



Fair Labor Standards Act Workweek Rule Implementation Toolkit

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Job Aid FLSA Workweek & Flextime Scheduling

This job aid has been designed to help human resources, time and leave, and payroll units navigate the change to a single Fair Labor Standards Act (FLSA) workweek by providing common terms and definitions, referring to additional guidance, and by providing different options to mitigate impacts to nonexempt employees. The Division of Human Resources (DHR) recommends that agencies transition employees to the new workweek as soon as possible. However, agencies will be given until the earlier of their transition to HRWorks or April 1, 2021, to fully comply. Agencies are asked to provide target dates for implementation to the new FLSA workweek to DHR by December 31, 2019.

Guiding Philosophy

First and foremost, it is of utmost importance to fulfill operational needs in order to accomplish an agency's mission. At the same time, an employer should provide some flexibility in work schedules to help employees balance the pressures of work, family life, and other personal needs. The unique demands of each agency's operations will dictate how much flexibility can be provided depending on the nature of the work and individual work assignments. Ultimately, all of these competing priorities must be balanced against efficient and compliant administration of timekeeping and payroll.

FLSA Workweek Changes

FLSA sets a single workweek as the standard length of time used to determine if a nonexempt employee is owed overtime. According to [29 C.F.R. § 778.105](#), "An employee's workweek is a fixed and regularly recurring period of 168 hours - seven consecutive 24-hour periods." For Colorado state agencies using the official payroll system designated by the State Controller, effective November 1, 2019, the standard FLSA workweek is **Saturday at 12:00 a.m. through Friday at 11:59 p.m.**

FLSA and Overtime Requirements

The FLSA is best known as the law determining the exempt or nonexempt status of jobs and overtime requirements. In regard to overtime, employees are divided into two groups:

1. Exempt: Employees primarily performing work that is not subject to overtime provisions of the FLSA. Overtime pay is not required by FLSA for exempt employees.

2. Nonexempt: Employees primarily performing work that is subject to the overtime provisions of the FLSA. Overtime pay is required.

Overtime or compensatory time off for nonexempt employees is explained in the [State Personnel Rules](#). Simply, nonexempt employees whose actual time worked exceeds 40 hours in the FLSA workweek will be owed 1 ½ times their regular hourly rate for hours over 40 or 1 ½ times the number of hours over 40 of compensatory time.

Suggested steps for adapting to the new FLSA workweek:

1. HR should partner with agency leadership and your payroll department to determine an implementation date for the new FLSA standard workweek.
 - a. DHR recommends that agencies transition employees to the new FLSA workweek as soon as possible.
 - b. Agencies will be given until the earlier of their transition to HRWorks or April 1, 2021, to fully adopt the new FLSA workweek.
 - c. ►**ACTION REQUIRED:** Please provide target dates for implementation to the new FLSA workweek to DHR by December 31, 2019 (email the date to dhr_consultingservices@state.co.us). You may need to evaluate the number of affected nonexempt employees to make this decision by identifying the nonexempt employees currently on a flexible work schedule that could exceed 40 hours in the new FLSA workweek.
2. Review the work schedules of your nonexempt employees currently under a flexible work arrangement. If they work more than 40 hours during the new FLSA workweek, they will incur overtime (or compensatory time).
 - a. You will need to work with your business units to determine if they can absorb the overtime, or if they will need to adjust the work schedules for those employees.
 - b. Options for alternative flex work schedules that do not incur overtime are outlined below.
3. **Remember: FLSA Exempt employees are not affected by this change.** While work schedules do not need to be adjusted for exempt employees because of the new FLSA workweek, agencies may want to consider making the additional flexible work schedules available to exempt employees as well.
4. Work with your payroll department and OIT on your implementation strategy and ensure you have a plan for any systems modifications, if necessary.
5. Develop your communication strategy.

