

Alternative Work Schedules (AWS)

Hello NWP Members and Rep;

Welcome to LR Chronicles number 30. As promised in the last edition of the LR Chronicles, this edition will explain what you need to know regarding all aspects of AWS. I will explain definitions of AWS, what regulation of the FAA cover AWS, what is needed by you in order to negotiate AWS for your facility, and give you some case law from the FLRA that will assist you in determining negotiable proposals for AWS. Please keep in mind, as you read this edition, that NATCA recognizes our ONLY collective bargaining agreement (CBA), that being the “Green Book.”

The Office of Personnel Management (OPM) has specific guidelines to be followed by agencies regarding all aspects of AWS. However, since the FAA has their own Personnel Management System (PMS), as authorized by FAA Personnel Reform in 1996, they are free to accept or reject the OPM guidance regarding AWS. However, the agency MUST comply with our CBA regarding any negotiated aspect of Basic Watch Schedules (BWS), including, but not limited to AWS. Therefore, I will mainly concentrate on what appears in our CBA and what appears in FAA regulations regarding AWS, considering the fact that our CBA is determined to be a valid exception to and will override any FAA regulation.

The availability of Alternative or Flexible Work Schedules within the Federal service stems from the “Flexible and Compressed Work Schedules Act of 1978 (“The Act”), as amended in 1986.

The federal law that covers the establishment and termination of flexible or compressed work schedules is 5 USC 6131. This law states that an Agency shall not establish or continue such schedules if the Agency determines that a particular flexible or compressed work schedule has had or would have an “adverse agency impact.”

This law defines adverse agency impact as:

- A reduction of the productivity of the agency;
- A diminished level of services furnished to the public by the Agency; or
- An increase in the cost of Agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

Established case law places the full burden of proving an adverse agency impact on the Agency.

In accordance with 5 USC 6131, should there be a bargaining impasse between an Agency and a Union, that impasse is presented to the Federal Service Impasses Panel (FSIP) for resolution. However, it is important to note that the FSIP has a specific protocol for addressing matters related to work schedules. As with any time you believe impasse is a possibility, you should contact your Regional Vice President and Labor Relations representative to discuss the appropriate steps that must be taken.

There are several FAA regulations covering workweeks, tours of duty, work schedules and AWS, including Compressed Work Schedules (CWS) and Flexible Work Schedules (FWS):

- Human Resources Policy Manual (HRPM), Leave and Work Schedules (LWS) 8.14 (Workweeks, Tours of Duty, and Work Schedules)
- HRPM, LWS 8.15 (Alternative Work Schedules)
- HRPM, LWS 8.17 (First 40/80-Hour Tours of Duty)
- Human Resources Operating Instruction (HROI), Compressed Work Schedules
- HROI, Flexible Work Schedules

LWS 8.14 Definitions:

Administrative Workweek – “in the FAA, the administrative workweek is the 7-calendar day period, which begins at 0000 hours Sunday and ends at 2400 (midnight) hours the following Saturday.”

Basic Workweek – “the 40-hour workweek for full-time employees.”

Regularly Scheduled Work – “regularly scheduled work means work that is scheduled in advance of the administrative workweek.”

Tour of Duty – “tour of duty means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitutes an employee’s regularly scheduled administrative workweek.”

Core Time (Hours) – “those designated hours and days during the biweekly pay period established by the agency when an employee must be present for work.”

The agency has “Basic Work Requirements” for both full-time and part-time employees:

- Full-time employees are required to work eighty (80) hours in a pay period;
- Part-time employees are required to work thirty-two (32) to sixty-four (64) hours in a pay period.

The FAA has two (2) different types of AWS:

- Compressed Work Schedules (CWS);
- Flexible Work Schedules (FWS).

Compressed Work Schedules (CWS):

In accordance with LWS 8.15, there are two types of CWS in the FAA:

- A **4-10** schedule; and
- A **5-4/9** schedule.

Employees working a CWS cannot earn or use credit hours except where allowed by the CBA.

4-10 Schedule:

The basic work requirement under a 4-10 schedule consists of 10 hours per day, 40 hours per week, and 80 hours per pay period, with three days off per work week and six days off per pay period. Additionally, the employee selects arrival and departure times.

An employee working the 4-10 schedule who are excused from work on holidays are entitled to their basic rate of pay for that day, not to exceed 10 hours. Likewise, employees that work holidays under the 4-10 schedule are entitled to holiday pay for all hours worked on the holiday, not to exceed 10 hours.

5-4/9 Schedule:

Under this plan, employees work 9 days per pay period. This schedule is accomplished by working for 9 hours, 8 days per pay period and 8 hours for 1 day per pay period. Additionally, employees must work a fixed schedule and must be present or otherwise accounted for by leave and/or other approved absence during core hours for 4 days in week one of the pay period and 5 days in week two of the pay period.

Flexible Work Schedules (FWS):

In accordance with LWS 8.15, there are five (5) options of FWS. These options are:

- Flexi tour;
- Gliding;
- Variable day;
- Variable week;
- Maxi flex

Flexi tour:

An employee selects their daily arrival time, subject to management approval, in advance of the upcoming pay period. The employee works a fixed schedule with designated arrival and departure times, 8 hours per day, and 5 days per week. The arrival and departure times are fixed until a new schedule is requested and approved.

