



West Virginia Department of Transportation Policy: **Attendance, Leave, and Overtime**

Issued by the Secretary of Transportation

Policy No: DOT 3.10

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1.0 PURPOSE

The purpose of this policy is to establish the attendance, leave, and overtime policy for the West Virginia Department of Transportation (WVDOT), excluding the Parkways Authority. This policy discusses WVDOT guidelines associated with work schedules and attendance, overtime classification and pay, and both authorized and unauthorized leave policies. In any case, where questions or confusion arise, contact the Human Resources (HR) Division for further guidance.

Employees are expected to maintain their normal, approved work schedules. If at any time an employee is not at the assigned duty station a leave slip or request for an alternate work schedule must be completed and approved to account for those hours.

This policy is designed to foster better communication between employees and supervisors and provide a record of schedules, attendance, and leave. If an employee's work schedule needs to be altered, the employee must request an altered work schedule. The supervisor must determine if altering the work schedule for an employee is in the best interest of the Agency and may approve, disapprove, or modify the work schedule accordingly. It is in the supervisor's discretion to alter the work schedule for individuals or groups of employees.

2.0 SCOPE

This policy applies to all WVDOT employees, except for Parkways Authority employees. All employees must abide by attendance, leave, and overtime guidelines. The WVDOT employs several categories of personnel with varying degrees of eligibility for leave and overtime. This policy applies to permanent employees unless otherwise provided. For a quick reference to determine whether an employee is eligible for a certain kind of leave or overtime compensation, see Appendix A, at the end of this Policy.

3.0 DEFINITIONS

- 3.1 **Agency Head**: The chief manager of the agency or his or her designee i.e., the Commissioner, Director, etc.
- 3.2 **CFR**: Code of Federal Regulations.
- 3.3 **Computer Employee Exemption**: A salaried person employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below:
 - A. the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - B. the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

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- C. the design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - D. a combination of the aforementioned duties, the performance of which requires the same level of skills.
- 3.4 **Covered Employees:** Employees that work under the rules and policies of the WVDOT merit selection system.
- 3.5 **District Manager:** The administrative head of a District or Region regardless of the person's classification.
- 3.6 **Division Director:** Means the administrative head of a WVDOT Division.
- 3.7 **Excess Hours:** Work hours paid in excess of 40 hours in a workweek.
- 3.8 **Exempt Employees:** Employees that are full-time, salaried, executive, administrative, professional, or some classification of computer-related employees who are not covered by the Fair Labor Standards Act and who are not eligible for time and a half overtime pay for more than 40 hours of work in a week in accordance with 26 CFR §§ 541.600, 541.602 and 541.603.
- 3.9 **Exempt Overtime:** Certain classifications of employees who are not entitled to premium overtime compensation under the Fair Labor Standards Act but may be eligible for straight time overtime.
- 3.10 **FLSA:** Fair Labor Standards Act.
- 3.11 **Full-time Employees:** WVDOT employees that report 2,080 hours per year.
- 3.12 **Hours Worked:** Hours during which an employee is actually engaging in work or leave time.
- 3.13 **Human Resources (HR) Representative:** The person in an organization who is responsible for handling employee benefit matters and processing various personnel-related forms. The entering of employees' time into the computer system from Form DOT-12s may also be a duty.
- 3.14 **Immediate Supervisor:** The employee's supervisor, normally a section manager. For West Virginia Division of Highways (WVDOH), this includes the County Highway Administrators.
- 3.15 **Leave Abuse:** Is a pattern of behavior which results in very low or no leave balance. Behaviors that may constitute leave abuse are, for example, excessive absences on Mondays and Fridays, missing deadlines or not completing assignments due to absences, requesting and using sick leave instead of annual leave for vacation or providing false or alter medical documentation for an absence.
- 3.16 **Nonexempt Employees:** Employees who are eligible for time and a half overtime.

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- 3.17 **Nonexempt Overtime:** Premium overtime compensation under the Fair Labor Standards Act.
- 3.18 **Organization Manager:** The next level manager of the employee's office or division, normally the chief manager of an office, division, district, or region within the agency.
- 3.19 **Overtime:** The hours the employee actually worked which are in excess of 40 hours for a workweek.
- 3.20 **Part-time Employees:** WVDOT employees that report less than 40 hours per week but are required to work a weekly schedule or hours of which equal at least 1,040 hours per year.
- 3.21 **Other Leave:** Leave utilized if the Agency Head or an Executive Order determines there must be a mandatory department closure, or time allowed for preparation or attending a grievance.
- 3.22 **Permanent Employees:** Employees that are hired for no specific duration of employment.
- 3.23 **Probationary Period of Employment:** The first six (6) calendar months of employment for permanent employees hired from a WVDOT certified register.
- 3.24 **Provisional Employees:** Employees that are hired to fill a position pending the administration of a competitive examination and the establishment of a WVDOT register for that position, after which they may apply for the position.
- 3.25 **Request to adjust weekly work schedule:** An employee's written request to work different hours or days than he or she is scheduled to work. The request must be made in advance unless some unplanned event prohibits the advance request. In that case, the employee will contact his or her supervisor as soon as possible to request permission to alter his or her work schedule. **Routine leave requests should be made on the appropriate Leave of Absence Request and do not meet the criteria for a change of work schedule.**
- 3.26 **Roadway Incident:** A road condition that impedes traffic or roadway safety sufficient to cause the Commissioner of Highways or his or her designee to declare it an emergency situation.
- 3.27 **SRIC:** Snow Removal and Ice Control.
- 3.28 **Student Employees:** College students that are hired for a specific period with no extension possible.
- 3.29 **TTD:** Temporary Total Disability under Workers' Compensation Insurance.
- 3.30 **wvOASIS:** means the Enterprise Resource System, the statewide computer system designed to manage the state's business functions including Financial Management,

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Procurement, Asset Management, Personnel Administration, Payroll, Time Reporting, and Benefits Administration.

4.0 WORK SCHEDULES AND ATTENDANCE

4.1 NORMAL WORK SCHEDULES OF WVDOT AGENCIES

It is the intent of the WVDOT to report 40 hours of work, leave or any combination thereof each week for all full-time employees. This does not preclude employees being scheduled to work more than 40 hours per week if the agency deems it necessary to meet its public service responsibilities. If a section or crew is scheduled to work five (5) or more 10-hour days, that is their normal schedule for purposes of this policy. An employee scheduled to work more than 40 hours per week but uses sick or annual leave during the week, he or she will either need to receive permission to work an alternate work schedule by submitting a Form DOT 3-15 or use 10 hours of leave for the day or the lesser amount of time off from work.

Normal work schedules vary from agency to agency and the needs of the agency, as follows:

- A. West Virginia Division of Highways (WVDOH): 7:30 a.m. to 4:00 p.m., Monday through Friday, with ½ hour unpaid lunch.
- B. Division of Motor Vehicles (DMV): 8:30 a.m. to 4:30 p.m., Monday through Friday, with ½ hour paid lunch. Regional Offices are assigned variable Alternate Scheduling to accommodate customer hours of operation established by the Agency Head.
- C. Division of Multimodal Transportation Facilities (DMTF): 8:00 a.m. to 4:00 p.m., Monday through Friday, with ½ hour paid lunch.
- D. The leave time accrued is based on a 40-hour work week.
- E. The wvOASIS Timel component will not allow an overtime exempt employee to submit more than 40 hours in a work week. DMV employees use the Kronos timekeeping system, therefore, Timel restrictions and requirements do not apply to DMV employees.

4.2 BREAKS

- A. The 30-minute lunch break may need to be staggered to provide coverage of phones and other essential services.
- B. Employees may not work through lunch breaks to make up for absences during the day without specific authorization from their organization managers. No such arrangement is permissible on a regular basis.

