

Implementing A Four-day Workweek: Legal Issues For Employers To Consider



So you're having trouble finding and retaining top talent. Offering hybrid or remote work doesn't work for you – or maybe it isn't enough to keep competitive in this tight job market. You're also hearing reports of employee burnout and have seen first-hand that the pandemic is causing employees to re-evaluate their work-life balance.

Several of your employees have asked about the possibility of a four-day workweek – which seems to be all the buzz these days for self-reported progressive workplaces. Some employers have already implemented a four-day workweek. Many others worldwide are currently engaged in trials to test out whether a four-day workweek could be an effective strategy to remain competitive, attract and retain talent, reduce overhead, improve employee wellness and possibly even increase productivity.

You do your research. You consider the various pros and cons. From a business perspective, you think that a four-day workweek could be a good solution for your organization.

But what are some potential legal issues that you should consider?

The legal issues largely stem from the type of four-day workweek implemented.

A true four-day workweek is based on the premise that employees receive 100% of their pay, for 80% of their time, in exchange for 100% productivity. This is known as the 100-80-100 rule. Rather than a 40-hour workweek, the employee works a 32-hour workweek, but still receives their full salary and benefits provided there is no loss in productivity by virtue of the reduced hours.

This is different from a four-day workweek where employees work the same number of weekly hours – over four instead of five days – for the same pay and benefits. Rather than working five 8-hour workdays, the employee works a compressed work schedule of four 10-hour workdays. Compressed workweeks tend to be more common where productivity is materially impacted by reduced working hours and, as such, it would not be feasible for employers to continue to pay 100% for 80% productively.

Of course, a third four-day workweek option is where employees work reduced hours, have reduced productivity and are paid accordingly.

Could the four-day workweek trigger a constructive dismissal?

Possibly yes. Not all employees may be keen on a four-day workweek if they feel pressured to maintain the productivity of a five-day workweek or are required to work 10-hour workdays to be paid their full compensation, or are otherwise paid 20% less compensation to align with their reduced working hours.

A constructive dismissal occurs where an employer makes a unilateral and material change to a fundamental term of the employment relationship. Strategies to avoid or reduce these risks include obtaining employee agreement (i.e. making the change optional) and providing reasonable advance notice of the change.

Could the four-day workweek create overtime obligations?

Possibly yes for compressed workweeks, depending on province and employer policy.

[Ontario's Employment Standards Act, 2000](#) does not have a daily overtime limit (e.g. overtime required after working more than 8 hours/day). However, there are daily overtime requirements for non-exempt employees working in British Columbia, Alberta, Manitoba, Saskatchewan, Yukon, Northwest Territories and Nunavut.

Employers should also be mindful of their own overtime policies that may provide a "greater right or benefit" to the applicable employment standards. If such policies provide for daily overtime and this is not intended to continue for employees working compressed workweeks, it is important that the overtime policies be changed and clearly communicated to the impacted employees.

Could the four-day workweek create human rights issues?

Possibly yes. Working 10-hour days, or maintaining the same productivity of a five-day workweek over a four-day workweek, may be too gruelling for employees with certain medical conditions. Working 10-hour days may also be unfeasible for employees with childcare or eldercare responsibilities.

In either situation, it is imperative on the employer not to ignore an employee who claims to be unable to work the new four-day workweek for such reasons. Since these reasons are protected grounds under applicable human rights laws (i.e. disability and family status), the employer needs to conduct a proper assessment of its duty to accommodate and will need to provide any legally-required accommodations, up to the point of undue hardship.

Could the four-day workweek impact benefit entitlements?

Possibly yes. If your four-day workweek has employees working reduced hours, you need to check with your employee group benefit provider that the reduced working hours will not disqualify or otherwise reduce any of the coverages for the impacted employees.

Also keep in mind that, under certain government employee benefit programs like employment insurance, eligibility or even benefit entitlement is calculated on the basis of hours worked – using 40 hours as the "standard" working week.

In brief, if you're telling employees that their new four-day workweek will have zero impact on their benefit entitlements, make sure you are right! Otherwise, you risk your business becoming the self-insurer of those benefits if your representations are wrong.

Will there be any restrictions on what employees can do on their third day off each week?

It's up to you! If an important reason for changing to a four-day workweek is to provide employees with a third day off each week to rest, rejuvenate and spend time focused on family, friends and other non-work commitments, then you likely don't want your employees picking up a side hustle (i.e. working elsewhere) on that third day off. On the other hand, if employee compensation has been reduced under your four-day workweek, employees may be working elsewhere on that third day off for financial reasons and, in this situation, you should have less concern.

Either way, it is important that you set expectations at an early stage about what they can and cannot do on their third day off.

Can you discontinue the four-day workweek in the future?

Again, this is all about setting expectations at an early stage.

Before adopting a four-day workweek on a permanent basis, there should ideally be a reasonable trial period (e.g. 6 months) for the employer to test out the feasibility of the four-day workweek model being considered. The impacted employees should know that this is a trial only and, furthermore, that the trial period can be shortened or extended by the employer upon some reasonable amount of advance notice (e.g. 4 weeks).

Similarly, once the trial period ends, if the employer decides to stay with the four-day workweek going forward, it is important that the employer makes it very clear to the impacted employees (including all new hires) that the employer may, at any time in the future, decide to change or even discontinue the four-day workweek, upon some reasonable amount of advance notice.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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