Gliding:

An employee elects to vary the arrival times on a daily basis, without management approval, and the employee works a variable schedule of 8 hours per day, and 5 days per week.

Variable Day:

The employee elects to vary the arrival and departure times and they also elect to vary the length of the day. However, management may require such daily variations requested and approved in advance of each pay period. The employee works a 40 hour week and an 80 hour pay period. Core hours are in effect all five days of the workweek.

Variable Week:

The employee may vary the daily arrival and departure times, the length of the workday and days per week, and the length of the workweek. However, management may require such daily and weekly variations requested and approved in advance of each pay period. The employee works 80 hours in the pay period and core hours are in effect all 5 days of the workweek.

Maxi flex:

Employees may vary the daily arrival and departure times, the length of the workday and the length of the workweek. However, management may require such daily and weekly variations requested and approved in advance. The employee works 80 hours in a pay period and may work less than five days per week and/or less than ten days per pay period.

Under an FWS, overtime, night differential and holiday pay are limited to a maximum of eight (8) hours for all five options.

Employees are allowed to earn and use credit hours, with management approval, if they are working a flexible work schedule. However, in accordance with our CBA, either of the two types of CWS and “maxi flex” work schedules are not authorized at facilities that operate 24 hours per day.

NOTE**For all seven (7) types of AWS schedules listed above, the employee must be present or otherwise accounted for by leave and/or other approved absence during core hours.

Below is some very important case law regarding AWS. I am providing this case law to you in order to assist you in preparation for your BWS negotiations:

- Alternative work schedules are a fully negotiable topic, subject to the provisions of the Act or other laws superseding the Act. (23 FLRA 872) **(The negotiability of this matter is subject to the provisions of our CBA regarding “Covered-by” which will be explained in a future edition.)**
- Proposals establishing work hours, core times and core days and the maximum hours employees may work during a day are negotiable to the extent that they comply with the Act. (5 FLRA 441) **(The negotiability of this matter is also subject to the provisions of our CBA)**
- Generally, the only basis for an acceptable non-negotiability claim is an assertion that a proposal for an AWS is in conflict with the provisions of the Act as set forth in 5 USC

6131. (23 FLRA 872) **(If during negotiations, the agency asserts a proposal is non-negotiable, contact your LR Lead or RVP)**

- Questions as to whether an AWS would conflict with the Act are subject to negotiability determinations by the FLRA. (32 FLRA 879) **(Again, contact your LR Lead or RVP if you have questions on non-negotiability)**
- The Agency bears full burden of proof regarding establishment or termination of an AWS. (97 FSIP 117) (5 USC 6131) **(The agency also must follow the provisions of the laws in order to terminate an AWS)**
- A proposal that would have required non-unit personnel or a specific bargaining unit employee to accept an AWS was non-negotiable. (27 FLRA 349) **(An employee cannot be forced into an AWS. An employee must volunteer to work an AWS)**
- A proposal to allow employees temporarily assigned to other parts of the agency to continue working under their AWS is negotiable. (29 FLRA 348) **(This can be used to negotiate for employees to keep an AWS that are temporary medically disqualified or for controllers that become Staff Specialists during the year)**
- Although the Act renders flexible and compressed work schedules generally negotiable, Agency management retains the right to determine the Agency's hours of operation and can require the presence of that number of employees necessary to meet operational needs. (42 FLRA 1196)
- Hours of work constitute a condition of employment. (50 FLRA 140) **(This means that it is negotiable)**
- A change in starting and/or quitting times constitutes a change in a tour of duty. (33 FLRA 532) **(This means that it is negotiable)**
- Management's right to assign employees to tours of duty does not affect the right of Unions to negotiate flex time arrangements. (38 FLRA 1136)
- A proposal that called for the establishment of an array of tours of duty with set starting and quitting times, but which did not require management to assign any particular number of employees to any of them was negotiable as an appropriate arrangement. (44 FLRA 1570) **(This is also subject to the provisions contained within our CBA)**
- A proposal that would have limited the number of employees management could assign to a particular shift was not negotiable. (46 FLRA 1152)
- A proposal that would have required the Agency to allow a specific percentage of employees to be absent under an AWS, regardless of the Agency's operational needs was non-negotiable. (20 FLRA 35)

It is important for all of us to know how case law plays into our negotiations. While case law has significant impact should something go awry in the negotiations, such as impasse or a negotiability appeal, it has little impact in the actual negotiations with your counterpart. The reason being, that the FAA more often than not will either just blatantly disregard established case law, or they will disagree with you as to its application to your day-to-day negotiations. This however, does not preclude you from raising this case law during your negotiations, and in fact, you should raise it if it is applicable to the discussion at hand.

If you are ever faced with any scenario where the Agency disregards the case law that you have provided, call your respective Labor Relations Lead or your RVP. If necessary, they can raise the issue to their level in an attempt to work out the situation.

When you get ready to negotiate your respective BWS MOUs, you should become familiar with the Agency's regulations regarding AWS. You also should compare those regulations with the provisions of our CBA, specifically Articles 32 and 34. When doing so, please keep in mind that our CBA is determined to be a valid exception to the Agency's regulations.

Should there be any questions regarding AWS, you should contact your FACREP, Regional LR Lead or your RVP.

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