



INDEPENDENT

COALITION

The Myth of Employee Flexibility

Overwhelmingly between 80-90 percent of independent contractors from across every industry prefer independent contracting over traditional employment. One of the top reasons continually cited is the need for flexibility. This has been verified by studies conducted by the U.S. Bureau of Labor Statistics, Beacon Economics, and survey of California independent contractors. However, some that want to force independent contractors into a traditional employment model, forcing millions of Californians away from the model of flexibility they need for their lifestyles.

While some may advocate that employers can just easily provide the same flexibility, this misses the point. As an independent contractor, *the individual* makes the decision of when to work, where to work, which projects on which to work, and for whom to work. In an employer and employee relationship, it's the employer who makes those choices. And, with California law, the employer's options to provide employee flexibility is significantly limited by the threat of increased costs, penalties, and ultimately litigation if the employer tries to accommodate an employee's request for flexibility. This chart reflects the limitation on employers' ability to provide flexibility.

	TRUE	FALSE
As an employee, my employer can easily accommodate my request to work flexible hours, such as four 10-hour days instead of five 8-hour days. ^{i ii}		✓
As an employee, I can skip my meal break so I can leave work a half hour earlier. ⁱⁱⁱ		✓
As an employee, my employer can allow me to come and go from the job as I want, without any additional cost. ^{iv}		✓
As an employee, my employer can allow me to leave work early one day and make-up that time the following week without any additional cost. ^v		✓
As an independent contractor, I choose what hours I want to work each day.	✓	
As an independent contractor, I choose when I want to take a break and how many breaks I want to take throughout the day.	✓	
As an independent contractor, I choose who I want to work for, what projects I want to work on, and what days I want to work.	✓	

ⁱ From the inability to waive daily overtime and meal periods so that a working parent can leave early to attend a school performance, to essentially eliminating the ability to freelance, California workers and employers are being forced into stringent, traditional work schedules that do not reflect today's society.

ⁱⁱ In order for an employer to implement an alternative workweek schedule, an entire work unit must agree to adopt the alternative workweek. A work unit might be the entire company, or a single division or department within the company. Thus, alternative workweek schedules do not provide flexibility on an individualized basis and are not even meant for a handful of employees within a department who want flexibility; instead, these schedules are based on the wants and needs of the entire work unit.

ⁱⁱⁱ Only employees who work between 5 and 6 hours a day can choose to waive their meal periods by mutual consent of the employer and employee. However, there is not a similar alternative for employees who work a traditional 8-hour day, even if the employee and the employer mutually agree that the employee can take an on-duty meal break.

^{iv} A split shift is any two distinct work periods separated by more than a one-hour meal period. If there is more than one hour between shifts, the employee must receive one hour's pay at no less than the minimum wage rate for the time between shifts.

^v Makeup time allows employees to request time off for personal obligations and make up the missed time without triggering overtime. However, this exception has rigid requirements that employers and employees must adhere to in order to remain legally compliant. The most difficult requirement for employees to meet is that the missed time must be made up in the same workweek. But, what if a last-minute personal obligation arises on a Friday and the employee's normal workweek is Monday through Friday? The employee simply cannot utilize the makeup time provision.