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- C. Employees may take two (2) 15-minute breaks for refreshments or other personal matters, one in the morning and one in the afternoon. Break periods cannot be accumulated, used to shorten a workday, or used to extend a lunch period.
- D. WVDOH Transportation Workers treating the roads during SRIC and other conditions requiring them to work more than six (6) hours between meal breaks will receive ½ hour paid lunch.

4.3 ALTERNATE SCHEDULING

This section is an option, it is not a substitute for good management and consistent communication. It provides guidelines and standards to assist managers and employees in meeting the WVDOT's goals and behaviors. It is up to the individual employee to manage his or her work assignments and time to accomplish the assignments in a predetermined workweek. It is up to managers at every level to ensure that his or her employees' scheduled hours allow the employees to complete assigned duties in a timely manner. This section explains how and in what types of circumstances to establish an alternate work schedule.

A. Permanent

1. The Agency Head may establish a permanent or seasonal workweek schedule that is different from the agency's normal schedule, provided that:
 - a. full-time employees will have a minimum of 40 scheduled reporting hours;
 - b. it is established to better serve the organization's objectives;
 - c. it is applied to whichever employees and whatever number of employees is necessary to meet the objective of the alternate schedule; and
 - d. it specifies the day and time that each work shift begins and ends.
2. Within the WVDOT, District Managers, Division Directors, or other appropriate managers may grant individual employees' permission to alter their start and end time by one (1) hour per day (e.g., for WVDOH 6:30 a.m. to 3:00 p.m. or 8:30 a.m. to 5:00 p.m.).
 - a. This alternate scheduling authority does not limit WVDOT's policy authorizing an entire organization to be assigned a different work schedule, e.g., four (4) days, 10-hour shifts per week.

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- b. Alternate scheduling must either represent the employee's regular schedule or must be for a specific time period. Employees may not be granted permission to work altered hours sporadically or at their own discretion.
- c. If an employee who is working an altered schedule must be absent from work during his or her work hours, just as if they were working the regular schedule, a leave slip must be completed, and the absence must be charged to the appropriate leave category.
- d. Employees are not permitted to work extra hours earlier in the week to accumulate hours which will be taken off later in the week without using leave time.
- e. This policy does not necessarily preclude other arrangements in situations of extreme need on the part of an employee. Supervisors should, in any case where some additional indulgence may be appropriate, submit the employee's request and the supervisory recommendation to the Agency Head for further consideration.
- f. Regardless of the situation, employees must request leave time or an alternate work schedule if the employee will not be present at the work site during scheduled work times.
- g. Requests for adjustments to the weekly work schedule must be made and responded to on Form DOT 3-15.

B. Temporary

Any workweek schedule may be changed due to circumstances including, but not limited to, project deadlines, seasonal workload, changed priorities, vacancies, inclement weather, occurrence of a paid holiday, or other factors. Schedules may be revised, and it should be understood that:

1. Employees who are eligible for overtime will not receive an adjustment in pay as a result of the change unless more than 40 hours of work are reported that week.
2. When a workday must be shortened by management due to unforeseen circumstances not referenced in Section 4.3.C. Emergency, each employee reporting to the work site is guaranteed, by management, the right to perform at least two (2) hours of actual work activity. This circumstance applies, primarily, to hourly employees involved in road maintenance. These employees, when this circumstance arises, will be paid for the two (2) hours and permitted, but not required, to take annual leave to make up the rest of the shift.

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- a. The immediate supervisor may allow employees to make up the hours they were not able to work later in the week or on the weekend, if possible. Form DOT 3-15 must be completed for this or any other alternate work schedule.
- b. If the employee desires, annual leave may be charged for the number of hours needed to compensate for those hours that were scheduled to have been worked that day. If the employee does not want to charge annual leave, no other type of leave or leave of absence may be used.

C. Emergency

The Governor, or designee, may order all state employees or all in an affected area not to report to work due to emergency situations, except for employees who are essential to efforts of dealing with the emergency. In this situation, the non-essential employees who were scheduled to work are paid as if they had worked, up to eight (8) hours, and their time is credited by the organization's HR Representative to "other leave", for accounting purposes.

The essential employees who are required to work are compensated for the hours worked or through adjusted work schedules. If an employee works more than 40 hours in a regular workweek, they will be paid overtime in accordance with this policy.

If the emergency occurs on a holiday, the essential employees who work will be compensated for the time worked and an additional eight (8) hours for the holiday.

If the essential employee chooses to receive time off rather than monetary compensation, the work schedule should be adjusted as soon as practical, preferably within the same workweek, or, if not possible, within the same pay period, but no later than 30 days following the occurrence. If it is not practical to give the time off within the 30-day time period, an extension may be requested through the HR Division.

1. When state offices are closed by Executive Order, an employee who reports to work, and works less than eight (8) hours will be credited the number of hours to equal eight (8) hours of "other leave."
2. Employees who are already scheduled for whole days of annual or sick leave on these days will not be charged for leave as planned. They will be paid "other leave" hours for their normal scheduled work hours, up to eight (8) hours, for that day if the WVDOT work location they report to is closed.

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3. If nonessential employees report to work at the usual time when an Executive Order has been given which specifies a delayed reporting time, they will be allowed to take off the number of hours of delay later that day or that same week.
4. When employees are unable to report to work because of inclement weather or other emergencies, but state offices are not closed, they will be granted annual leave or their workweek will be adjusted to allow make-up for the hours missed, if possible. If no accrued annual leave is available, a personal leave of absence may be granted; however, employees must call in as soon as possible if they cannot report.
5. If any employee's work location is closed, making it impossible for them to report, the employee will be compensated for their scheduled workday as "other leave", up to eight (8) hours.

D. **Unscheduled Duty**

Employees who have completed their normal workday and have left the work site may be required to return to work before the next scheduled shift in order to meet agency needs, due to power interruptions requiring equipment or operations, and computers to be checked or restarted, robberies or break-ins at the office requiring interactions with law enforcement, and other situations. Management will assign employees to respond to situations such as these that may occasionally occur. Employees who are required to report for unscheduled duty will be paid reasonable travel time from their residences to the reporting or work locations and back to their residences, as well as for the actual time spent performing the required work activities. In such situations, employees shall be credited with no less than two (2) hours of work time.

E. **Snow Removal and Ice Control (SRIC)**

Certain WVDOH employees are expected to work SRIC duty as an essential function of their jobs. The conditions of that function are as follows:

1. Individuals involved in SRIC and designated to work on a particular shift shall personally be contacted at the work location or, if necessary, at home by phone, by his or her County Highway Administrator, Expressway Supervisor, Assistant Supervisor or Supervisor in Charge, when inclement weather (i.e., heavy rain, snow, or ice) is predicted during off-duty hours. The employee will then receive instructions on reporting for duty.
2. Work time begins when an employee reports to the prescribed work location as previously established by the management levels noted above.

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3. Transportation Workers treating the roads during SRIC will receive ½ hour paid lunch.
4. If an employee is not needed for one (1) shift, he or she will contact the supervisor prior to the next assigned shift if inclement weather is still predicted.
5. If an employee has been away from home and returns then becomes aware of inclement weather conditions impacting road conditions, he or she is expected to call the supervisor for instructions.
6. If any employee desires to be away from home for an extended period, such as a weekend when inclement weather is a possibility, he or she will advise the supervisor to determine if an alternate employee can cover the employee's assignment.
7. An employee on call is not required to remain on call on the WVDOH's premises or at home but is required to leave word at home or with the supervisor how the employee may be reached.

F. Management required overtime during SRIC, emergencies, or other events which require certain employees to work extended schedules or overtime do not require employees to complete Form DOT 3-15. The supervisor and the employee will continue to document this time as provided in this policy.

