

IS THE 4-DAY WORKWEEK RIGHT FOR YOUR BUSINESS? TOP 4 THINGS FOR EMPLOYERS TO CONSIDER BEFORE IMPLEMENTING THIS TREND

Insights
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Over the past few years, you've likely weighed the pros and cons of remote and hybrid work arrangements – but have you considered moving to a four-day workweek as a tool for building a top-notch workforce? Recent trends like “quiet quitting” show that employees are increasingly feeling overworked. They may be pushing back against “hustle culture” or searching for opportunities with companies that embrace flexible work arrangements. Employers are being challenged to reevaluate what they consider traditional elements of work in order to keep up with the times, and this now includes the very length of the workweek. Notably, however, the four-day workweek trend — which has garnered significant media attention — isn't about redistributing the 40-hour workweek to four 10-hour days. Instead, under this model, employers would essentially cut a day of work and make the workweek 32 hours without reducing workers' pay. Maybe this sounds intriguing to you, or maybe it sounds completely impractical. Either way, the trend is likely to stick around. What are the pros and cons of a four-day workweek, and what are the top four steps to consider if your organization wants to adopt this new model?

Exploring the Potential Benefits

Let's start with the positive aspects of moving to a four-day workweek. Proponents advocate that the four-day workweek benefits employers and employees alike by promoting employee work-life balance and health, reducing healthcare premiums for employers, and lowering

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operational costs for businesses. A four-day workweek also offers a solution to a number of growing issues in the labor market that COVID-19 may have exacerbated – including employee burnout and retention.

Increased Productivity

Are longer workweeks actually counterproductive? In 2018, the International Labour Organization (ILO) of the United Nations concluded [in its research paper](#) that, “longer hours of work are generally associated with lower unit labor productivity, while shorter hours of work are linked with higher productivity.” In support of this statement, the ILO compared several countries and found that the relationship between the number of hours worked annually per person and labor productivity (measured as GDP per hour worked) was strongly negative.

Similarly, a study in the [American Journal of Epidemiology](#) found that working long hours may have a negative effect on cognitive performance. That is, that those who worked 55 hours per week performed worse on certain mental tasks than those who worked 40 hours a week. So, even though the study explored hours worked over 40 hours per week, the study serves as a great resource for advocates of the four-day workweek when looking for studies to point at that “fewer hours = higher productivity.”

Equal Workplace

Another valid argument in favor of a shorter workweek is the push for an equal workplace. Tools such as a four-day workweek used to reduce class inequality could benefit all workers but could be particularly impactful for women.

[Marketplace](#) reported that more than two million women left the workforce between 2020 and early 2021 — [and many of them left to care for their children](#).

Even without taking the COVID-19 pandemic into account, women remain less likely to participate in the labor market than men around the world. [UN Women](#) conducted research regarding facts and figures of women in the workplace, showing their lower labor participation rate and their disproportionate responsibility for unpaid care and domestic work, such as childcare. These numbers [only increased](#) during the pandemic.

Thus, a four-day workweek could promote an equal workplace as employees would be able to spend more time with their families and find some balance between their work and home commitments.

Competitive Advantage in the Marketplace

As with any trend that's viewed as friendly to workers, employers that adopt the 32-hour workweek are likely to see a boost when it comes to attracting and retaining talent. The competition for skilled workers remains fierce, so anything you can do to stand apart and provide a welcoming working environment will be favorably received in the internal and external marketplace.

Possible Challenges to Ponder

Employers considering adopting a shorter workweek should account for wage and hour laws, compliance with other relevant employment laws (including sick pay laws and ordinances), state-specific considerations, and any applicable collective bargaining agreements (CBAs). Also, you should note that shorter workweeks may not work for everyone.

Wage and Hour Issues

Four-day workweeks present issues for both hourly and exempt employees. For hourly employees, you'll need to address overtime, leave, sick pay, time off, benefits, the effect on part-time employees, and more. This is particularly important for non-unionized employees without a collective bargaining agreement establishing their workweek and overtime requirements.

The Fair Labor Standards Act (FLSA) generally requires employees to be paid 1.5 times their regular rate for all hours worked over 40 hours in a workweek. But with a 32-hour workweek spread over four days, employers could still implicate overtime requirements.

In some states, like California, an employee receives overtime pay after working more than eight hours in a single day – which could lead to unexpected additional labor costs and the need for strict wage-and-hour-law compliance. (Note that the California Legislature **considered a bill last year** to mandate a 32-hour workweek for certain large employers, but the bill did not come close to passing.)

Similarly, sick leave, paid time off, or vacation plans may be affected by a four-day workweek. Generally, laws allow businesses to develop their vacation plans, but businesses are often bound by their handbooks – so vacation plans should state exactly what time off is provided to employees. In some states (again, like California), employers that provide paid sick leave using an accrual method other than one hour for every 30 hours worked must ensure that employees have 24 hours of paid sick leave by the 120th day of employment. A four-day workweek would then possibly decrease the chances of employees accruing 24 hours of paid sick leave by the 120th day of employment even by taking just a few days off.

