



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-035100 Overtime and Extra Hours Worked Compensation	Issued: 11/08/90 Effective: 01/05/91	Reviewed: 4/24/26 Revised: 12/23/19
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

- A. Fair Labor Standards Act of 1938, as amended.
- B. NMSA 1978, Section 33-1-6, as amended.
- C. State Personnel Board Rule 1.7.4 NMAC.

REFERENCE:

- A. State Personnel Office Audit Procedures for State Personnel Board Rule 1 NMAC 7.4.
- B. ACA Expected Practice 5-ACI-1D-09, *Performance Based Standards and Expected Practices for Adult Correctional Institutions*, 5th Edition.

PURPOSE:

Establish guidelines for overtime and extra hours worked compensation for employees of the New Mexico Corrections Department.

APPLICABILITY:

All employees of the New Mexico Corrections Department.

FORMS:

- A. **Fair Labor Standards Act (FLSA) Coverage Memo** form (CD-035101.1)
- B. **Overtime Statement** form (CD-035101.2)
- C. **Central Office/PPD Weekly Overtime Authorization** form (CD-035101.3)
- D. **Daily Overtime Authorization** form (CD-035101.4)
- E. **Extra Hours Worked Authorization** form (CD-035101.5)
- F. **Supporting Document Form and Position Assignment Documentation** form SPO-SDF/PADF available at:
http://www.spo.state.nm.us/uploads/FileLinks/3c561c2468cd4805bea4e21f2f21ef3c/SDF_PA_DF_10.11.doc

ATTACHMENTS:

- A. **FLSA Covered Positions** Attachment (CD-035100.A)
- B. **FLSA Exempt Classifications** Attachment (CD-035100.B)
- C. **Overtime Code List** Attachment (CD-035101.A)

DEFINITIONS:

- A. Administrative Employee: An employee 1) whose primary duty is the performance of office or non-manual work directly related to the management policies or general business operations of the employer or responsible work that is carried on in the administration of an educational system; 2) who customarily and regularly exercises discretion and independent judgment, as distinguished from using skills and following procedures, and must have the authority to make significant decisions; 3) who regularly assists an executive or administrative employee who performs work under general supervision along specialized or technical lines requiring special training, experience or knowledge or who executes special assignments under general supervision; 4) who devotes no more than 20 percent of their time to activities not directly or closely related to administration; and 5) who is paid at least \$455.00 per week.
- B. Agricultural Employee: An employee whose primary job is in agriculture. Agriculture includes farming and all its branches, such as the tillage of soil, dairying, raising of livestock, etc.
- C. Bona Fide Meal Period: A bona fide meal period is a period of time AT LEAST 30 minutes in length, where the employee is relieved from duty for the purpose of eating regular meals.
- D. Class Seniority: The date that the employee began working in his/her current job classification.
- E. Executive Employee: An employee 1) whose primary duty is management of a customarily recognized department or division; 2) who customarily and regularly directs the work of at least two (2) or more employees; 3) who has the authority to hire or fire other employees or whose recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees are given particular weight; 4) who customarily and regularly exercises discretionary powers; 5) who devotes no more than 20 percent of their time to activities not directly or closely related to the managerial duties; and 6) who is paid at least \$455.00 per week.
- F. Hours Worked: The general rule is that hours worked are all hours that an employee is required or permitted by the employer to work. Hours worked does not include the time an employee is on leave status (with the exception of paid holiday leave and administrative leave for voting), compensatory time off, bona fide meal periods, etc.
- G. Professional Employee: An employee 1) whose work requires knowledge of an advanced type in a field of science or learning, customarily obtained by a course of specialized instruction and study or whose work is original or creative in character in a recognized field of artistic endeavor the result of which depends primarily on the employee's invention, imagination or talent or who works as a teacher certified or recognized as such in a school system or education institution; 2) who consistently exercises discretion and judgment; 3) whose work is predominantly intellectual and varied as distinguished from routine mental, manual, mechanical or physical duties; 4) who devotes no more than 20 percent of their time on activities not essentially part of and necessarily incident to the professional duties; and 5) who is paid at least \$455.00 per week.
- H. Tour of Duty: For purposes of this policy, it is 14 consecutive 24-hour periods (336 hours) beginning at 12:01 a.m. on Saturday and ending at 11:59 p.m. on Friday. Such tour of duty is

concurrent with the biweekly pay period cycle used by the Department of Finance and Administration.