- a. We advise meeting with supervisors of affected employees first to ensure consistent messaging and minimize confusion. An FAQ document has also been included in the toolkit and may prove useful in this effort.
 - b. An HR Representative or the supervisor will want to communicate directly with affected employees, but HR may want to send out a notification to all employees as well. Two sample memos have been included in this toolkit for this purpose. Please adapt them to fit your needs.
 - c. Employees should understand that a flexible work schedule is only available if it continues to meet the business needs of the work unit, and as such, is not an entitlement and can be terminated or altered at any time. The approval and removal of a flexible work schedule is always at the discretion of the agency.
 - d. As a result of the new FLSA workweek, it is recommended that the agency provides employees with sufficient notice (at least 60 days) of any changes to their work schedule so they have adequate time to adjust to the change.
6. We realize this change presents challenges. Our goal is to assist you in minimizing impact to your nonexempt employees wherever possible. Please reach out to dhr_consultingservices@state.co.us to report your implementation date, for assistance with your implementation plan, or for sample flexible work schedule policies implemented by other agencies.

Alternate Work Schedule Options

Though nonexempt employees may have become very accustomed to their current flex work schedule, there are several alternate flex work schedule options that are available under the new FLSA workweek that aid managers and supervisors in balancing the business needs of their organization or unit against the needs of their employees and customers.

The chart and samples below outline some flexible and compressed work schedule options and considerations about nonexempt employees. **Remember: All work schedule options are still available. It is the calculation of overtime or compensatory time for nonexempt employees that must now be considered.**

Scheduling Type	Definition	Nonexempt Employee Considerations
<u>Flexible 5x4 work schedule</u> (sometimes called 9-80 schedule)	<p>There are variations on this type of work schedule. The key is working 80 hours over a two-week period. Employees work five days in one week and four in the next, totalling 80 hours.</p>	<p>If a nonexempt employee works more than 40 hours during the FLSA workweek, overtime must be included (except for employees covered by rule 3-26(A)). Therefore, if an employee works 44 hours in the first workweek they are entitled to 6 hours of overtime or compensatory time (not 4 hours). Agencies may choose to continue using this scheduling option, but must pay applicable overtime or award 1 ½ times in compensatory time (6 hours in this example). Other flex work schedules could achieve similar flexibility without incurring overtime. (See “combination flex”.)</p>
<u>Combination flex or rotating work schedules</u>	<p>Combination flex work schedules allow for variation in work schedules from week to week. They can expand core business hours and add value to an organization’s customer service availability if employee teams are closely coordinated to cover all operations.</p> <p>An example is first week is five 8-hour shifts, second week is four 10-hour shifts. The day off during the second week could vary.</p>	<p>A combination flex work schedule may be a viable option for nonexempt employees instead of the 9 day, 80-hour work schedule, as it provides similar time off benefit but does not incur overtime.</p>
<u>Compressed work schedule</u>	<p>A flexible work schedule where a full workweek is completed in fewer than five days by increasing the number of hours worked per day.</p> <p>A common example of compressed scheduling is the four-day, 10-hour</p>	<p>The key with this option is to ensure that nonexempt employees do not work more than 40 hours in a week or 12 hours a day without consideration for overtime or compensatory time. A very</p>

	per day schedule (known as 4-10s). Work schedules can be compressed to as few as three 12-hour days with one four-hour day.	compressed work schedule may not meet services needs if not balanced throughout the work unit.
<u>Regular flexible work schedule</u>	The most common flexible work scheduling type, an employee works the same set hours each day, but the hours worked are outside the core business hours of the office, e.g., 7:30 a.m. to 4:30 p.m., in an office that is normally open from 8:00 a.m. to 5:00 p.m.	Adjusting an employee's daily work schedule may help mitigate any work schedule changes required by the FLSA workweek.
<u>Daily flexible scheduling</u>	Not appropriate for every work group, this type of scheduling allows an employee to make their own daily work schedule. As long as the employee's work schedule conforms to core business hours and is within the parameters defined by organizational managers, this can be an attractive option for trusted employees.	Daily flexible scheduling is an option for nonexempt employees with the understanding that supervisors may need to closely coordinate and negotiate work schedules with individual employees to ensure core business needs are met. Supervisors would need to closely monitor the tracking of hours to ensure it does not exceed 40 hours in a week or 12 hours a day.

