The Legal Implications of Nontraditional Workweeks

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Competition in the global economy demands efficiency and increased productivity, while time off has become a higher priority for many employees. For these reasons and others, including high gasoline prices and the escalating costs of commuting, more employers are considering or adopting creative work schedules. What some of them are *not* doing is taking a clear-eyed look at the wage and hour ramifications of these arrangements. There are potential pitfalls - under both federal wage and hour law and the requirements and limitations of other jurisdictions - that demand close attention. Employers sometimes believe that they can bypass legal impediments to innovative scheduling by asking employees to agree to the new arrangements, particularly if the employees asked for them in the first place. The FLSA does not recognize agreements that are contrary to its requirements. This is also usually true under the applicable laws of most other jurisdictions. Employers should not expect to defend themselves successfully by arguing that employees approved something that is inconsistent with the law. Most wage and hour requirements were not designed to be flexible or adaptable, or to facilitate the practical concerns of modern-day employers. Instead, they were adopted years ago for a bygone working world. Nevertheless, they remain in force, and an employer is well-advised to fit alternative-scheduling plans into the legal parameters they establish.

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