- I. Work Week: Seven (7) consecutive 24-hour periods (168 hours) beginning at 12:01 a.m. on Saturday and ending at 11:59 p.m. on Friday.

POLICY:

A. Policy Statements: (General)

1. Overtime Compensation for Corrections Department employees shall be made in accordance with the Fair Labor Standards Act (FLSA), this policy, and State Personnel Board rules.
2. Management has the authority to schedule and require overtime work to accomplish the mission of the Department. Management also has the authority and responsibility to control overtime.
3. Overtime work shall be held to a minimum consistent with efficient use of human resources.
4. An employee shall receive prior authorization to perform overtime work, except for an emergency, when an employee is unable to obtain approval from their supervisor. An employee will be appropriately compensated for any overtime worked without prior authorization, if the employee's supervisor knew or clearly should have known that the employee was working overtime and permitted the employee to do so. Failure to obtain prior authorization may lead to disciplinary action.
5. If, due to an emergency, an employee is unable to obtain advance approval, it is the employee's responsibility to promptly notify their supervisor of any overtime worked and to immediately complete and submit an Overtime Authorization Form. Failure to promptly notify the supervisor and complete an overtime form may lead to disciplinary action, denial of payment for the alleged overtime worked, or both.
6. It is a management and employee responsibility to properly document overtime work.
7. Supervisors shall distribute overtime in a fair and equitable manner and shall make every effort to provide employees with reasonable notice of scheduled overtime work.
8. The institution's budget includes funds to reimburse staff for their time when training is conducted during off-duty hours. [5-ACI-1D-09]

B. Policy Statements: (FLSA-Covered Employees)

1. These policy statements pertain specifically to employees who are in the positions listed on the **FLSA Covered Positions** Attachment (*CD-035100.A*).
2. Overtime work by FLSA-covered employees is defined as hours worked in excess of 40

hours in a work week. A supervisor may grant an FLSA-covered employee equal time off within the same work week to avoid an overtime work situation.

3. Overtime work by employees partially exempt under Section 207K of the Fair Labor Standards Act is defined as hours worked in excess of 86 hours in a 14-day tour of duty. A supervisor may grant an employee partially exempt under Section 207K equal time off within the 14-day tour of duty to avoid an overtime work situation.
4. Overtime shall be compensated by way of cash payment on a time and one-half basis on the payday for the pay period in which it is earned.
5. FLSA-covered employees transferring or promoted outside of their current classification shall be paid out cash for premium banked overtime at the hourly rate held prior to their transfer or promotion at the time of their transfer or promotion.

C. Policy Statements: (FLSA-Exempt Employees)

1. These policy statements pertain specifically to employees who are in the positions listed on the FLSA Exempt Classifications Attachment (*CD-035100.B*).
2. Extra hours worked by FLSA-exempt employees is defined as hours worked in excess of 80 hours in a tour of duty.
3. Extra hours worked by FLSA-exempt employees may be compensated through compensatory time on an equal time basis, or maybe paid with the approval of Cabinet Secretary or designee.
4. FLSA-exempt employees may not receive cash payment in lieu of compensatory time upon separation from the Department or upon transfer to another department.
5. FLSA-exempt employees transferring within Corrections Department Budget Activities shall have all accrued compensatory time transferred to the new activity with the approval of the appropriate Division Director(s).
6. FLSA-exempt employees transferring from other state agencies into the Corrections Department shall not have any compensatory time that was earned while working for the other state agency transferred to the Department.
7. FLSA-Exempt employees shall not carry more than a maximum of 160 hours of compensatory time at any time, including the end of a calendar year.
8. Governor-Exempt employees shall not accrue compensatory time unless authorized by the Governors' Office or Department of Finance and Administration.

D. Policy Statements: (Travel Time)

1. Travel time from home to the normal place of work and from the normal place of work to

home is not counted as hours worked under normal circumstances. Travel time from home to work and from work to home to perform emergency work outside of the employee's normal workday is considered hours worked.