4.4 OVERTIME AND HOLIDAY WORK

The organization manager, or designee, may require employees to work more than the normal working hours or work official holidays, when necessary. Overtime work and work on holidays will be controlled and compensated in accordance with the Fair Labor Standards Act, W. Va. Code § 21-5C-1 *et seq.*, and the provisions of this policy.

- A. The WVDOT workweek, for overtime purposes, is from 12:01 a.m. on Saturday through midnight Friday.
- B. Overtime must be approved for hours actually worked in excess of 40 hours.
- C. Hourly and non-exempt salary employees who exceed 40 hours of actual work in a workweek are paid at one-and-one-half times the normal rate, (time and a half) for the overtime hours. For salaried employees, the normal rate is calculated by dividing the annual salary by the standard annual work hours (2,080 hours). Salaried, exempt employees are paid according to the specifications of their individual job classification and this policy.

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- D. Full-time employees who are required to work holidays will be paid for the actual number of hours worked plus an additional eight (8) hours for the holiday. Part-time employees are entitled to receive payment in accordance with the provisions of Appendix A.
- E. In the case of agencies that must modify holiday schedules to accommodate around-the-clock shifts or other special needs, the organization manager or designee may implement altered holiday schedules. Each agency should notify employees in advance of altered holiday work schedules and should schedule the altered holiday as close as possible to the officially scheduled holiday.

5.0 OVERTIME CLASSIFICATION AND PAY

This section applies federal fair labor standards, as specified in the FLSA and the Code of Federal Regulations (CFR), regarding eligibility for premium overtime pay to the employees of the WV DOT. It specifies positions that are considered clearly ineligible for premium overtime pay within the organizational hierarchy and those considered clearly eligible for such. Further, it specifies a process by which the overtime status of all other positions will be determined and addresses the method of payment for hours worked in excess of 40 hours to employees who are ineligible for 1½ time pay under the FLSA. The FLSA does not require, nor does it prohibit straight time overtime for employees not eligible for 1½ pay under FLSA. Nor does it regulate leave time, however, it provides that leave time is not time actually worked and therefore it is not required to be counted in calculation of overtime. This section does not apply to any positions with salaries specified by statute.

5.1 NON-EXEMPT EMPLOYEES

Employees who do not meet the Executive, Administrative, Professional or Computer-Related employee exemptions under the FLSA and federal regulations and are considered non-exempt are therefore eligible for premium overtime pay. Such employees typically:

- A. perform non-administrative duties;
- B. have no supervisory responsibilities;
- C. do not hold any professional licensure and do not primarily perform work in a field requiring advanced knowledge or a postsecondary education degree in fields such as law, accounting, engineering, architecture, or physical, chemical, or biological sciences; and
- D. do not primarily perform computer systems design, analysis, or programming duties.

Employees are not permitted to work via remote access (i.e. laptop or other mobile devices). In the unusual circumstance that an employee is granted permission to work via remote access, they must submit the time and projects worked on to their supervisor to assure productivity and quality of work are maintained.

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5.2 TESTED POSITIONS

- A. All positions not falling in the exempt and non-exempt categories described above will be evaluated by HR Division under applicable federal law and regulations, using the WVDOT's White Collar Exemption Worksheet.
- B. The test will be conducted at the time an employee is hired or enters a new position or at such time as an agency manager requests an updated FLSA review.

5.3 PAYMENT TO CERTAIN EXEMPT EMPLOYEES

- A. Except those employees listed below, exempt employees will receive straight time pay for hours actually worked in excess of 40 hours per week, up to a maximum of 270 hours per calendar year. Once the maximum hours have been reached, exempt employees may be required to work additional hours with no additional compensation.
- B. Overtime hours worked during or as a result of declared states of emergency will not be counted toward the 270-hour limit. The WVDOT Secretary or his or her designee may also exempt hours from the limit in situations where employees must work overtime to meet work demands. Requests for such hours to be exempted must be made to the appropriate executive level manager and must be approved in writing by the WVDOT Secretary or his or her designee.
- C. Individuals serving in the following positions will not receive additional compensation in any form when they work more than 40 hours per workweek:
 - Secretary, Department of Transportation;
 - Deputy Secretary, Department of Transportation;
 - Assistant Deputy Secretary Department of Transportation;
 - Assistant to the Deputy Secretary Department of Transportation;
 - Director, Aeronautics Commission;
 - Commissioner, Division of Highways;
 - Deputy Commissioner, Division of Highways;
 - Assistant Commissioner, Division of Highways;
 - Commissioner, Division of Motor Vehicles;
 - Deputy Commissioner, Division of Motor Vehicles;
 - Assistant Commissioner, Division of Motor Vehicles;
 - Commissioner, Division of Multimodal Transportation Facilities (DMTF);
 - Council for Division of Multimodal Transportation Facilities;
 - Assistant Commissioners;
 - Executive Director, DMTF - Public Transit;
 - Executive Director, DMTF - Rail;

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- Chief Engineers;
- Assistant Chief Engineers;
- Executive Advisor;
- Attorneys;
- General Counsel;
- Deputy General Counsel for HR Division;
- Business Manager;
- Deputy Business Manager;
- District Managers;
- Deputy District Managers;
- District Department Heads (i.e. construction engineer, bridge engineer);
- Division Directors;
- Assistant Division Directors (i. e. Highway Engineer Senior);
- Chief Data Officer; and
- Computer system analyst, programmers, software engineers.¹

6.0 MANAGEMENT AND REVIEW OF HOURS THAT EXCEED THE STANDARD WORKWEEK

The purpose of this section is to ensure that hours worked that exceed an employee's standard workweek are reasonable and necessary to carry out the goals and mission of the WV DOT. The procedures required by this policy are designed to ensure excess hours are either planned or approved in advance or reviewed after their unanticipated occurrence.

The requirements contained herein are predicated on the fact that the WV DOT's public service responsibilities often involve necessary work outside normal working hours that cannot be foreseen. In addition, it is recognized that many hours worked outside of the standard workweek are routine, even though unplanned, for common activities such as snow removal and other weather-related events or other situations that affect transportation throughout the state. It is the responsibility of supervisors to manage their employees' work schedules in best interests of the WV DOT.

Overtime in an office setting is not to be used to complete normal, routine, non-time sensitive work. In office overtime is limited to emergencies or time sensitive activities as determined by the Commissioner, Agency Head, District Manager, or Division Director. The need for overtime must be documented and approved in the same manner as all deviations from the scheduled work week by completing Form DOT 3-15.

The wvOASIS timekeeping system will not allow more than 40 hours per week to be entered for an exempt employee for overtime. If an employee is scheduled for five (5) eight (8) hour shifts, then eight (8) hours should be charged for a given day regardless of the hours worked unless an alternate work schedule has been approved in advance.

¹ As these positions are defined in 29 C.F.R. §541.400.

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This does not affect other schedules that may be instituted as long as it is the normal schedule for section or crew, i.e., a crew normally scheduled to work four (4) 10-hour days. Those employees would have four (4) days entered at 10 hours each.

