

LBAEE

December 2023 News

LBAEE Members Overwhelmingly Approve New Contract!

Last month, LBAEE membership overwhelmingly approved the Tentative Agreement your bargaining team reached with the City. 134 members voted in favor of approving the Tentative Agreement, and 11 voted against it. Membership also voted to approve the small dues increase.

Thanks to everyone who attended last month's membership meeting to discuss the Tentative Agreement. As always, your ongoing feedback is critical to getting the best MOU possible. We also enjoy having the opportunity to answer your questions and address your concerns.

The Tentative Agreement went before Council on December 5, 2023. "Motion to adopt resolution approving the 2023-2026 Memorandum of Understanding (MOU) with the Association of Engineering Employees (AEE) was carried by City Council."

You will get your general wage increase retroactively to November 18, 2023, and your equity adjustment retroactively to December 2, 2023.

Your bargaining team The team – Jason Rodriguez, Henry Corzo, Chris Sanatar, Jennifer Williams, Juan Arias, Tai Vu, Jorge Castillo, Dillon O'Donohue, and Giancarlo Moral – put in countless hours to secure the best contract possible for members. We hope you will thank them for their efforts.

Thanks for your support!

Alternate Work Schedules

Alternate Work Schedules (AWS) are common for local government employees in California. They have been around for decades. Employee organizations frequently make them a big priority when negotiating a new labor contract, or memorandum of understanding (MOU). Since COVID-19 began, interest in a four-day workweek has surged. As workplaces continue to adapt, employees and applicants have shown renewed interest in having more flexibility over work schedules. One size does not fit all. This month, we look at some important considerations regarding alternate work schedules.

Types of Alternate Work Schedules: The “traditional” schedule is what is referred to as the 5/40 (five days / forty hours per week) or 5/8 (five eight-hour days per week). The terms can be used interchangeably and refer to the same thing. An employee works five eight-hour days each week (typically Monday through Friday) for a total of forty hours. Most employees are familiar with and have worked this schedule before. An AWS is anything other than the traditional five eight-hour days per week schedule. Schedules common amongst California public employees are:

- 4/10 – Four ten-hour days each week. This is typically Monday through Thursday, or Tuesday through Friday. It may overlap with others in the same work group, so that Monday and Friday have lower staff levels, but Tuesday through Thursday are fully staffed. This schedule became common with maintenance and operations staff, who often need longer hours (or earlier start times) for various projects.
- 9/80 – Eight nine-hour days and one eight-hour day in an 80-hour two calendar week period. This is typically nine-hour days Monday through Thursday, with an alternating Friday off. The alternating Friday worked is an eight-hour day. The short day (or alternating day off each week) does not have to be a Friday. It can be any day of the week. Monday is also common. It is typically referred to as the employee’s 9/80 day. Sometimes everyone has the same 9/80 day (e.g., administrative offices closed every other Friday). In other cases, employees have different 9/80 days (and service hours do not change).
- 3/12 – Three twelve-hour days each week. There is also typically either a four-hour shift every week, or more commonly, one eight-hour shift every other week. Police dispatchers and other staff who need to be available round the clock (twenty-four hours, seven days a week) often have a 3/12 schedule.

Employers and employees cite the benefits of AWS, which may include:

- Better work-life balance.
- Less commuting and lower carbon footprint.
- More flexibility when scheduling medical appointments, childcare, and other personal appointments.
- Supports recruitment and retention.
- Increased productivity, performance, and morale.
- Expanded service hours and lower energy and operating costs.

The Utah Experiment: In 2008, amid surging gas prices, the State of Utah became the first state in the nation to mandate a four-day workweek for state employees. It decided to close offices on Fridays. It moved state employees to a 4/10 schedule. It was an experiment to determine if the four-day workweek saved the State money. It did, though the source of the real savings came as something of a surprise! The State had anticipated saving millions in energy and maintenance costs by closing buildings, but it saved less than a million. The surprise savings occurred in labor costs, particularly overtime. When employees work a four-day week, they can be more productive for the time they are at work, less likely to need to work overtime, and appear far happier. A spokeswoman for then-Governor John Huntsman said, “they’re getting what they need to get done in 10 hours and going home.” More states and local governments have experimented with the four-day workweek ever since.

Shift Towards a Four-Day Workweek: Private companies, too, have moved to a four-day workweek. For example, Panasonic and Microsoft experimented with a four-day workweek in Japan. Microsoft found production jumped 40% reportedly due to staff returning to work refreshed, less stressed, and with improved morale. Lockheed Martin implemented a 4/10 schedule and now 70% of its U.S. workforce is on some variation of a 4/10. Nearly 3,000 workers in the United Kingdom at 61 companies completed a six-month pilot program of the shortened week from June through December 2022. Businesses reported improved productivity, revenue, morale, and team culture. Individuals saw benefits in their health, finances, and relationships. More than 900 workers across 33 businesses in the U.S. and Ireland did the same program. None of those businesses report returning to a five-day model.