2. Travel time that takes place during an employee's normal workday is considered hours worked.
3. Travel time to a place that is not the normal place of work that is required for a special one (1) day assignment is considered hours worked. EXAMPLE: An employee who works in Santa Fe and whose normal workday is 8:00 a.m. to 5:00 p.m. is required to go to Roswell. He leaves home at 7:00 a.m. and arrives in Roswell at 10:00 a.m. and works until noon. He then takes lunch from noon until 1:00 p.m. and then works and finishes his tasks at 3:00 p.m. He then drives back and arrives at home at 7:00 p.m. This employee has worked 11 hours.
4. Travel time as a passenger in an airplane, train, boat, bus, or automobile outside of regular working hours is not considered hours worked unless the travel itinerary and time schedule is approved by an authorized supervisor.
5. Travel time or work time by an FLSA-covered employee that occurs on the employee's scheduled day off (e.g. Saturday, Sunday, holiday) when the employee was required to travel out of town and stay overnight is considered hours worked.

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FLSA Covered Positions

NOTE: FLSA status is determined by the actual duties performed. The following are generally the codes assigned to individual classifications, but individual duties may require a different category than shown.

Bookkeeping, Accounting & Auditing Clerk – O
Business Operations – O and A (varies by position duties)
Correctional Officer Jailer – O
Correctional Officer & Jailer – A (Sergeant and Specialists)
Criminal Justice & Law Enforcement Teacher – O and A
Data Entry Keyer – O
Detective & Criminal Investigator – O and A
Executive Secretary & Administrative Assistant – O and A
Financial Specialist – B, O and A
HR Coordinator
HR Generalist I
HR Generalist II (Roster)
Information & Records Clerk – O and A
Legal Support Worker – O and A
Library Tech – O
Office & Admin Support Worker – O and A
Office Clerk – O and A
Paralegal and Legal Asst – O and A
Probation Officer & Correctional Treatment Specialist – O and A (Classification Officer, Advanced Classification Officer, Records Coordinator, Advanced Records Coordinator)
Probation Officer I
Probation Officer II (STIU, High Risk, Intensive Supervision)
Purchasing Agent – O
Public Relations Specialist – A
Secretary – O and A
Training and Development Specialist – O and A

Information Technology Positions

IT Tech Support 2 (Perm # 56571 (help desk) #15847)

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FLSA Exempt Classifications

NOTE: FLSA status is determined by the actual duties performed. The following are generally the codes assigned to individual classifications, but individual duties may require a different category than shown.

Accountant & Auditor – O and A
Administrative Law Judge – O and A
Behavioral Health Therapist
Behavioral Health Therapist Supervisor
Budget Analyst – O and A
Business Operations Specialist – A
Business Operations Specialist Supervisor
Clergy – O and A
Clinical, Psychologist – I
Compliance Officer – A
Correctional Officer Lieutenant
Epidemiologist – A
HR Generalist II, III, IV
HR Manager I and II
HR Director
Lawyer – A
Management Analyst – A
Mental Health Counselor – A
Probation Officer & Correctional Treatment Specialist – A (Classification Supervisor)
Probation Officer Supervisor
Purchasing Agent – A
Social & Community Service Coordinator – A

Managers

Line
Staff
Admin / Ops
General
Executive
Correctional Officer Captain
Correctional Officer Major

All Information Technology positions (except as individually listed under “covered”)



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Secretary
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Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:
Policy *CD-035100*

PROCEDURES:

A. Notification Procedure:

1. New employees shall be given a copy of this policy as part of their new employee orientation process. Additionally, new employees shall be given a **Fair Labor Standards Act (FLSA) Coverage Memo** form (*CD-035101.1*) that informs them of their FLSA status and shall be required to sign an **Overtime Statement** form (*CD-035101.2*), which includes an acknowledgment that FLSA has been explained to them. Probation Parole Officers will also sign form *CD-035101.2* and Probation Parole Supervisors, Region Managers, and supervisors will also sign form *CD-035101.2*. Signed forms will be placed in the employee's personnel file.
2. Current employees shall receive the same material as outlined in A.1 within two (2) weeks of the effective date of this policy.
3. Each personnel officer shall establish a process, which ensures that FLSA codes are updated as duties and responsibilities change. Also, when a new position is created, a determination on the FLSA status shall be made and documentation shall be kept.
4. Employees may appeal their FLSA status in accordance with the appeals procedure.