6.1 **SCHEDULED HOURS THAT EXCEED THE STANDARD WORKWEEK**

- A. Hours credited to an employee over 40 hours in a workweek that are planned by organizational supervisors must be approved in advance by the District Manager, Division Director, or relevant authority for the WVDOH, or by the Agency Head in other WVDOT agencies. Requests for planned excess hours are to be submitted to the District Manager or Division Director or relevant authority for the WVDOH, or to the Agency Head in other WVDOT agencies prior to the start of the week in which the work is to be performed. The District Manager or Division Director, or relevant authority for the WVDOH, or the Agency Head in other WVDOT agencies, will approve, disapprove, or modify the requested hours and communicate his or her action to the requesting supervisor. In an office setting, overtime must be planned and approved, or requested as the need arises and approved by the District Manager, Division Director, or Agency Head.
- B. Non-management office staff are expected to complete normal, routine tasks in the scheduled workweek. In the rare instances where an emergency has arisen the supervisor may request such staff to work additional hours. Non-management office staff do not have the authority to work outside of their established schedule without prior approval of the supervisor.
- C. The HR Representative or Comptroller in the Division, District, or other WVDOT agency will generate a weekly time report in the electronic payroll system for any week in which such scheduled hours are worked and forward it to the organization or unit supervisor at the conclusion of that week. The supervisor will reconcile the hours worked with those approved. If the hours worked are less than the hours approved, the supervisor will sign the Weekly Time Report, attach documentation of the hours approved, and file that material at the organization level. If the hours worked exceed the hours approved, the supervisor will follow, for those hours worked but not previously approved, the procedure for unscheduled hours outlined herein.

6.2 **UNSCHEDULED HOURS THAT EXCEED THE STANDARD WORKWEEK**

- A. Hours credited to an employee over 40 hours in a workweek that are not planned but must be worked as a result of unanticipated work demands (e.g., weather conditions, traffic accidents, changes in contractor schedules, etc.) must be requested and justified using Form DOT 3-15 to the District Manager, Division Director, or relevant authority for the WVDOH, or to the Agency Head in other WVDOT agencies by organizational supervisors.

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- B. The designated person will generate a weekly time report in the electronic payroll system for any week in which unscheduled hours are worked and forward it to the organization or unit supervisor who will review the report to quantify the hours, sign it to denote that the review has been made, and submit that document, as well as a signed justification for the hours, to the District Manager, Division Director, or relevant authority for the WVDOH, or the Agency Head in other WVDOH agencies. The District Manager, Division Director, or relevant authority for the WVDOH, or the Agency Head in other WVDOH agencies will affix his or her signature to the same documents after reviewing them to verify and acknowledge the information received.
- C. The employee will be paid overtime for hours worked in excess of 40 hours whether the hours were scheduled, approved unscheduled, or unapproved.

6.3 UPPER MANAGEMENT REVIEW

Each agency will establish internal procedures to track and report overtime hours for each employee and justification for the overtime. The reports will be submitted each quarter to the Agency Head and appropriate managers.

6.4 RECORDS RETENTION

The weekly time reports, documents relating to approved scheduled hours that exceed the normal workweek, and documents justifying unscheduled hours that exceed the normal workweek will be maintained at the organization level and by the relevant authority for a period of three (3) years. Where federal aid projects are involved, this supporting documentation **must** be retained for a period of three (3) years *beginning with the date final expenditure information has been submitted to the Federal Highway Administration (FHWA)*. The quarterly reports will be maintained by the District Manager, Division Director, or relevant authority for the WVDOH, and appropriate executive level management for the same time period.

6.5 INTERNAL AUDIT ACTIVITY

The Internal Audit Section of the WVDOH Auditing Division will perform occasional reviews of files to ensure that organizations are complying with this policy. The sampling rate for this activity will be at the discretion of the Auditing Division Director.

7.0 AUTHORIZED LEAVE WITH PAY

Violations of this leave policy may subject the employee to penalties described under DOT policies, including disciplinary action, up to and including dismissal.

7.1 ALL TYPES OF LEAVE WITH PAY (EXCEPT HOLIDAY LEAVE) REQUIRE EMPLOYEES TO:

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- obtain approval of the immediate supervisor for planned leave as early as possible. A minimum advance request time may be established by the organization manager;
- obtain approval of the immediate supervisor for unplanned leave, such as personal emergencies and sick leave, at least by the organization's established reporting time, the time by which employees must call in for unexpected absences, set at the organization manager's discretion;
- complete and submit Form DOT-L1² to document the request and the approval or disapproval;
- a leave slip must be completed for any time that an employee does not work the hours scheduled in a given day. For example: an employee is scheduled to work five (5), eight (8) hour shifts. The employee takes four (4) hours of sick or annual leave on Thursday. The employee must submit a leave slip for four (4) hours of appropriate leave regardless of how many hours they have worked the other days that week;
- have sufficient earned leave balance to cover the absence; and
- charge a minimum of ¼ hour.

7.2 LEAVE USAGE AND PAY

- A. Employees will be paid for hours of actual work performed that occur after the accumulation of 40 hours for the workweek. The fact that annual or sick leave may have been attributed to reaching the 40-hour threshold is not a consideration, those hours are counted.
- B. Employees will be paid straight time for all hours, including annual and sick leave counted in the accumulation of hours in excess of 40 hours per week.
- C. Eligible employees will be paid time and a half for hours worked in excess of 40 hours in a work week when annual and sick leave are not used to accumulate 40 hours.
- D. Leave usage is recorded on Form DOT-12 for daily work reporting. (See Section 4.3 for processing information.) At the end of this Policy, Appendix B provides a listing of leave accrual and carry-forward rates, while Appendix C provides a listing of the leave with pay authorization numbers and Appendix D provides benefits for employees on leave of absence and receiving TTD benefits.
- E. All employees are responsible for managing their leave and maintaining a sufficient balance to provide time off for personal matters and illness. Leave abuse will not be tolerated and can result in a range of actions including

² The naming conventions for HR forms throughout this policy are subject to change without further notice. Please check with your supervisor or personnel manager for current forms.

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counseling, leave improvement plans, and the full range of disciplinary action up to and including dismissal. Leave abuse can take many forms such as missing Monday's and Friday's, calling off before and after holidays and vacations, etc.

- F. Supervisors are responsible for monitoring and approving their subordinates leave usage and keeping the employees updated on leave balances. To that end, each supervisor must maintain a record of their employees' leave balances.
 - 1. The supervisor will send any employee who is close to going below acceptable leave balances a courtesy letter advising them they are close to reducing their leave balance below acceptable levels. The HR Representative for the District, Division, or agency will prepare the letter.
 - 2. After sending the letter, the supervisor or a District, Division, or agency HR Representative will meet with the employee to discuss the importance of maintaining an appropriate leave balance and provide appropriate options. Assistance is available from the central office HR Division throughout this process.

7.3 ANNUAL LEAVE

- A. Annual leave is an employment benefit that allows employees to have paid time off work to be used as the employee chooses. However, an employee is not automatically granted annual leave upon request. Annual leave may be granted or denied at the discretion of the supervisor based on the needs of the employer and the employee. Employees are encouraged to use leave wisely and be mindful of future needs. "Earning and burning" leave may be grounds for disciplinary action. Supervisors must maintain a record of their employees' leave balances. Any employee who shows a pattern of leave abuse will be put on a leave improvement plan.
- B. Ultimately, supervisors and employees are responsible for the overall planning, coordination, and approving of annual leave throughout the year so that:
 - 1. the agency's mission and employees' needs are met;
 - 2. employees do not approach the end of the year with a significant amount of annual leave that must be used or forfeited; and
 - 3. employees are in compliance with leave policies.
- C. All permanent and provisional employees accrue annual leave.
- D. Approval for taking annual leave is based on not affecting the efficient operation of the organization.

