

Steps to Implement a 9/80 Compressed Work Schedule for Nonexempt Employees

One type of compressed schedule is colloquially called a 9/80 pay plan. Under this arrangement, the federal Fair Labor Standards Act workweek and the schedule for nonexempt employees are set so that the employees work:

- Nine days in a two-workweek period; but
- Not more than 40 hours in either workweek.

Under a typical 9/80 arrangement, the nonexempt employee works four nine-hour days, followed by an eight-hour workday day that is split into four-hour portions by the midday ending of the first workweek, and then works four more nine-hour days in the second workweek. The key is that the employee's workweek ends during the eight-hour workday, causing the first four hours worked that day to fall into one workweek and the remaining four hours worked that day to fall into the next workweek. In this way, the employee's hours worked in each workweek do not exceed 40.

Setting up a 9/80 for hourly or nonexempt employees isn't difficult, but does require some consideration. Because of the legal requirement to pay overtime after 40 hours worked in a workweek, there are a number of technicalities that must be met. The Fair Labor Standards Act (FLSA) requires that special procedures be followed when a nonexempt employee begins, changes, or ends a 9/80 schedule to determine if any overtime must be paid.

Note: There is no federal law that requires breaks or lunch periods; these requirements are determined at the state level. Your company may also have a policy requiring full-time employees to schedule a minimum of a half-hour lunch break each day as well as two rest breaks.

Exempt Employees

Since there is no limitation on the hours worked by an exempt employee, and no overtime pay is required by law, there are no special procedures for beginning such a schedule. The exempt employee can begin working the new schedule at the beginning of any pay period. No change in the workweek is required, and it is not necessary to split the flex day or keep any special records.

Glossary of Terms

Here are a few terms that will be used throughout this guide.

- The **9/80 compressed work** schedule is working eight days of nine hours, one day of eight hours with the 10th day off (flex day) in a two-week period.
- The **calendar week** is Sunday through Saturday.
- The **workweek** is a seven-day (168 consecutive hours) period that is established to calculate overtime. It does not change from week to week. It could be the same as the calendar week, but it doesn't have to be.

Steps to Implement a 9/80 Compressed Work Schedule for Nonexempt Employees

- The **work schedule** is the schedule of hours that an employee is actually expected to work. The schedule may change from week to week and can be whatever combination of hours that the employer needs or requires the employee to work.
- The **flex day** is the day that the employee is off every other week.
- The **short day** is the eight-hour day of the 9/80 schedule.

10 Steps to Establishing the New Workweek

A new 9/80 schedule may begin in any week but must be started at the beginning of a pay period to maintain the number of hours worked at 80 hours. A change in the workweek, special procedures, and special record keeping are required when a nonexempt employee is placed on a 9/80 schedule.

The work schedule must be started at the beginning of a pay period. The best time to start the schedule is during any pay period that contains a holiday, especially if the holiday falls during the first week of the pay period.

Step 1: Select the employee's "flex" day. This day should not be changed, switched, or traded as it can result in overtime. Making such a trade would automatically create overtime in one of the workweeks.

Step 2: Calculate the workweek. For many organizations, the workweek for calculating overtime is the same as the calendar week: it begins on Sunday at 12:01 a.m. and ends on Saturday at midnight every week. You can begin a workweek in the middle of the day of the week that is the employee's flex day. This is the period that will be used to calculate whether overtime is worked from now on. The workweek will no longer be the same as the calendar week.

Note, the following rules apply to calculating wages when changing workweeks: When the FLSA workweek is changed, the period in which the conversion occurs typically involves hours worked falling within, or overlapping, both the new and the old workweeks. As an enforcement policy, the U.S. Department of Labor will deem wages to have been paid properly if the employer uses a particular computation method:

- Assume that the overlapping hours were worked in only the "old" workweek, compute FLSA straight-time and overtime pay due for each of the workweeks, and then total the sums;
- Perform the same calculation assuming instead that the overlapping hours were worked in the "new" workweek; and
- Pay the employee the greater of the two totals.

Step 3: To determine when to start the new workweek, start with the flex day and count backward the hours scheduled for each day in the new 9/80 schedule until you reach 40

Steps to Implement a 9/80 Compressed Work Schedule for Nonexempt Employees

hours. This will be in the middle of the same day of the week as the flex day. Be sure to allow for a lunch period on that day. This will be the starting time of the new workweek.

Step 4: The new workweek will overlap two pay periods. It may be the supervisor's responsibility to monitor the work schedules to determine and record if an employee works any overtime. Payroll may not be able to determine whether overtime is worked because the workweek overlaps two time cards or timesheets.

Step 5: Time is still reported to Payroll based on the regular two-week pay period. Overtime worked will be reported in the pay period in which it is worked.

Step 6: The new workweek should be established at least one week before the employee actually starts working the 9/80 schedule. Because the new workweek begins in the middle of the calendar week, there will be a partial week in between the last full calendar workweek and the new one.

If the 9/80 workweek is established at least one week before the employee actually begins to work the 9/80 schedule, then the special procedure required by FLSA is met.

Step 7: If the employee takes a sick or vacation day on a regularly scheduled nine-hour day, nine hours of leave must be recorded.

Example: If the employee is off work for the entire week that normally has the flex day in it, and she is scheduled for four nine-hour days that week, then 36 hours of sick or vacation time is recorded. If she is off for an entire week and is regularly scheduled to work four, nine-hour days and an eight-hour day that week, then 44 hours of sick or vacation time are recorded.

Step 8: If a holiday falls on an employee's flex day, the employee will be given another day off during the pay period, usually either the day before or the day after the holiday.

Step 9: The holiday is an eight-hour day. If the holiday does not fall during the same workweek as the employee's regularly scheduled eight-hour day, an hour must be made up during the holiday week. This can be done in one of several ways:

- Work an extra hour on one other day
- Work an extra half hour on two other days
- Take an hour of vacation time
- Take an hour of voluntary leave without pay

Step 10: A record of the new schedule and the new workweek must be kept with the Office Manager or Human Resources Representative.

Note: Prior to adoption, also check individual states as state laws may differ in terms of specific overtime provisions. Notably, California law has extensive requirements for adopting alternative workweeks.