B. Scheduling Procedures:

If a determination is made that overtime work is required (e.g., coverage on a second shift) the authorized supervisor shall assign overtime to the employee(s) best suited to perform the work in a fair and equitable manner or in accordance with the Collective Bargaining Agreement (CBA) as applicable. The use of volunteers is encouraged.

C. Authorization Procedures:

1. Supervisors and employees shall document overtime work or extra hours worked by using the Central Office/PPD Weekly Overtime Authorization form (*CD-035101.3*), the Daily Overtime Authorization form (*CD-035101.4*) or the **Extra Hours Worked Authorization** form (*CD-035101.5*) as appropriate. Forms shall be completed accurately and completely, shall be retained as per FLSA records retention requirements and shall be signed by the appropriate authorizing personnel.

2. A list of managers and supervisors who are authorized to assign overtime or extra hours work shall be established within each division and institution. A copy of the list shall be posted on the bulletin boards with a copy sent to the Human Resource Bureau.

D. Appeals Procedure:

1. Employees who wish to appeal their FLSA status shall submit a completed **SPO-SDF-PADF** along with a brief statement as to why they disagree with their status to their human resources administrator.
2. The human resources administrator shall forward the packet to the Human Resource Director.
3. The Human Resource Director shall render a decision. If the appeal is decided to the employee's satisfaction, the appeal process shall be complete. If not, the employee may request a review by the Department Secretary or designee.
4. Upon appeal to this level, the Department Secretary or designee shall render a decision. If the appeal is decided to the employee's satisfaction, the appeal process shall be complete. If not, the employee may appeal the decision to the State Personnel Office within 30 calendar days. The State Personnel Office's determination is final.

**NEW MEXICO CORRECTIONS DEPARTMENT
FAIR LABOR STANDARDS ACT (FLSA) COVERAGE MEMO**

TO: Employee
FROM: Warden or Division Director
SUBJECT: Fair Labor Standards Act (FLSA) Coverage

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The duties you perform for the Corrections Department place you in the following FLSA coverage category:

- Covered by FLSA. Overtime work will be compensated in accordance with the provisions of the Fair Labor Standards Act.
- Not covered by FLSA because you are:
 - An executive employee (see definition)
 - An agricultural employee (see definition)
 - An administrative employee (see definition)
 - A professional employee (see definition)

If you have any questions concerning your FLSA coverage status, please contact _____. You have the right to appeal your status in accordance with Section E of the attached policy.

Attachments

cc: Personnel File

Signature

Date

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Overtime Statement

I, _____, an employee of the Corrections Department, acknowledge that the Fair Labor Standards Act has been explained to me and that I have received a copy of Policy CD-035100 entitled Overtime Compensation. I understand that under normal circumstances, if I am covered under FLSA I must obtain advance approval to work beyond 40 hours in a workweek. I understand that hours worked in excess of the normal 40 hours work week will be compensated if my supervisor knew or clearly should have known that I was working overtime and allowed me to do so. I also understand that it is my responsibility when, due to an emergency, I am unable to obtain advance approval and I am required to work overtime, that I promptly notify my supervisor of any overtime worked and to immediately complete and submit an Overtime Authorization form. Failure to seek prior approval or to promptly notify my supervisor and to submit an overtime form after an emergency may lead to disciplinary action, or denial of payment for the overtime allegedly worked.

Employee's Signature

Date

**NEW MEXICO CORRECTIONS DEPARTMENT
DAILY OVERTIME AUTHORIZATION**

(MILITARY TIME TABLE AND SPECIFIC INSTRUCTIONS ON REVERSE)

NAME: _____ SSN: _____ ID #: _____

FAIR LABOR STANDARDS ACT STATUS: COVERED _____ NOT COVERED _____

EMPLOYEES OVERTIME POST ASSIGNMENT:

I hereby certify that I worked overtime on _____, 20____
(Date)

From _____ to _____ at: _____
(Military time)

Total Hours worked _____

EMPLOYEE SIGNATURE: _____ TITLE: _____

SUPERVISOR

I hereby certify that the above employee worked overtime for the following individual:

(Name of officer replaced)

The employee was authorized to work for the following reason:

All available positions designated as shut down were utilized prior to hiring an overtime officer:

Yes / No (Circle One)

If no, Reason(s):

AUTHORIZING SUPERVISOR'S SIGNATURE: _____

PAYMENT AUTHORIZATION

I hereby authorize compensation for the overtime work above:

DATE: _____

(WARDEN)

FOR PAYROLL USE ONLY

This overtime work will be compensated with:

_____ Cash payment on pay period ending: _____

_____ Compensatory time.

PAYROLL OFFICER'S SIGNATURE: _____

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Overtime Code List

SPECIFIC INSTRUCTIONS:

1. Information (except signatures) is to be printed or typed.
2. Supervisors must indicate why an employee worked overtime, use reasons whenever possible.
Example: Officer worked OT to replace Officer Doe.

NOTE: IF AN OFFICER IS ON SICK LEAVE, ANNUAL LEAVE, ETC., THE POST IS NOT VACANT. A VACANT POST IS A POST THAT DOES NOT HAVE A REGULAR ASSIGNED OFFICER.
3. If Non-mandatory 1 and 2 posts are not utilized, the supervisor must indicate the reason(s) why.
Example: Post was not shut down due to a disturbance in CD4 that required additional security.
4. Employee working overtime will complete employee section, supervisor will complete supervisor section and Warden will complete authorization section.

OVERTIME REASON:

Process New Inmates	Annual Leave
Position Vacant	Sick Leave
Increase Security	Regular CTO
Infirmity Duty	Holiday CTO
Outside Hospital	Administrative Leave
Inmate Transport	Workers Compensation
K-9 Mission	Duty Injury Leave
Escape	Educational Leave
Disturbance	Jury Duty Leave
Investigation	Military Leave
Maintenance	Personal Leave Day
Official Business Travel	Training
Meeting	AWOL
Court Appearance	Parole Board Hearing
Suspension	Special Project
Approved LWOP	

MILITARY TIME CONVERSION:

1:00 AM	=	0100	1:00 PM	=	1300
2:00 AM	=	0200	2:00 PM	=	1400
3:00 AM	=	0300	3:00 PM	=	1500
4:00 AM	=	0400	4:00 PM	=	1600
5:00 AM	=	0500	5:00 PM	=	1700
6:00 AM	=	0600	6:00 PM	=	1800
7:00 AM	=	0700	7:00 PM	=	1900
8:00 AM	=	0800	8:00 PM	=	2000
9:00 AM	=	0900	9:00 PM	=	2100
10:00 AM	=	1000	10:00 PM	=	2200
11:00 AM	=	1100	11:00 PM	=	2300
12:00 AM	=	1200	12:00 PM	=	2400

**NEW MEXICO CORRECTIONS DEPARTMENT
EXTRA HOURS WORKED AUTHORIZATION FORM**

NAME: _____ SSN: _____ ID #: _____

FAIR LABOR STANDARDS ACT STATUS: COVERED _____ NOT COVERED _____

INSTRUCTIONS

- STEP*
1. Employee completes "Employee" section and forwards to supervisor.
 2. Supervisor completes "Supervisor" section and forwards to Warden or Division Director.
 3. Warden or Division Director officially authorizes the extra hours worked and forward to payroll officer.
 4. Payroll Officer compensates incumbent for extra hours worked in accordance with policies.

EMPLOYEE

I hereby certify that I worked extra hours on _____ (date)

From _____ to _____ (Use military time conversion table on Attachment CD-035101.A).

Assignment: _____

Regular Assigned Facility: _____

Total Hours: _____

Employee Signature

SUPERVISOR

I hereby certify that the above mentioned employee performed extra hours starting at _____

And ending at _____ (Use military time conversion table on Attachment CD-035101.A). on _____ (date).

The employee was authorized to perform such work for the following reason: _____

Supervisor Signature

AUTHORIZATION

I hereby authorize compensation for the extra hours worked:

Warden

Or

Division Director

These extra hours worked will be compensated with:

_____ Cash payment on pay period ending: _____

_____ Compensatory Time

Payroll Officer's Signature