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- E. Annual leave shall be granted, upon request, to employees who have exhausted their sick leave, sick leave for immediate family, and sick leave for death in the immediate family.
 - 1. A completed, signed Form DOT-L13, Medical Care Provider's Statement, is required upon return from annual leave for a sick absence of more than three (3) days.
 - 2. Do not confuse this use of annual leave with family sick leave.
- F. Provisional employees must use all of their accrued annual leave, prior to the termination of their employment, in order to receive payment for it.
- G. Employees who volunteer as emergency responders, firefighters or emergency medical service (EMS) providers may be allowed to use annual leave to respond to fire or medical emergencies during work hours if the following conditions are met.
 - 1. The employee must provide his or her immediate supervisor with a notarized statement from the volunteer fire department or EMS provider certifying that the employee is a volunteer firefighter or EMS provider before any emergency arises.
 - 2. Authorizing the use of annual leave for emergency responders is within the sound discretion of the supervisor and may only be approved if the supervisor determines that it will not unduly interfere with the work scheduled or anticipated work for that day.
- H. Since supervisors must balance the work of the agency against the interest of the employee in using annual leave, supervisors may find it necessary from time to time to ask employees how they will use the requested annual leave so that the supervisors may make informed decisions about scheduling the leave. In such cases, employees are not required to provide the supervisor with this information but should understand that in the absence of such information, their request for annual leave may be denied based on project related deadlines or the workload of the agency. However, supervisors should not make it a standard practice to require that employees inform them how the annual leave will be used.
- I. Supervisors will deny an employee's request for annual leave any time it is in the best interest of the agency to have the employee perform his or her assigned duties during the time the employee has requested annual leave. The supervisor will advise the employee of the agency's need for the employee's presence.

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7.4 SICK LEAVE

- A. Permanent and provisional employees accrue sick leave which is to be used for personal illness, medical operations and recovery, routine dental, and medical appointments, etc.
- B. Time for travel to and from appointments may be charged to sick leave up to three (3) hours per sick leave request.
- C. The maximum charge is one (1) work year per substantially continuous absence, after which time the employee should consider disability retirement.
- D. Within two (2) days of returning to work from sick leave of more than three (3) consecutive workdays, employees must submit a completed Medical Care Provider's Statement, Form DOT-L13.
 - 1. For extended periods of sick leave, a physician's statement confirming the necessity for continued leave must be submitted every 30 calendar days.
 - 3. The organization manager or designee may require a Medical Care Provider's Statement for all sick leave of an employee when it is deemed that the employee has a pattern of sick leave abuse and is on a leave improvement plan. Abuse of sick leave will result in disciplinary action being taken against the employee. Factors potentially signaling leave abuse include the following:
 - a. numerous and frequent short-term absences;
 - b. numerous absences due to sick leave of three (3) days or less; or
 - c. patterns of sick leave usage involving Mondays, Fridays, or holidays.
 - 3. In the absence of the Medical Care Provider's Statement, the time will be charged as unauthorized leave.
- E. Employees must submit the required Forms DOT-L1 and DOT-L13 at the earliest practical time. If an employee is unable to furnish a completed Form DOT-L1 or Medical Care Provider's Statement in time to meet payroll deadlines because of extreme circumstances, the immediate supervisor, with the approval of the organization manager, may approve sick leave without the required documentation. In this event, a letter explaining the circumstances must be attached to the organization's Form(s) DOT-12, Daily Work Report.

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- F. Exposure to a contagious disease is a valid reason for sick leave approval when a medical care provider states in writing that the employee has been exposed and that his or her presence at work may jeopardize the health of others. In the event of a pandemic or any declared State of Emergency due to a contagious disease outbreak, employees are not required to provide a statement from a medical care provider. All employees must follow DOT policy, or if issued, the employing agency's guidelines in such circumstances.
- G. Employees who become ill while on approved annual leave and are treated at a hospital emergency room or are admitted to a hospital may request that all or part of the time for treatment be charged to sick leave. The employee must provide a Medical Care Provider's Statement listing the specific dates of hospitalization or emergency room services.
- H. Employees injured on the job:
 - 1. May not receive sick leave at the same time they are receiving Temporary Total Disability (TTD) benefits through the Workers' Compensation Insurance.
 - 2. He or she must choose at the outset of their absence whether to use sick leave or accept TTD benefits.
 - 3. If an employee elects to accept TTD, sick or annual leave may be paid until the claim has been ruled compensable and the first benefit check is received; however, the employee must reimburse the WV DOT the net value of sick and annual leave benefits paid to them. Upon receipt of the repayment, the leave used will be credited to his or her leave balance.
- I. Accrued sick leave balances of provisional employees terminate at the end of their employment.

7.5 SICK LEAVE (IMMEDIATE FAMILY)

All employees who are eligible for paid sick leave may use up to 80 hours of their accrued sick leave per calendar year for illnesses and routine dental and medical appointments for members of their immediate family provided their sick leave balances are adequate to cover use.

- A. "Immediate family" members include father, mother, son, daughter, brother, sister, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, grandfather, grandmother, grandchildren, stepfather, stepmother, stepbrother, stepsister, stepchild, foster children, individuals in an *in loco parentis* relationship, and individuals in a legal guardianship relationship.

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- B. The organization's HR Representative is responsible for tracking employee sick leave hours which are used for "Sick Leave (Immediate Family)."
- C. All other sick leave rules apply.

7.6 SICK LEAVE (DEATH IN IMMEDIATE FAMILY)

All employees who are entitled to paid sick leave may use up to three (3) days of accrued sick leave per occurrence for death in their immediate families provided their sick leave balances are adequate to cover the use.

7.7 LEAVE TIME FOR ORGAN DONATION

- A. Full-time employees shall receive up to 120 hours of leave with pay during each calendar year to use when the employee is absent from work because of the employee's donation of any portion of an adult liver or because of the employee's donation of an adult kidney.
- B. Full-time employees shall receive up to 56 hours of leave with pay during each calendar year to use when the employee is absent from work because of the employee's donation of adult bone marrow.
- C. Eligibility includes time spent for pre-operative testing to determine the potential donor's surgical fitness and compatibility. This is the case whether or not the potential donor is found to be compatible, or the organ donation occurs.
- D. The employee must request paid leave and provide verification of the pre-operative testing or organ donation on the forms prescribed by the HR Division.
- E. Leave may be taken continuously or intermittently.
- F. Leave taken for this purpose shall not be charged against employee's accrued sick or annual leave balance.

7.8 HOLIDAY LEAVE

Employees are entitled to time off with pay for official holidays subject to the following:

- A. To receive pay for any holiday, an employee must, at a minimum, work or be on approved paid leave for his or her full scheduled workday immediately preceding and following the holiday. An employee is not eligible to be paid for any holiday that occurs prior to his or her first day of work or after his or her date and time of separation.
- B. Full-time employees receive eight (8) hours of holiday leave for each official holiday.

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- C. Part-time employees receive payment for holidays in proportion to the amount of time worked as compared to the employer's standard workweek.
- D. Employees who work alternate schedules that require them to work on holidays will be given time off on another day or may be paid for eight (8) hours of holiday leave in addition to being paid for the hours actually worked.
- E. In accordance with W. Va. Code § 2-2-1 *et seq.*, official holidays are: New Year's Day, Martin Luther King's Birthday, Presidents' Day, Memorial Day, West Virginia Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Lincoln's Day (Day after Thanksgiving Day), Christmas Day, any day on which a primary, general, or special election is held throughout the State, and such other days as the President, Governor or other duly constituted authority may proclaim to be legal holidays.

7.9 MILITARY LEAVE

All employees who are members of the National Guard or of any of the Reserve Components of the Armed Forces of the Federal Government are entitled to paid military leave without loss of status or efficiency rating, on all days during which they are engaged in drills or parades during business hours or for field training or active service, for a maximum period of 30 working days in any one (1) calendar year ordered or authorized by proper authority.

- A. The employee must have worked or been on approved leave with or without pay for military service for at least 1,040 hours, or 50 percent of the normal work schedule for part-time permanent classified employees, during the 12-month period immediately preceding the beginning of the leave.
- B. Additionally, all employees who are ordered or called to active duty by the President of the United States are eligible for an additional paid leave of absence without loss of status or efficiency rating for a maximum period of 30 working days.
- C. Holiday leave will be paid, and official holidays are not included in figuring the 30-working day limit for military leave, provided that the eligibility requirements for being paid holiday leave are met.
- D. This "paid" status is unaffected by any other compensation these employees may receive.
- E. This paid leave policy does not apply under the provisions of any Selective Training and Service Act. Employees in this situation may request and will be granted an unpaid leave of absence (see Section 8.3).

