alaska.gov/lss/whhome.htm>.

The Wage and Hour office provides a cost-free counseling service to Alaska employers, and we invite you to take advantage of this service. A regular, monthly webinar is offered to employers and employees concerning wage and hour laws. Check our website for the webinar schedule and contact our office at (907) 269-4900 for registration. Additionally, an investigator is available each business day to answer any questions you may have.