NEW MEXICO DEPARTMENT OF TRANSPORTATION

OVERTIME/COMPENSATORY TIME

Tom Church, Cabinet Secretary


AUTHORITY: 1.00 Fair Labor Standards Act (the “FLSA”), 29 U.S.C. §§ 201 through 219; 29 C.F.R. § 541; NMSA 1978, §§ 10-9-4 and 10-9-5; 7.4 NMAC; and Policies for the Governor 1.7.4 NMAC and Policies for the Governor Exempt Employees.

PURPOSE: 2.00 The purpose of this administrative directive is to provide guidelines for the approval and compensation of overtime for employees in the New Mexico Department of Transportation.

DEFINITIONS: 3.00 “FLSA Exempt Employees” means an employee—who, based on the duties performed and the amount and manner of compensation, is exempt from the FLSA minimum wage and overtime provisions. In general, employees will be FLSA exempt only if they are in executive, professional, or administrative positions, or if they are employed in outside sales or certain computer related occupations.

3.01 “FLSA Covered and Non-Exempt Employees” (FLSA Non-Exempt), means an employee who, based on the duties performed and the amount and manner of compensation, is covered by the FLSA and is not exempted from the minimum wage and overtime provisions of the FLSA.

3.02 “FLSA Non-covered Employee” means an employee who is not covered by the FLSA and therefore not subject to FLSA minimum wage and overtime provisions. The following employees are not covered: an elected official and the personal staff, policy-making appointees, and legal advisors of an elected official; legislative employees; bona-fide volunteers; independent contractors; prisoners and certain trainees.
3.03 “Governor Exempt Employees” means a FLSA Non-covered or FLSA Exempt Employee who is hired upon the Governor’s approval on an at-will basis.

3.04 “Overtime” means time worked in excess of forty hours in one workweek for FLSA Non-Exempt Employees and in excess of eighty hours in one pay period for FLSA Exempt Employees.

3.05 “Time Worked” includes:

3.05a time spent driving a vehicle or other conveyance on official business outside an employee’s normal work hours;

3.05b time spent as a passenger in a vehicle or other conveyance outside an employee’s normal work hours if the travel itinerary and time schedule are approved by an authorized supervisor;

3.05c paid holiday leave;

3.05d annual leave;

3.05e time spent in a workshop/training; and

3.05f administrative leave for voting taken in accordance with the provisions of the State Personnel Board Rules.

3.06 “Time Not Worked” includes:

3.06a time normally required to travel from home or temporary residence to work and return as a result of a regularly scheduled work shift, except as provided in Administrative Directive 620, Call Back and On-Call Pay;

3.06b meal periods and time before and after normal duty hours not spent in work activities; and

3.06c absence without leave, administrative leave, compensatory time off, educational leave, leave without pay, military leave, jury duty leave, periods of suspension, personal leave day, sick leave, on call and callback time not worked

3.07 “Workweek” – means a calendar week beginning at 12:01a.m. Saturday and ending 12:00 midnight the following Friday. The full time employee’s normal work schedule is forty hours from 7:45 a.m. to 4:30 p.m., Monday through Friday, with a forty-five minute lunch period. Supervisors may designate other work schedules and approve flexible work schedules in accordance with Administrative Directive 606, provided that a change to the normal work schedule shall not be considered a change to the workweek.

DIRECTIVE: 4.00 The Department retains the right to require employees to work overtime as operational needs require. Supervisors are to
effectively plan work schedules to minimize the necessity for overtime

4.00a Overtime for union eligible employees is scheduled, assigned and paid subject to the provisions of the current collective bargaining Agreement; those provisions supersede any conflicting policy set forth in this Administrative Directive.

4.01 FLSA Non-exempt Employees

4.01a Overtime work must be approved in advance by the appropriate Division Director or District Engineer, and must be justified by operational need as stated by the supervisor. This justification shall be provided by the supervisor on Form No. A-0657 Overtime Authorization Request Form, or Form No. A-0658, Overtime Authorization Form for Construction and Project Development Personnel, in case of Construction and Project Development personnel.

4.01b Employees who perform emergency maintenance operations such as snow removal, slide repair, hazardous material cleanup, etc. are not required to complete Form No. A-0657 in advance. Employees assigned to perform emergency maintenance operations include, Highway Maintenance Worker Basic, Operational and Advanced, Maintenance and Repair Worker Basic, Operational, and Advanced, and Landscaping and Grounds Worker Basic, Operational, and Advanced. Working beyond a normal work shift to complete a project is not considered an emergency maintenance operation.

4.01c Division Directors and District Engineers may delegate, in writing, overtime authorization to supervisors.

4.01d FLSA Non-Exempt employees are not to work overtime without authorization from the supervisor. If they do, they shall be compensated for such overtime but may be subject to disciplinary action for doing so without authorization.

4.01e Overtime shall be computed and recorded by rounding to the nearest quarter hour increment, as follows:

<table>
<thead>
<tr>
<th>Minutes</th>
<th>Hours</th>
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</thead>
<tbody>
<tr>
<td>0 - 7 minutes</td>
<td>0 minutes</td>
</tr>
<tr>
<td>8 - 22 minutes</td>
<td>0.25 hours</td>
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<tr>
<td>23 - 37 minutes</td>
<td>0.50 hours</td>
</tr>
<tr>
<td>38 - 52 minutes</td>
<td>0.75 hours</td>
</tr>
<tr>
<td>53 - 60 minutes</td>
<td>1.00 hours</td>
</tr>
</tbody>
</table>

4.01f For FLSA Non-Exempt Employees, the supervisors shall assign overtime in an equitable manner, rotating such overtime to the extent feasible.
4.01g Overtime, shall be compensated at 1 ½ times the employee’s regular hourly rate, including all compensation provided for under the FLSA, through cash payment.

4.01h Employees may elect to be placed in either the compensatory time or cash work group; this election becomes the default for how overtime is paid. A change to the default work group must be requested on Form No. A-1176 and submitted to Human Resources in advance of the pay period in which overtime is worked. Staff with authorization to approve overtime, including payroll staff, shall not approve a conversion of earned compensatory time to cash in SHARE dating back for more than one pay period and, then, only if the change was requested prior to the overtime being worked.

4.01i Supervisors may offer to compensate FLSA Non-exempt Employees with compensatory time in lieu of cash, or an employee may request this. In such cases, the offer or request must be made in advance of the overtime work being performed and the employee must agree in writing to accept compensatory time in lieu of cash by completing Form No. A-0907.

4.01j If the supervisor offers compensatory time in lieu of cash payment and the employee declines the offer, the employee must be compensated by cash payment for the overtime he or she is required to work. If only compensatory time is offered, the employee may refuse the overtime assignment without penalty. Employees cannot refuse to work overtime if cash payment is offered.

4.01k FLSA Non-exempt employees carry a balance of no more than two hundred forty hours of compensatory time. If an employee has reached the maximum amount of time, all overtime hours worked in excess of this amount must be paid cash.

4.01l Employees wishing to take compensatory time off must submit a leave slip to their immediate supervisor requesting the time off in advance as they would for annual leave. Supervisors have the right to approve or disapprove the leave request depending on operational needs.

4.01m FLSA Non-exempt Employees shall be paid for unused compensatory time when they separate from the Department.

4.01n FLSA Non-exempt Employees shall be paid for all accumulated compensatory time when they are selected to fill a FLSA exempt position. The payment of accumulated compensatory time shall be processed
during the last pay period prior to the change in positions, or as soon as practicable thereafter

4.01o In May of each year, the Deputy Secretaries shall review the Department’s available cash balance to determine whether sufficient funds are available to pay all compensatory time accumulated by FLSA Non-exempt Employees and shall make a recommendation to the Cabinet Secretary. The Cabinet Secretary shall then decide whether to pay all accumulated compensatory time or allow it to be carried forward into the next fiscal year. Employees will be notified of the decision.

4.02 FLSA Exempt Employees

4.02a FLSA Exempt employees may be approved for compensatory time at straight time, if the approving authority feels the circumstances warrant it. All FLSA exempt employees shall be placed in the compensatory time default work group. Staff with authorization to approve overtime in SHARE, including payroll staff, may not approve a conversion from compensatory time to cash in SHARE, except as provided in 4.02c.