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- F. Organization managers are authorized to approve military leave. The employee must submit a copy of the official orders from the appropriate military authority in advance of leave being granted. The official orders must be attached to the organization's copy of the Time Report for subsequent audit.

7.10 WITNESS OR JURY SERVICE LEAVE

Permanent employees will be granted witness or jury service leave with pay when, in obedience to a subpoena or direction by proper authority, they serve on a jury or appear as a witness before any court or judge, any legislative committee, or any officer, board or body authorized by law to conduct any hearing or inquiry.

- A. The organization manager, or designee, will require the employee to furnish written confirmation of the employee's need to be on witness or jury service leave.
 - 1. Failure of an employee to submit a summons or other appropriate documentation in advance of taking witness or jury service leave will result in accrued annual leave being charged.
 - 2. Failure to submit the required documentation will result in the employee being placed in unauthorized leave status for the absence.
 - 3. The employee must furnish official written documentation from the court or hearing officer immediately upon returning to work.
- B. The WVDOT will not support an employee's request to be excused from jury duty unless an employee's absence from work would cause significant problems in the agency's work progress.
- C. If the jury duty or duty as a subpoenaed witness does not occupy a full working day, the employee must report back to work for the remaining scheduled work time, unless the remaining time would be less than one (1) hour, making a reasonable allowance for travel time.
- D. If an employee who normally works evening or night shift must serve as a juror, the employee should be placed on day shift, if practicable, for the length of such service and be given time off on jury service leave.
 - 1. Schedule adjustments for the employee serving on a jury are recommended because of the fatigue factor, which may contribute to increased errors, security risks, and safety infractions.
 - 2. Employees who are subpoenaed to be witnesses and normally work evening or night shift may also request a schedule adjustment.

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3. If an employee is appearing in court on behalf of and at the request of the agency, the employee is not required to submit documentation and is to be paid for actual hours incurred from the organization's administrative overhead account.
- E. This policy does not apply in cases where the employee is a litigant, defendant, or other principal party, or has a personal or familial interest in the case or proceeding.
- F. This policy does not apply to involvement in grievance proceedings. See DOT 3.5, Grievances for that information.

7.11 EMERGENCY RESPONDER LEAVE

- A. In accordance with West Virginia Code §21-5-17, no employee may be discharged or disciplined if a fire, medical emergency, or other emergency call requires the employee to respond to an emergency prior to reporting for work and requires the employee to lose work time. Any loss of time from work may be charged against annual leave or as unpaid leave if sufficient annual leave time is not available, at the employee's discretion. The employee may be required to provide a signed certification from the person in charge of the emergency.
- B. As used in this section, "emergency" means going to, attending to or coming from: (1) A fire call; (2) a hazardous or toxic materials spill and cleanup; (3) a motor vehicle accident; or (4) any other situation to which his or her fire department or emergency medical service entity has been or later could be dispatched.

8.0 LEAVE OF ABSENCE WITHOUT PAY

These stipulations do not apply to employees on military leave of absence. Contact HR Division for details about workers' compensation claims.

8.1 EMPLOYEES ON A LEAVE OF ABSENCE WITHOUT PAY:

- A. do not accrue annual leave or sick leave,
- B. are not eligible for holiday leave,
- C. are not eligible for salary advancements,
- D. do not gain leave accrual rate increases, incremental increases, layoff consideration, or
- E. tenure of retirement.

8.2 ALL LEAVES OF ABSENCE WITHOUT PAY REQUIRE THE FOLLOWING:

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- A. The employee must complete and submit a Form DOT L-2 or DOT L-4 to document the request and the approval or disapproval.
- B. The organization's HR Representative must complete and submit a Form GL-5 (with a copy of the Form DOT-L2 or DOT-L4) and Form DOT-129 to HR Division to deactivate the employee.
- C. The organization's HR Representative, after the employee returns to work, must contact the HR Division to reactivate the employee, and must complete and submit Form DOT-129 to HR Division's Payroll Section, for leave balance adjustment payroll activation, and must submit Form GL-5 to HR Division.

8.3 PERSONAL LEAVE OF ABSENCE

- A. An Agency Head, or designee, may grant any permanent, probationary, or provisional employee a personal leave of absence for a specific period not to exceed one (1) year.
 - 1. The employee must complete and submit a Form DOT L-2 to document the request and the approval or disapproval. See Section 8.0 for requirements on all leaves of absences without pay.
 - 2. Based on the organization's personnel needs, periods exceeding one (1) year may be granted by the Agency Head.
 - 3. An organization manager may independently grant a personal leave of absence for a period of five (5) consecutive working days or less.
 - 4. Time spent by probationary employees on leaves of absence are not counted as time served in completing the probationary period. This section doesn't extend the provisional period limitation.
- B. Employees must pay 100% of their medical and any optional insurance premiums for personal leaves of absence of one (1) calendar month or more.
- C. Upon return to work, the employee will either be returned to his or her former position or one of comparable pay and duties without loss of rights, unless the position is no longer available due to a reduction in force.

8.4 MEDICAL LEAVE OF ABSENCE

- A. Medical leave is available only to permanent employees. The Agency Head or designee will approve this leave if the employee meets all the requirements.

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- B. Medical leave is limited to a maximum of six (6) continuous calendar months in a 12-month period.
 - 1. The employee must have worked or been on approved leave with or without pay for at least 1,040 hours during the 12-month period immediately preceding the beginning of the leave.
- C. The employee must have exhausted all available sick and annual leave.
- D. Application is made with Form DOT-L13, Medical Care Physician's/Provider's Statement, completed and submitted to the immediate supervisor, along with Forms DOT-L4 and DOT-L5 if DOT-L13 does not include enough information.
 - 1. The physician must verify on Form DOT-L13 that the employee is ill or injured and unable to perform work duties and must provide a tentative date for returning to work.
 - 2. An employee must apply no later than 15 calendar days following the expiration of all sick and annual leave, no later than 15 calendar days following the day on which the employee files a claim for Workers' Compensation, or within 15 days after injury or illness that renders the employee unable to perform his or her duties.
 - 3. Upon the submission of a properly supported application, the employee may retain all, or any portion of, his or her annual leave balance. An employee may retain all, or any portion of, his or her sick leave balance if the injury or illness is one for which a Workers' Compensation claim will be filed.
 - 4. Following approval, a new Form DOT-L13 must be submitted each time the employee's condition is re-evaluated to confirm the necessity for continued leave.
- E. The Agency Head or designee will send by certified mail to the employee a written notice of the employee's right to a medical leave of absence without pay. If possible, this must be done at least 15 days prior to, but no later than, five (5) days following the expiration of the employee's sick leave if the employee has opted to use sick leave. A copy of the letter will be sent to HR Division to be placed in the employee's personnel file.
- F. Upon approval, the Agency Head, or designee, must notify the employee by certified mail that the request for a medical leave of absence has been granted. The letter will specify the beginning and ending date of the leave of absence, insurance information and what is required before the employee returns to work. A copy of the letter will be sent to the HR Division to be placed in the employee's personnel file.

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- G. Employees are required to remit to the designated HR Representative payment for their portion of the basic health insurance premium. The WV DOT will continue to pay the agency's share.
 - 1. If an employee is enrolled for optional or dependent life insurance, 100% of the premium will be remitted by the employee.
 - 2. All applicable premiums are to be mailed to the HR Division, Payroll Section, no later than the fifth day of each month.
- H. When an employee is approaching the last month on medical leave of absence without pay, the organization manager, or designee, will notify the employee, by certified mail, of his or her expected return date. The employee will also be reminded that failure to return for work promptly at the expiration of the medical leave of absence, except for satisfactory reasons submitted in advance, will be cause for recommendation for dismissal. A copy of the letter will be sent to the HR Division to be placed in the employee's personnel file.
- I. After the expiration of a six (6) month medical leave of absence, if the employee is still unable to work, the Agency Head, or designee, may, but is not required to, grant a personal leave of absence. The request granting a continuance of a personal leave of absence for an ill or injured employee will be governed by the same policy as the granting of a medical leave of absence. This includes the payment of insurance premiums. The agency's portion of insurance premiums for a non-Workers' Compensation illness or injury will be paid for a maximum of 12 months (six (6) months of medical leave of absence plus six (6) months of personal leave of absence).
- J. If the employee is still unable to return to work after the expiration of six (6) additional months of personal leave, the HR Division Director, or designee, may, but is not required to, grant an extension of personal leave. The decision of this officer, on whether or not to grant an extension, is final. The request and continuance for this extension will be subject to the same requirements as a medical leave of absence. The agency's portion of insurance premiums for ill or injured employees receiving Workers' Compensation will be paid by the employing agency. All other employees on such leave will be responsible for paying 100% of the insurance premiums.
 - 1. If an employee's leave of absence is due to a Workers' Compensation illness or injury, the leave for a single injury is limited to the period during which TTD benefits are received, or 24 months, whichever is longer.
 - 2. If an employee's leave of absence is due to a non-Workers' Compensation illness or injury, the maximum period of leave cannot exceed 24 consecutive months.

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- K. Upon returning to work, the employee will be reinstated to his or her former position or one of comparable pay and duties, without loss of rights. At this time, the employee must furnish a statement from the attending physician (Form DOT-L13) indicating the ability of the employee to return to work.
 - 1. The Agency Head, or designee, may permit an employee to return to work at or before the expiration date of the leave of absence at less than full duty, but the terms of return shall be written and are subject to review and renewal by the Agency Head, or designee, every 30 calendar days. Such review may include the requirement of additional certification by a physician.
 - 2. Failure of the employee to report promptly at the expiration of a medical leave of absence, except for satisfactory reasons submitted in advance, is cause for recommendation for dismissal.

8.5 **MILITARY LEAVE OF ABSENCE**

Any employee entering the U.S. Armed Services in time of war, national emergency, or under compulsory provisions of U.S. law in time of peace, may be granted a military leave of absence without pay. Upon completion of and discharge from any such Armed Service, and within the applicable time period described by federal statute or regulation, the employee shall have the right to return to WVDOT service without any prejudice as to status, merit rating, or standing by reason of such absence. An employee will be credited with all annual leave and sick leave not used at the commencement of his or her military leave of absence.

- A. The employee must have worked or been on approved leave with or without pay for military service for at least 1,040 hours, or 50 percent of the normal work schedule for part-time permanent classified employees, during the 12-month period immediately preceding the beginning of the leave.
- B. When applying for such leave, the employee must submit a copy of the official orders from the appropriate military authority to the organization's HR Representative, who will then submit the orders and other documentation to the HR Division, Payroll Section.
- C. When returning from such leave, the employee must submit a copy of the official military discharge papers and a completed Form GL-5 to the HR Division. A completed Form DOT-129 must be submitted to HR Division, Payroll Section.
- D. Military leave will not be allowed to be used as an attempt to enlarge or extend the length of employment of any temporary employee or to create a definite term in a position where none existed before.
- E. The federal law shall prevail if any of the provisions expressed in this section are found to be in conflict with federal statutes or regulations.

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- F. Employees who enter the Armed Services under circumstances other than those specified above must resign but are eligible for reemployment in accordance with and subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act.

8.6 **EDUCATIONAL LEAVE OF ABSENCE**

Employees may apply for a leave of absence without pay for the purpose of pursuing additional education. The Agency Head has the authority to approve or disapprove an application for such leave.

- A. Employees requesting educational leave are advised to express their reason thoroughly and explicitly for requesting this leave on Form DOT-L2 or on a separate letter attached to this form.
- B. Each agency's policy on the granting of this leave may vary, along with requirements for additional documentation and applications. It is the responsibility of the Agency Head or designee, to provide the details to the employee.
- C. Educational pursuits may be subsidized, non-subsidized or reimbursable, depending on the employee's reason for requesting educational leave and the agency's policy on education. In no case will educational leave be considered paid leave.

8.7 **PARENTAL OR FAMILY LEAVE OF ABSENCE**

Any permanent employee who has worked for at least 12 consecutive weeks may take an unpaid parental or family leave of absence. This policy is in compliance with the Federal Family and Medical Leave Act of 1993 and the West Virginia Parental Leave Act, over which the federal act takes precedence if there is any conflict between the two.

- A. This unpaid leave may be taken at one of the following times:
 - 1. at the birth of a child of the employee;
 - 2. at the placement of a child by adoption;
 - 3. for the care of an employee's child, spouse, parent, or dependent who has a serious health condition. This leave can be taken intermittently when medically necessary; or
 - 4. at an employee's own serious illness.
- B. The qualifications and conditions of family leave are as follows:
 - 1. Leave is restricted to 12 weeks in a 12-month period.

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- a. This may be taken on a part-time leave schedule, but may not exceed 480 hours, and must be mutually arranged between the employee and supervisor.
 - b. The employee must have exhausted all available sick and annual leave.
 - c. If a married couple are both state employees, both are entitled to the 12 weeks.
 - d. An employee may substitute any part of this unpaid 12 weeks with paid leave, if available. Documentation must be made on Form DOT-L1.
2. The employee must submit Form DOT-L13 and give two (2) weeks' notice to the immediate supervisor that he or she will be taking parental or family leave, if practical. Form DOT-L5 for employee's own illness may be requested.
 3. The immediate supervisor may require certification of a serious illness of the employee's family member from a health care provider before granting leave (use Form DOT-L13, Medical Care Provider's Statement or the physician's own written statement). Form DOT-L6 may be requested.
- C. During parental or family leave, or at its conclusion:
1. The employee's job position will be held, and he or she will be returned to the position.
 2. While on leave, employees are entitled to the same insurance coverage, and premium obligation, they would have if working.
 3. If the employee fails to return to work, the agency may seek to recover the health insurance premiums paid by the agency.

9.0 UNAUTHORIZED LEAVE

When an employee is absent from work without authorization, for sick or annual leave, the employee is on unauthorized leave. The employee shall not be paid for unauthorized leave. This unpaid time is not counted as tenure for leave accrual purposes, incremental increase, or as tenure with WVDOT if a reduction in workforce is affected, *provided*, that if the employee is being compensated for 40 hours in the same workweek, tenure for the employee will not be affected. Unauthorized leave is counted in increments of one-quarter of an hour. No time is reported for this form of absence on DOT-12 Forms.

- A. Immediate supervisors are to document the unauthorized leave with the completion and submission of Forms RL-544 and Form RL-546

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(disciplinary action forms). Also, Form GL-5, "Personnel Transaction Form" (to reduce the employee's tenure), must be submitted to the HR Division.