On the other hand, treatment would be different for exempt employees. Back in 2016, we published a [Legal Insight](#) explaining the FLSA definition of “workweek” for exempt employees. FLSA’s recordkeeping regulations do not require the same workweek for both non-exempt and exempt employees. And, because exempt employees are not eligible for overtime pay, a four-day workweek should not present any major problems. However, make sure you consult with your employment lawyer about this possible change.

Proper Compliance with Other Employment-Related Laws

Just like with wage and hour laws, a four-day workweek may present issues in other employment laws, especially when it comes to discriminatory practices.

Under the American with Disabilities Act (ADA), there is a risk that a compressed workweek may come with negative consequences for some employees with ADA protections. For example, some employees that experience fatigue or weakness may require shorter days. Or, some employees may not be able to perform at a higher productivity level in order to accomplish company goals in 32 hours a week instead of 40.

Similarly, under the FMLA, four-day workweeks may cause issues surrounding absenteeism and retaliation. With a shorter four-day workweek, absenteeism, sick leave requests, or leaves of absence may become more apparent to supervisors or managers, leading to stricter — and possibly unfair — standards regarding FMLA leave. Without proper training for a four-day workweek, managers and supervisors could accidentally retaliate against some employees.

Labor Issues and Collective Bargaining Agreements

Labor unions are beginning to make the case for even less work for their workers. In 2019, the [AFL-CIO](#) (the largest federation of labor unions in the U.S.) released a report on the Future of Work and Unions focusing on methods for employees to take advantage and benefit from ever-evolving technology. The report explores how artificial intelligence and other new technologies have generated the interest in a “leisure dividend” allowing for the reduction of overall work hours with no reduction in pay for workers.

What about collective bargaining agreements? While it is true that the FLSA established the 40-hour workweek, work hours can be reduced by bargaining for a four-day workweek, establishing minimum work hours for issues regarding insufficient work, and even pay or other wage and hour issues like overtime pay.

In 2014, the California Court of Appeal [concluded that](#) when there is a valid CBA, “employees and employers are free to bargain over not only the timing of when overtime pay begins within a particular day, but also the timing within a week.” And labor unions may argue that a holding such as this one may be valid for purposes of a 32-hour, four-day workweek without a reduction in pay. Furthermore, the FLSA requires employees to be paid at an overtime rate for all hours worked over 40 hours in a workweek. And assuming a CBA provides for overtime compensation for all hours worked over 32 hours in a workweek (instead of 40), then such CBA would be valid under the FLSA.

The issue is, however, that both employers and unions have to consent to the change, triggering negotiations on other unrelated issues. So, if you have a unionized workforce and are considering a 32-hour workweek, you should coordinate with your labor counsel before advancing any changes.

It Just Won't Work for Everyone

Lastly, the reality is that shorter workweeks may not work for everyone. Four-day workweeks and their limited hours may result in higher employee costs or lower quality of service. For example, the Washington State Legislature proposed [SB 6516](#), advocating for a 32-hour workweek. The bill also required employers to pay overtime for all hours worked over 32 hours at time-and-a-half. While this may sound great for employees, there is still a problem:

Implementing a four-day workweek may cause employers to increase wage costs by at least 12% and businesses may be forced to raise prices on consumers or lay off employees.

Thinking About Implementing a Four-Day Workweek? 4 Things to Consider

After reviewing all of the arguments for and against a four-day workweek, is your company still thinking about implementing a shorter workweek? If so, we compiled a list of four key things that you and your company should think about before making it official. And remember, if the idea is attractive but you find it intimidating, you shouldn't worry. There is no need of a full commitment right at the outset. Instead, consider a test-drive, see how your workers react, and evaluate productivity levels. Then, go from there.

- 1. Monday: Clarify the meaning of a 4-day workweek and its intent.** Make sure your workers understand what your company means by implementing a four-day workweek. For example, you may want to clarify that this new policy is not another way of saying 4×10 (which is still 40 hours per week), but instead that you are implementing a workweek of only 32 hours (four eight-hour days). Further, make sure you communicate with your workers about the intent of this new policy. Do you want to create a more inclusive workplace? Do you want to increase productivity? Do you want to change company hours? The cliché of "communication is key" has never been more appropriate.
- 2. Tuesday: Consider wage and hour issues.** As discussed above, the possibility of wage and hour violations should immediately come to mind when considering a four-day workweek. This is even more important in states like California that have daily overtime requirements. Before you implement a shiny and new four-day workweek policy, consult with your employment counsel about the possible ramifications at the state and local levels.
- 3. Wednesday: Consider the impact on your customers.** Is your business dependent on customers that walk in and out of the door on a daily basis? If so, remember to consider the impact of a shorter week. Make sure you establish policies and conditions regarding flexibility to accommodate operational demands, peak business periods, and customer needs. You may also want to

consider staggering work schedules — like you may do for part-time workers.

4. Thursday: Education, communication, and training. You should also speak with your employment counsel about educating and training your workers. You'll likely need to change your employee handbook and provide an update to your top senior leaders and the Human Resources department. Most importantly, supervisors and managers need to be properly trained in order to avoid any liability.

Conclusion

Implementing the four-day workweek may yield benefits for your organization, but with so many potential traps, this decision should not be made lightly. Moreover, regardless of your location, you should consult your employment counsel before rolling out a new policy. If you have further questions, contact your Fisher Phillips attorney or the author of this Insight. We will monitor developments related to this trend and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox.