GENERAL ADMINISTRATION
EMPLOYEE

046 WORK SCHEDULES AND COMPENSATION

046.1 Overtime

046.1.1 Purpose

To establish uniform policies and procedures for compensation of Human Services Department (HSD) employees who have overtime.

046.1.2 Definitions

A. "Division" for purposes of this policy means those categories defined by the Legislature in allocating personnel and budgets (for example, Behavioral Health Services Division, Medical Assistance Division, Income Support Division, Child Support Enforcement Division, and Program Support).

B. "Employee" means a person employed by HSD in a permanent, probationary, term, temporary, or emergency position.

C. "Overtime status" refers to whether an employee is covered or not covered (exempt) by the Fair Labor Standards Act (FLSA).

D. "Workweek" means Saturday through Friday.

046.1.3 Policy

HSD adheres to uniform policies and procedures for compensation of employees who have worked overtime. These policies and procedures are governed by the New Mexico State Personnel Board's (SPB) Rules and Regulations and the New Mexico Department of Workforce Solutions' (DWS) Rules and Regulations under FLSA. All provisions of this policy shall be modified/amended or superseded by any SPB Rules or DWS regulation changes.

046.1.4 Status Determination

The Office of Human Resources (OHR) will evaluate all employees' duties to determine if they are covered by FLSA. All employees shall be informed in writing by the OHR Manager of their overtime status. New employees shall be informed of their status within ten (10) work days from the date of employment. Employees whose job tasks change will be advised of any resulting change in their status within ten (10) work days from the date of any OHR assessment. Any queries about an employee's status should be directed to their supervisor or OHR.

046.1.5 Appeal Process

All employees, at any time, have the right to appeal the determination of their overtime status by filing a written document with the OHR Manager explaining the reasons for their appeal. The OHR Manager shall investigate the facts and shall advise the employee within thirty (30) calendar days of the decision. Thereafter, the employee has the right to continue the appeal process through State Personnel Office (SPO) pursuant to SPB rules and procedures. (See 1.7.4.14 NMAC 1978)

046.1.6 Provisions Applicable Only to Employees Covered by the Fair Labor Standards Act

A. Requirements

1. An employee must have worked in excess of forty (40) hours during a workweek to be eligible for overtime compensation.

2. Advance permission from the employee's supervisor or manager must be secured by an employee in order for the employee to work in excess of the scheduled hours. Working beyond scheduled hours in non-emergency situations without securing permission is prohibited. Unauthorized overtime, however, must be compensated if such overtime constitutes work over the 40-hour per week threshold.

3. Supervisors have an obligation to stop an employee from working overtime hours that have not been authorized. Planned overtime must be officially authorized, in advance, by management.

4. Any overtime worked due to an emergency situation must be approved by management as soon as possible after the emergency.

B. Timesheets

All hours worked beyond a regular 40-hour workweek for employees covered under FLSA shall be recorded on the employee's weekly timesheet. Overtime hours should be marked using the appropriate Transaction Reporting Code (TRC) with an explanation in the Comments section.

C. Compensatory Time for FLSA-covered Employees

1. Compensatory time in lieu of cash compensation may be given only if there is an agreement entered into voluntarily between the FLSA-covered employee and the agency as per 1.7.4.14 NMAC 1978. The employee must have entered into this agreement before overtime work is performed.

2. Excepting those requirements by statute, regulation or Collective

Bargaining Agreements, supervisors shall only authorize compensatory time in lieu of cash compensation for overtime. In rare circumstances, when the FLSA-covered employee's work is indispensable to meet business needs and the employee does not agree to work for compensatory time, an exception must be approved by the Director or designee.

3. Compensatory time for FLSA-covered employees shall be at a rate equal to one and one-half (1.5) hours for each hour of employment for which overtime compensation is required.

4. The FLSA-covered employee who has accrued compensatory time, and who has requested the use of the compensatory time, shall be permitted to use the time within a reasonable period after making the request. Use of the compensatory time must not unreasonably disrupt the operations of the agency as determined by the supervisor.

5. Employees must receive monetary compensation for any additional overtime worked after accrual of 240 hours of compensatory time.

6. Compensatory time may be accrued while traveling on HSD business. However, compensatory time while traveling on HSD business shall not be accrued outside the employee's normal work schedule unless the employee was required to work or travel during those hours.

7. All compensatory time for FLSA covered employees will be paid upon an employee's leaving the department or division, or upon the death of the employee to the employee's estate, at the employee's final regular rate of pay.

8. If compensation is paid to an employee for accrued compensatory time, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

9. At the time of separation of employment with HSD, all accrued types of compensatory time will be paid. However, if an employee is transferring to another State agency, and that agency agrees to accept the compensatory time balance, the time may be transferred if the employee elects to do so.

D. Mealtime

A meal period when an employee is completely relieved from duty is not work time. However, short periods, such as coffee breaks or snacks, are not meal periods. The following three conditions must be met to be considered a bona fide meal period:

1. The meal period must be at least 30 minutes in duration.

2. The employee must be completely relieved of all duties. If the employee must sit at a desk and incidentally answer the telephone, for example, this would be compensable work time. It is not considered work time if the employee chooses to remain at the desk during the meal time period, is completely relieved of all duties, and is not required by the supervisor to remain at the desk.

3. The employee must be free to leave the duty post.

046.1.7 Provisions Applicable only to Employees Not Covered by (Exempt from) Fair Labor Standards Act Overtime Provisions

A. Requirements

1. An employee must have worked in excess of eighty hours during a two-week pay period to be eligible for overtime compensation.

2. Advance permission from the employee's supervisor or manager must be secured by an employee to work in excess of the scheduled hours.

3. Excepting those requirements by statute, regulation or Collective Bargaining Agreements, supervisors shall only authorize compensatory time in lieu of cash compensation for overtime.

B. Compensatory Time for FLSA Exempt Employees

1. Employees exempt from FLSA shall be eligible for compensatory time on a straight-time basis. Accrual of compensatory time must be authorized by the employee's immediate supervisor.

2. Compensatory time may be accrued while traveling on HSD business. However, compensatory time while traveling on HSD business shall not be accrued outside the employee's normal work schedule unless the employee was required to work or travel during those hours.

3. Compensatory time may be accrued to a maximum of 200 hours. Only 200 hours may be carried over into the next fiscal year.

4. Upon separation or transfer from HSD, compensatory time will not be paid, and cannot be transferred.

B. Timesheets

All approved hours worked beyond a regular 80-hour pay period for employees not covered by FLSA shall be recorded on the employee's weekly timesheet. Overtime hours should be marked using the appropriate Transaction Reporting Code (TRC) with an

explanation in the Comments section.

046.1.8 Overtime Parameters

County Directors or Bureau Chiefs will document, in writing, overtime decisions and inform affected employees of those decisions. For purposes of this policy, email communication shall constitute written notice.

A. Division Directors will determine the managers and/or supervisors who have the authority to:

1. Determine the need for overtime work;

2. Determine employees who will work overtime in accordance with Collective Bargaining Agreements when applicable; and

3. Prevent unauthorized overtime.

B. Supervisors shall not change the workweek in order to avoid the payment of overtime or compensatory time.

C. Divisions will count as overtime:

1. All time spent driving a vehicle on official business outside an employee's normal work hours;

2. All time spent as a passenger in a vehicle outside an employee's normal work hours if the travel itinerary and time schedules are approved by an authorized supervisor; and

3. Paid holiday leave, annual leave, and administrative leave for voting shall also count as time worked in the consideration of overtime.

D. Divisions will not count as overtime:

1. Time normally required to travel from home or temporary residence to work and return;

2. Meal periods and time after normal duty hours not spent in work activities or authorized travel; and

3. Any leave except paid holiday leave, annual leave and administrative leave for voting.

E. HSD will maintain for three years payroll records in compliance with 29 CFR 516.3 and 29 CFR 5.6.2 (U.S. Department of Labor, Wage and Hour Division,

Records to be Kept by Employers). HSD will also maintain for four years payroll records in compliance with 26 CFR 1.6001-1 (U.S. Internal Revenue Service, Records).

APPROVED: DATE:

PAMELA S. HYDE, J.D., Secretary 7/9/09