4.02b If FLSA Exempt Employees are on the on-call list and are called back to work in accordance with Administrative Directive 620, or are required to perform critical maintenance or construction operations, overtime, shall be compensated at straight time (one times the hourly salary) through cash payment.

4.02b1 By the end of each fiscal year, Divisions and Districts must provide a list using Form A-1210) of FLSA Exempt Employees who perform critical maintenance or construction operations. The list shall be forwarded to the respective Deputy Secretary or designee for program approval, and then the Deputy Secretary of Business Support for budget approval.

4.02c Employees cannot refuse to work overtime. To do so will subject the employee to disciplinary action.

4.02d The decision whether to offer overtime cash or compensatory time compensation lies solely with the Department.

4.02e Division Directors and District Engineers may delegate, in writing, overtime authorization to supervisors.

4.02f Overtime shall be computed and recorded in quarter hour increments. (See 4.01e for example)
4.02g  FLSA Exempt Employees may not carry a balance of more than eighty hours of compensatory time.

4.02h  FLSA Exempt Employees may not be paid for unused compensatory time upon separation from the Department or changing to another position within the Department.

4.02i  FLSA Exempt Employees wishing to take compensatory time off must submit a leave slip to their immediate supervisor requesting the time off in advance as they would for annual leave.

4.03  Upon determination by the Department that a position is either FLSA Exempt or FLSA Non-exempt, and during New Employee Orientation, the Human Resources Division or District Human Resources will advise employees, in writing, of his or her status under FLSA and the right to appeal under the Department appeal process and the SPB appeal process. If an employee is unsure of his or her status under the FLSA, he or she should contact the Human Resources Division.

4.03a  Employees who believe their FLSA determination is incorrect may appeal the determination, as follows:

1. The employee must file a written appeal with the Human Resources Division within thirty days of the date his or her position is determined to be FLSA exempt. In addition, the employee must include an updated Position Assignment Documentation Form (SDF/PADF) describing the work currently being performed and any other relevant information.

2. The Human Resources Division will review the SDF/PADF and other relevant information and determine if the employee’s position is exempt or non-exempt from the overtime provisions of FLSA and notify the employee of their decision within 30 calendar days.

If the employee disagrees with the determination of the Human Resources Division, the employee may file an appeal with the State Personnel Director within thirty calendar days of receipt of the decision from the Human Resources Division.

4.04  An employee may substitute approved paid leave or to modify his or her work schedule (for example, working two additional hours on Monday and leaving two hours early on Wednesday) for any additional hours worked during the same work week for FLSA Non-Exempt Employees or during the same pay period for FLSA Exempt Employees, subject to the supervisor’s approval. A supervisor may not require an employee to substitute approved leave or modify his or her work schedule. Supervisors shall enter agreed-to modifications through the Manage Schedules function in SHARE to reflect the actual hours worked.
4.05 Governor Exempt Employees

4.05a Governor Exempt employees may be required to work in excess of forty hours per week and are expected to work all hours necessary to perform their duties to the best of their abilities without additional compensation. However, the Cabinet Secretary or designee may approve overtime compensation as compensatory time at straight time for hours worked in excess of 80 hours in a pay period, when it is in the best interest of the agency.

4.05b No Governor Exempt employee shall earn more than 80 hours of compensatory time in a calendar year.

4.05c No Governor Exempt employee shall be permitted to carry more than 80 hours of compensatory time at any one time.

4.05d No Governor Exempt employee shall be permitted to carry forward accrued compensatory time into the next calendar year.

4.05e Under no circumstances shall cash payment be made in lieu of compensatory time for these employees.

4.05f Governor Exempt employees shall not be paid for unused compensatory time upon separation or transfer.

4.06 Extra hours worked in a workweek for FLSA Non-Exempt Employees or in a pay period for FLSA Exempt Employees must be recorded and approved in SHARE. Any practice of recording overtime worked and/or taking leave in any “off the books” system is strictly prohibited, considered falsification of official state records and is cause for disciplinary action up to and including dismissal.

PROCEDURES: 5.00 N/A
CROSS REFERENCE: 6.00 AD 620, Call Back and On-Call Pay and AD 632, Annual Leave