These case studies on shorter workweeks show positive outcomes, including large improvements in worker well-being, stress, and burnout, without any meaningful decline in productivity. This is backed up by the survey data. A survey released by Gallup last month found 77% of U.S. workers said a 4/10 work schedule would have a positive impact. The next-highest marks went to employers offering a set number of paid mental health days (74%) and limiting the amount of work employees are expected to do beyond the regular workday (73%). A poll conducted by Marketplace-Edison Research found that nearly two-thirds of workers prefer a 4/10 schedule over a traditional schedule, and the preference was even higher for men and workers older than 35. Another recent survey found Generation Z views flexibility in work schedules as more important than health benefits when evaluating job opportunities.

Not everyone favors longer hours, particularly working parents. Depending on the start and end time of shifts, a longer shift can pose challenges for workers who have childcare responsibilities and cannot begin work until after dropping kids off at daycare or school, or who need to pick them up early. Also, some workers do not like working longer days because they can be grueling, even though they still report liking the additional day off. Ideally, a schedule policy should be flexible and provide an exception for anyone whose personal needs may require shorter hours. The ability to choose a schedule that suits their lifestyle is what is most sought after by workers today.

Legislation for Shorter Workweeks: Earlier this year, legislation was introduced in Congress to move to a four-day workweek. Representative Mark Takano reintroduced his Thirty-Two-Hour Workweek Act, which would have officially reduced the standard definition of the workweek from 40 hours to 32 hours in the Federal Fair Labor Standards Act (FLSA). His proposal would mandate overtime pay for any work done after 32 hours. Takano first introduced the bill in 2021. In 2022, two assembly members introduced a similar bill in Sacramento that would have amended the Labor Code Section 510 to require overtime pay for hours worked over 32 in a workweek. Neither bill became law.

Re-defining the FLSA Work Period: The FLSA states that hourly employees must receive overtime pay for hours worked over forty per workweek at a rate not less than one and one-half times the regular rate of pay. The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days off unless it results in the employee working more than forty hours that workweek. Implementing an alternate work schedule may require re-defining the FLSA work period. Under the FLSA, an employer can define the work period as any fixed and regularly recurring period of 168 hours over seven

consecutive 24-hour periods. It does not have to coincide with the calendar week. It can begin on any day and any hour of the day. The employer cannot change this designated period to avoid paying overtime, but it can establish different work periods for different employees or groups of employees. For example, for those on a 9/80 work schedule, the employer might set the FLSA work period as starting half-way through the eight-hour day, so the total hours worked in any regular workweek is 40 hours. Doing so is legal and helps avoid having to regularly pay overtime during the calendar week where employees work 44 hours on a 9/80 schedule. The 3/12 schedule may also require redefining the FLSA work period to avoid automatically having to pay overtime every other week when employees work 44 hours.

Addressing the Impact on Public Services: During negotiations over an AWS, management often responds that the elected officials do not want to reduce services to the public. This is a common misunderstanding. Public agencies that have implemented an AWS have learned that there are ways to staff services that do not require closing public offices one day a week. Some operations are already successfully staffed outside of normal business hours (*e.g.*, police and libraries). Even if elected officials do decide to close one day a week, the expanded service hours on the remaining open days are often well received by residents. For example, an earlier opening or later closing might allow residents to get service when they would not otherwise be able to come in during the day. Implementing an AWS may require addressing the misunderstanding about how public services are affected.

Changes to Work Schedules are Negotiable: The Myers-Milias-Brown Act specifically identifies “wages, *hours*, and other terms and conditions of employment” as within the scope of representation. (*Gov’t Code §3504*) (emphasis added). Other state bargaining laws include similar language. The word “hours” is construed broadly, including:

- The hours of work on particular days.
- Distribution of workdays in a week.
- Days worked per year.
- Shift schedules.
- Breaks and duty-free time during the day.
- Special duties and extra hours assignments.
- Scheduling changes that limit or reassign overtime opportunities to others.
- Modification of hours of a vacant position.

The word “hours” is not limited to the total number of working hours required of employees. It includes what days of the week and hours of the day are to be worked. (*San Jacinto Unified School District* (1994) PERB Decision No. 1078). The decision to change work schedules, workweeks, or the number of hours per day assigned to employees, and the effects thereof, are negotiable subjects of bargaining. (*Pittsburg Unified School District* (1982) PERB Decision No. 199).