Note: Managers, supervisors and schedulers should not feel obligated to limit themselves to the options outlined above or the sample work schedules provided below, but use them as examples of creative scheduling options they might employ to maintain employee work-life balance under the new FLSA workweek and state rule.

SAMPLE Flexible 5x4 Work Schedule (Exempt)

Employees	First Week								Second Week							
	SA	SU	M	T	W	TH	F	Total	SA	SU	M	T	W	TH	F	Total
A	Off	Off	9	9	9	9	9	45	Off	Off	9	9	9	8	Off	35

NOTE: While exempt employees can be on a flexible schedule reflecting 40 hours a week, exempt employees are expected to work as many hours as necessary to complete the requirements of their job.

SAMPLE Compressed Combination Flex (Nonexempt)

Employees	First Week								Second Week							
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	SA	SU	M	T	W	TH	F	Total	SA	SU	M	T	W	TH	F	Total
A	Off	Off	8	8	8	8	8	40	Off	Off	10	10	10	10	Off	40
B	Off	Off	8	8	8	8	8	40	Off	Off	9	9	9	9	4	40
C	10	10	10	10	Off	Off	Off	40	12	12	12	4	Off	Off	Off	40

Need Help?

If you have questions about the standard FLSA workweek, best practices in flexible scheduling or implementation, please access the [Standard FLSA Workweek FAQ for HR & Payroll Professionals](#) or reach out to dhr_consultingservices@state.co.us.



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FAQs

Standard FLSA Workweek

Frequently Asked Questions (FAQ) have been developed to support HR, Time and Leave Administrators, and Payroll Officers with the implementation of the standard FLSA workweek rule effective November 1, 2019.

Q: Can we still provide a flexible work schedule to our nonexempt employees?

A: Yes. There are several alternate flexible work schedule options that may work for your business. Please reference the Job Aid for suggestions. The new FLSA workweek impacts the calculation of overtime for nonexempt employees, which is why you may need to adjust their work schedule.

Q: Does this impact nonexempt employees who work a regular flexible work schedule (employees who work outside of core hours, for example, 6 a.m - 3 p.m. or 10 a.m - 7 p.m.)?

A: No. Nonexempt employees who work a standard 40 hour week, but come in before, or after, core hours will not be impacted. For example, nonexempt employees who come in at 6 a.m. and leave at 3 p.m. (includes one hour lunch) will not be impacted by this change.

Q: What is the State's newly adopted standard FLSA workweek rule?

A: The final, approved rule 3-26 is as follows:

The State's standard FLSA workweek is Saturday at 12:00 a.m. through Friday at 11:59 p.m. This standard FLSA workweek applies to agencies that use the official payroll system designated by the State Controller. (11/1/2019)

A. For law enforcement, healthcare, and fire protection employees, appointing authorities may adopt a "work period" under the FLSA between 7 consecutive days to 28 consecutive days in length. Overtime compensation is not required until the employee satisfies the maximum hour standard under the federal regulations. (11/1/2019)

Q: Why did the State Personnel Director adopt one standard FLSA workweek?

A: The one standard FLSA workweek will present better transparency and understanding for all employees as they report time and review their paystubs. In addition, the standard workweek reduces the risk for errors and noncompliance with the FLSA by reducing the complexity with processing payroll and the need for adjustments outside of the payroll system.

Q: Does this apply to institutions of higher education?

A: The standard FLSA workweek only applies to agencies that use the official payroll system designated by the State Controller.

Q: Which flexible work schedules are impacted by the standard FLSA Workweek?

