

POORLY-PLANNED POLICY CHANGES CAN BE WORSE THAN NO CHANGE AT ALL

Many companies are starting to let their employees work the same 40-hour workweek, but on a schedule of four ten-hour days instead of five eight-hour days. The reason is obvious: current gas prices are taking huge chunks from their employees' paychecks and this is a way of lessening that impact.

It seems to be a classic win-win situation: the employee saves money and also reduces the carbon footprint, and the employer does not have to pay anything extra for this "perk." If this change is merely offered but not required, it provides employees with even more choices – those living further away are more apt to choose the four-day weeks, while those living closer may decide to stay with the original schedule.

As with any workplace transition, however, such a move should not be taken without carefully considering the possible ramifications. For example, last week we illustrated how a four day workweek schedule might impact the daily breaks and meal periods employers must provide. This week, we will discuss how such a change (or any major workplace change, for that matter) might lead to confusion and conflict about employer-provided benefits.

Employers are not obligated to provide benefits such as paid vacation or health insurance to their employees. Many do so, however, in the hope of attracting and maintaining good employees. For example, a typical vacation policy might state, "Employees will earn one day of vacation pay for every month of work."

That sounds pretty clear, and there would probably be no problem if every employee continued working eight hours a day. But in the above scenario, employees doing exactly the same work may now start working different hours, and it may be natural for them to assume that a "day" meant the same as their current workday.

Of course, the result would be that those working the ten-hour days would be earning two hours more of vacation per month than the eight-hour a day employees. And although that may seem like a minimal difference in dollars, the more serious problem is that an inequitable system is being established, with an increased chance of dissatisfaction and possible litigation. That litigation might take the form of a civil rights complaint (which would likely be unsuccessful, since the distinction does not seem to be based on a protected class) or a "breach of contract" action, claiming that the employer is incorrectly interpreting its own policy. It is also pretty unlikely that this claim would be successful.

However, instead of dealing with unhappy employees and possible legal claims, the employer could have done something much easier and more equitable when it made the decision to allow employees to work these different schedules: the employer could have simply decided to change the way future vacation is earned from "days" to "hours." That way, everybody would get the same amount of benefits, no matter how much their work schedules might vary. This ensures both flexibility and equality, which in turn is likely to ensure a more productive workforce.

For more information on this and other issues affecting Oregon employers, join Technical Assistance for Employers at an upcoming seminar: Wage and Hour Laws in Bend on July 22; Effective Supervisory Practices in Redmond on July 23 and Salem on July 29; Advanced Leave Laws in Portland; and Complying with Crime Victims Leave in Eugene on July 23, Salem on July 24, and Ontario on July 29. For more information and registration instructions, visit the website at www.oregon.gov/BOLI/TA or call 971-673-0825.