In *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal. 3d 608, the California Supreme Court unanimously held that a “maximum hours” proposal made by the fire fighters union was within the scope of representation under the MMBA. The fire fighters wanted a maximum of 40 hours per week for those on eight-hour shifts, and 56 hours per week for those on 24-hour shifts. The Court rejected the city’s argument that the proposal involved the “organization” of the fire service, a subject specifically excluded from the scope of representation under the MMBA. The Court held that a “maximum hours” proposal is negotiable. (12 Cal. 3d at 617-618).

In *San Jacinto Unified School District* (1994) PERB Decision No. 1078, the state Public Employment Relations Board (PERB) said that the district violated state bargaining law by unilaterally changing its established policy regarding work schedules of maintenance and grounds employees assigned to work home football games in the fall of 1992. The labor contract did not specify a particular shift or work schedule for maintenance and grounds employees, but there was an established policy for these employees. They worked either 7 am to 3:30 pm or 6 am to 2:30 pm with a one-half hour uncompensated lunch break. During football season, the employees volunteered to work home football games as overtime assignments beyond their regular eight-hour workday. PERB said the district could not change the hours on game days to 12 noon to 9 pm, and make the assignment mandatory, without first giving notice to the employee organization and providing an opportunity to bargain over the change before implementing it.

It is common to find language about changes to work schedules in the MOU or work schedule policy. A common clause is one that allows management to retain the right to change schedules but must give employees a certain amount of advance notice before making any changes. Sometimes, a specific schedule is guaranteed (*e.g.*, the 4/10 workweek schedule), but management retains the right to change how that schedule is administered. Management does not have to bargain if it simply follows what the policy says and what has been agreed to. However, management must bargain with the

employee organization if it wants to change the policy, change any agreed-upon terms, or implement a new policy.

Conclusion: Check your local policy or MOU to see what work schedules may be available and how to go about requesting a different one. If your employer changes your work schedule without giving the proper notice, or violates your policy or MOU, contact your professional staff for help with enforcement. In the near future, the terms “traditional” and “alternate” may be history.

News Release - CPI Data!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

3.2% - CPI for All Urban Consumers (CPI-U) Nationally

3.3% - CPI-U for the West Region

2.4% - CPI-U for the Los Angeles Area

2.8% - CPI-U for San Francisco Bay Area

4.9% - CPI-U for the Riverside Area (from September)

4.7% - CPI-U for San Diego Area (from September)

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.

Question: The City is making code enforcement officers work a food vendor sweep and not paying them overtime. According to our commander who is not running the sweep he heard from upper management that the City is making the staff flex their schedules for this coming

Thursday's sweep and that the City will not pay us overtime. We have not been notified by the head of the department regarding this matter. We only received an email stating that we have a sweep and who is available. In our last meeting, we were told that this could be

a nightly sweep and that it would be overtime. Can the City do this?

Answer: The City should not be directing you to flex your time unless there is a policy or MOU provision that allows for it. Typically, “flexing” is offered to employees who are exempt from overtime pay under the Federal Fair Labor Standards Act (FLSA). For those who are eligible for overtime pay, which includes code enforcement officers, you should receive the overtime pay or be able to bank the hours as compensatory time off. Once banked, it is the employee’s right to decide when to use the time, but the employer can deny a request to use compensatory time off based on operational necessity.

If the City wants to change work schedules, they must comply with any MOU language or policies on changes to work schedules, which often requires advance notice (for example, two weeks), and may require meeting and conferring with the employee organization first. Also, although the City may be able to change work schedules consistent with the MOU, it cannot change the FLSA-designated work period to avoid paying overtime.

Review your MOU and policies on flexing, overtime, and work schedules, and contact professional staff if you believe there has been a violation, and you need help enforcing your right to overtime pay. If the City does propose to change work schedules, contact your employee organization, who can request to meet and confer over the City’s proposal. You can also contact your department head or Human Resources for confirmation as to whether the City will provide overtime pay for these sweeps.

Question: What are the terms regarding teleworking when there is a written policy in place versus when there is no written policy? For example, who can telework? Who decides? Can we request to telework permanently? Is there any state law information that applies to general law cities? It does not seem like remote work is being approved equally in our workplace.

Answer: Public agencies have a lot of leeway when it comes to teleworking. During the pandemic, all public agencies in California had to temporarily transition all non-essential employees to remote work. Now that the emergency order has been lifted, public agencies are no longer required to provide telework, although

many have continued and updated their telework policies ever since.