A: Nonexempt employees whose work schedules will cause them to work more than 40 hours during the new FLSA workweek will be affected. For example, nonexempt employees who work 45 hours in one week and 35 in the next week will be affected, as they would incur overtime (or compensatory time) in the first week. The FLSA workweek, not the calendar week or work schedule, is the basis for determining overtime for nonexempt employees. Business units must decide if they can absorb the overtime or compensatory time on an ongoing basis, or will need to change the flexible work schedule for nonexempt employees.

Q: When must agencies comply with the rule 3-26?

A: Agencies will have until they transition to HRWorks or April 1, 2021, whichever is earlier, to comply. However, it is recommended that agencies transition employees to the new FLSA workweek as soon as possible. In addition, the Division of Human Resources recommends that no additional nonexempt employees be placed on any flexible work schedule where a

nonexempt employee would work more than 40 hours in the new FLSA workweek unless they are covered by rule 3-26(A).

Q: What is the process and deadline for agencies to report their targeted date to implement rule 3-26?

A: Please send your agency's targeted date to implement the new FLSA workweek to dhr_consultingservices@state.co.us no later than December 31, 2019.

Q: What should agencies do to begin implementing the standard FLSA workweek for nonexempt employees who work flextime schedules that could create overtime exposure?

A: It is important to communicate with all affected employees in your agency about other flexible scheduling opportunities that may mitigate the change and be a fit for your agency and workforce. Please explore the Division of Human Resources' [Workweek and Flextime Job Aid](#) and our recommendations for communicating with employees about the new FLSA workweek rule. It is recommended that you provide your employees with sufficient notice (at least 60 days) of any changes to their work schedule so they have adequate time to adjust to the change. Sample templates are included in the Implementation Toolkit.

Q: How do you define “work schedule?”

A: A work schedule is a list of employees, and associated information e.g. location, working times, responsibilities for a given time period e.g. shift, day, week, month. A work schedule is necessary for the day-to-day operation of an agency's business. An effective work schedule balances the needs of stakeholders including managers, supervisors, internal service providers, employees and customers. A work schedule is most often created by a supervisor. In larger operations, a human resources manager or scheduling specialist may be solely dedicated to creating and maintaining the work schedules. While work schedules can and often do vary based on the needs of the business and stakeholders, the new FLSA workweek will not fluctuate and is how overtime is calculated for nonexempt employees.

Q: How do you define “alternate work schedule?”

A: There are two types of flexible work schedules that differ from the regular, 8-hour day. These are known as alternate work schedules:

1. **Flextime work schedules** mean redesigned or restructured traditional employee work schedules over five days per week. Note: core hours, or the hours during which all employees must be present, are generally established by the manager.
 - Agencies can use this option to accommodate the changing workforce while still satisfying business needs.
 - Employees can use innovative scheduling to fulfill a variety of personal needs (family responsibilities, routine health appointments, educational activities, or volunteer and wellness activities) without losing work time.
 - This type of scheduling is flexible enough to be used on an ongoing or as-needed basis.

2. **Compressed work schedules** are flexible work schedules compressing a full time workload to complete all job responsibilities into fewer than five days per week or in fewer than ten days over two weeks.

Q: Why aren't FLSA exempt employees affected by the new FLSA workweek?

A: FLSA exempt employees are expected to work as many hours as necessary to complete the requirements of their job and as such, are not eligible for overtime or compensatory time. Therefore, the new FLSA workweek does not affect them. Work schedules for FLSA exempt employees are structured around the requirements of their job and may vary from week-to-week; however, a supervisor, at their discretion, may set core business hours for exempt employees based on business needs. Additionally, under the FLSA, employers are allowed to track hours for exempt employees. In general, exempt employees are expected to fulfill the full-time equivalency of 2080 hours per fiscal year.

Q: What should be considered for employees on Flexible Work Schedules?

A: In reviewing requests for flexible work schedules by employees, whether or not they are eligible for overtime, it is critical that supervisors and appointing authorities consider the following:

- Type of work and size of the work unit;
- Establishing work schedules based on work load and customer need;
- Customer interactions, including how communication and customer requests will be handled while the employee is on flextime;

- Consideration for agency and unit meetings where all staff need to be present;
- Team structure and participation, e.g. the employee functioning as part of a team that would require a corresponding work schedule for team members;
- The work unit being able to provide coverage for functions handled by the employee while they are flexing without undue burden on other employees in the unit;
- Consistency when determining which staff can participate in flexible work schedules;
- Impact on employees whose positions are not appropriate for flexible work schedules;
- Effective monitoring of employee work that occurs outside the supervisor's regular work schedule;
- Effective communication regarding attendance, work product, and when and where work must be performed;
- An employee's job performance; and
- For nonexempt employees in particular, adherence to federal wage-hour regulations and State rules regarding work that occurs outside the employee's regular work schedule.

► **Best Practice:** Document expectations between a supervisor or appointing authority and the employee in language stating that all flextime work schedules are subject to business need, and as such, the business reserves the right to adjust at any time, either on a temporary basis (like mandatory attendance at meetings), or permanently. If changes are to be made at any time, it is recommended that agencies provide reasonable time and sufficient advance notice to employees prior to making a change.



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This is a template for a targeted communication to individual nonexempt employees impacted by changes to the FLSA workweek.

Memorandum

To: [Insert individual's name you will be sending to]
From: [Insert HR Leaders Name and Title]
Date: [Insert Date]
Re: Fair Labor Standards Act (FLSA) Standard Workweek - Nonexempt Flexible Work Schedule

In order to increase transparency, ensure best-practice, and assist with compliance, beginning November 1, 2019, all agencies using the official payroll system designated by the state controller will begin transitioning to one standard, Fair Labor Standards Act (FLSA) workweek of Saturday 12:00 a.m. to Friday 11:59 p.m. [AGENCY NAME] will transition to the new standard FLSA workweek effective [INSERT AGENCY TARGET IMPLEMENTATION DATE].

You are receiving this memo because you have been identified as an FLSA nonexempt employee who is eligible for overtime, and your current flexible work schedule will be impacted by this change. Because you are currently on a flexible work schedule, we understand that you are a high performing employee that is valuable to your agency and the state as a whole. As such, we want to work with you regarding this change.

With this new standard FLSA workweek, your current work schedule will incur overtime that we are unable to support. We understand that this decision directly affects you and we want to help you and your manager find a work schedule that supports your work life balance as well as the agency's ongoing operational needs.

We have come up with alternative flexible scheduling options that you and your supervisor will discuss. You will be asked to transition to another viable flexible work schedule by [INSERT DATE NO LATER THAN AGENCY TARGET IMPLEMENTATION DATE]. If you want to transition sooner than this date, please let your supervisor know. We apologize for any inconvenience this causes you and hope this notice provides you the time needed to make this as smooth of a transition as possible. For more information please speak with your supervisor or HR representative.



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If you choose to communicate the rule change to all employees, the following is a template for generalized communication.

Memorandum

To: All Employees of [Insert Agency Name]
From: [Insert HR Leaders Name and Title]
Date: [Insert Date]
Re: New Fair Labor Standards Act (FLSA) Standard Workweek

In order to increase transparency, ensure best-practice, and assist with compliance, beginning November 1, 2019, all agencies using the official payroll system designated by the state controller will begin transitioning to a new standard Fair Labor Standards Act (FLSA) workweek of Saturday 12:00 a.m. to Friday 11:59 p.m.

What does this mean to you as a state employee?

- If you are an FLSA exempt employee, **not** eligible for overtime, there will be no impact to you.
- If you are an FLSA nonexempt employee, eligible for overtime, you may be impacted if you are currently on a flexible work schedule. If you are impacted, we will be reaching out to you individually with more information and flexible work scheduling options.

We appreciate your service to the State of Colorado and we will do our best to mitigate any impacts.

For more information, please speak with your supervisor, manager, or human resources representative. Thank you.