Other than those public health orders, there is no state or local law that specifically governs teleworking. Instead, remote work is determined by your MOU and employer policy. If there is nothing written, your employer is not required to offer telework. If there is a written policy or directive, review it carefully. Most policies give the employer the ability to decide who can or cannot telework. The policy should identify who gets to make this decision (for example, the department head, in consultation with Human Resources or top management) and based on what criteria (like operational need).

The employer cannot discriminate against employees based on protected categories such as race or gender. Because an employer must reasonably accommodate employees with a disability, and that may include temporary or partial work from home, a coworker may be allowed to work from home for this reason when others in the office are denied telework.

Other than that, if your employer follows the written policy, it probably can decide who teleworks on a case-by-case basis. If

your employer offers telework and there is nothing written, your employee organization can ask HR for clarification on the criteria used in deciding eligibility.

Question: I received an email the Thursday before the hurricane was expected to hit that Sunday. It said I am being placed on standby and must be available to respond if called. Do I get standby pay? Our Administrative Services Director said no because I am a disaster service worker. Is that correct? I can see if there was a big earthquake or something unexpected, but if it is something that we know is coming in advance, does that still fall under the disaster service worker? Our regular standby pay is for maintenance staff who rotate standby assignments, and it is stated in our MOU. Those on standby are called out after hours for tree limbs that fall. They get standby pay during their assigned week and overtime pay if called out. Does this apply to me?

Answer: Your Administrative Services Director is correct that you are a disaster service worker. All public employees in California are considered disaster service workers under the California Emergency Services Act. This means you may be required to work outside of normal hours and your normal job duties to assist in an

emergency, like a hurricane. Often, there is a public declaration of a citywide emergency first.

The fact that you are a disaster service worker subject to callout in such cases does not normally change how you are paid. In other words, the fact that you could be asked to work outside of normal hours does not mean the employer can put you on standby without compensating you. If the employer is placing restrictions on your off-duty time, such as requiring you to respond in work-ready condition and within a short period of time after getting a call, then you are being placed on standby and you should get standby pay. If you are on standby and get called back to work, and you are eligible for overtime under the FLSA, you should also get overtime pay for all hours worked.

If your MOU provision or standby policy is limited to specific job classifications and your position is not listed, the employer can still ask you to be on standby, but it should first provide notice to the employee organization and an opportunity to negotiate prior to implementing. The Association can propose additional pay for those who are being placed on standby, and for exempt employees when called back to work. If

the City acts unilaterally and forces you to be on standby without pay, contact your employee organization, who can request to negotiate or evaluate the merits of an unfair practice charge.

Question: The City recently hired a new Director, and ever since, he's been hiring consultants and contractors to assist with the Department's workload. He asked staff to identify our workflow and project management so contractors can assist as needed. It seems our new Director and the City are trying to contract out our jobs. Should I be worried? What can I or the employee organization do to help protect our permanent full-time staff from being contracted out by this new Director? What protections do we have?

Answer: The most immediate step that your employee organization can take is to request a meeting with the City about their plan to use contractors and consultants to perform bargaining-unit work. Your employee organization is entitled to know if the City is only planning to use these contractors for a short period of time, or if it is permanent. Your employee organization should ask for clarity and specificity on what role these contractors and consultants will play in the department, so that there are

clear delineations between the work handled by employees, and that handled by outside contractors, if any.

Once it has this information, your employee organization can request to meet and confer with the City over contracting out and a policy governing the use of independent contractors. Securing a written policy with a specific duration and scope over how and when independent contractors are used is an important step in providing job security for City employees. This will help prevent the City from replacing employees with contractors, who are not subject to the pay, benefits, and working conditions of the negotiated MOU. If the City refuses to provide information or to negotiate, or if it makes clear that it does intend to fill bargaining unit positions with independent contractors, your employee organization has options.

The employee organization can file a grievance. This is ordinarily a good initial step before escalating the matter. Some grievance procedures may even provide for an independent arbitrator or hearing officer to issue an advisory or binding decision on the dispute.

Another option could be an unfair practice charge with PERB. This is often

called an “erosion-of-the-bargaining-unit” claim. PERB can order the City to cease and desist from all contracting out of bargaining unit work until the City exhausts the good-faith bargaining process, including any impasse procedures, such as factfinding.

The employee organization can help the members in their efforts to take the issue directly to the City Council and push the elected officials to oppose contracting out. Residents are often supportive of staff, and do not want to see a reduction in the quality of City services. Unfortunately, that often turns out to be the case when jobs are contracted out, especially if the City’s motivation is cost savings and not because of the specialized nature of the work. Residents do not like giving up control over how core services are performed or delivered. Contact your employee organization first, before going to elected officials or residents, so they can evaluate the best approach. There may be better ways to resolve the staffing need without the permanent loss of bargaining unit jobs.