- B. Immediate supervisors may place an employee in unauthorized leave status, whether or not the affected employee has accrued leave available, if an employee fails:
 - 1. to notify the immediate supervisor of the reason for an absence prior to the call-in time established for the organization. Supervisors should not apply this discipline when unusual or emergency situations make this rule difficult or impossible for the employee to follow.
- C. If, when the employee does call in, the supervisor feels that the reason the employee gives for not calling in at the proper time is an acceptable reason, he or she may allow the employee to apply retroactively for paid leave or a leave of absence for the time missed from work.
- D. Failure of an employee to report for work on time, subject to the conditions below.
 - 1. If an employee is tardy for work and has failed to notify the immediate supervisor in advance, he or she may be placed on unauthorized leave status.
 - 2. If this action is taken and the tardiness is less than one-quarter of an hour (or not on the quarter hour: e.g., beginning of shift is 7:30 a.m. and the employee comes in at 8:05 a.m.), the employee is not to be allowed to begin work until such time as the total unauthorized leave can be counted in one-quarter of an hour increments.
 - 3. The immediate supervisor is to instruct the employee, in the presence of one (1) witness, that he or she may either leave the work premises or sit in the supervisor's office for the period needed to complete the one-quarter of an hour increment.
 - 4. If the employee is allowed to begin work, he or she must be paid for the one-quarter of an hour in question and cannot be placed on unauthorized leave status for that portion of his or her tardiness.

10.0 RELEVANT MATERIALS and DOCUMENTS

- 10.1 [Form DOT-12](#) Daily Work Report
- 10.2 [Form DOT-129](#) Payroll/Benefits Transaction Form
- 10.3 [Form GL-5](#) Transaction Form

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- 10.4 [Form RL-544](#) Notice to Employee: Warning, Disciplinary, or Criminal Suspension
- 10.5 [Form RL-546](#) Employee's Verification of Disciplinary Action
- 10.6 [Form DOT 3-15](#) Request to Adjust Work Week
- 10.7 [Form DOT-L1](#) Leave with Pay
- 10.8 [Form DOT-L2](#) Leave of Absence Without Pay
- 10.9 [Form DOT-L3](#) Physician's or Practitioner's Statement
- 10.10 [Form DOT-L4](#) PLA; FMLA or Medical Leave of Absence Without Pay Request
- 10.11 [Form DOT L-5](#) FMLA and/or Medical Leave of Absence Without Pay Supplemental Certification of Health Care Provider for Employee's Serious Health Condition
- 10.12 [Form DOT-L6](#) FMLA and/or PLA Supplemental Certification of Health Care Provider for Family Member's Serious Health Condition
- 10.13 [Form DOT-L13](#) WVDOT Physician's/Practitioner's Statement
- 10.14 Division of Highways Human Resources Division's White Collar Exemption Worksheet (Division's Internal Worksheet)
- 10.15 Code of Federal Regulations (CFR) <https://www.ecfr.gov/cgi-bin/text-idx?SID=2f8e76ba1ebf6d4c076736e8f3a82dcd&mc=true&tpl=/ecfrbrowse/Title29/29cfrv302.tpl#>
- 10.16 Fair Labor Standards Act (FLSA) <https://www.dol.gov/agencies/whd/flsa>
- 10.17 Federal Family and Medical Leave Act of 1993 (FMLA)
- 10.18 [Employment Law Guide - Family and Medical Leave \(dol.gov\)](#)
- 10.19 Selective Training and Service Act [Selective Service | USAGov](#)
- 10.20 Veterans Reemployment Rights Act [USERRA - Uniformed Services Employment and Reemployment Rights Act | U.S. Department of Labor \(dol.gov\)](#)
- 10.21 West Virginia Parental Leave Act (PLA) [West Virginia Code | §21-5D \(wvlegislature.gov\)](#)
- 10.22 W. Va. Code § 21-5C-1 (Minimum Wage and Maximum Hours Standards for Employees.) [West Virginia Code | §21-5C \(wvlegislature.gov\)](#)

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10.23 W. Va. Code § 2-2-1 (Official Holidays) [West Virginia Code | §2-2 \(wvlegislature.gov\)](#)

10.24 wvOASIS WV-HRP-PYRL-032 - Over/Under 40 Report

11.0 APPENDICES

Appendix A

Table of Leave Eligibility

Kinds of Leave	Permanent FT	Permanent PT	Probationary	Provisional	Temporary
Annual (all types)	Yes	Yes 1	Yes	Yes	No
Sick (all types)	Yes	Yes 2	Yes	Yes	No
Holiday	Yes 3	Yes 3	Yes 3	Yes 3	No
Military	Yes	Yes	Yes	Yes	No
Witness or Jury Service	Yes	Yes	Yes	Yes	No
Personal LOA 4	Yes	Yes	Yes	Yes	No
Medical LOA	Yes	Yes	Yes	Yes	No
Military LOA	Yes	Yes	Yes	Yes	No
Education LOA	Yes	Yes	Yes	Yes	No
Parental or Family LOA	Yes	Yes	Yes	Yes	No

1. Permanent part-time employees earn annual leave based on a percentage of the amount of time they report as compared to the normal 40-hour week.
2. Permanent part-time employees earn sick leave based on a percentage of the amount of time they report as compared to the normal 40-hour week.
3. Any employee is eligible to receive payment for a holiday provided the employee works or is on approved paid leave status for the full scheduled workday before and after the holiday. Part-time employees receive payment for holidays in proportion to the amount of time they would normally be scheduled to work.
4. LOA: unpaid leave of absence.

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Appendix B

Table of Annual and Sick Leave Accrual and Carry-Forward Rates

Type of Leave	Length of Service*	Maximum Accrual Hours Per Pay Period	Maximum Annual Carry-Forward Rate
Annual	Less than 5 years	4.616660	240 hours or 30 days
Annual	5 years but less than 10	5.550000	240 hours or 30 days
Annual	10 years but less than 15	6.470000	280 hours or 35 days
Annual	15 years or more	7.400000	320 hours or 40 days
Sick	Any length	5.550000	No maximum

* The WVDOT will accept service from certain non-covered and non-WVDOT agencies as qualifying service for determining the rate of accrual for annual leave and transfer of accrued annual and sick leave. Contact HR Division for details. A general list of agencies from which service and leave will be accepted is as follows:

- all state agencies under the Executive branch, including boards, commissions, and authorities.
- state colleges and universities (non-faculty employees only).
- state constitutional offices, including full-time employees of the legislature and any state funded board, commission, or authority appointed by constitutional officers.

This list is intended as guidance and is not to be taken as exhaustive or exclusive. The intent of the agency is to accept service and leave from state-funded entities that adhere to the same leave accrual and usage policies as those prescribed in the DOT Employment Procedures Rule, 217CSR1. If there is a question about acceptance, contact the HR Division for details. In all cases of leave balance transfer, such transfer will be on an hour-for-hour basis, with no consideration given to any differences in work hours between the transferring agency and the WVDOT.

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Appendix C

Table of Authorization Numbers for Leave with Pay

Standard Authorizations:

wvOASIS Leave Events	DESCRIPTION
ANNLV	Vacation/Annual leave
SICKLV	Sick leave
FMSUS	Sick leave – family
HOLLD	Holiday leave

Special Authorizations:

wvOASIS AUTH	DESCRIPTION
(Consult Payroll)	Annual leave paid after termination
JURL	Jury duty (court/witness leave)
MLVAU	Military leave usage – Maneuvers
MLVBU	Military leave usage – Call to Duty
DPTCL	Eligible Dept Close Leave (Only used when authorized by mgt)
WCIME	Workers' Comp. Requested Medical Exam*

* Limited to actual travel time and examination time only. Requires copy of letter from the Insurance Commissioner or HR or Legal Division to be attached to the employee's time report, Form DOT-12. Use Receiving Organization 0083.

Appendix D

Table of Benefits for Employees on Leaves of Absence and Receiving TTD Benefits

Merit System Benefit	Previous Entitlement	Present Entitlement <i>Effective: 7/6/2005</i>
Annual Leave Accrual	No	Yes
Service for Accrual Rate	No	Yes
Sick Leave Accrual	No	No
Holiday Pay	No	No
Annual Increment Pay	Yes	Yes
Annual Increment Seniority	No	Yes
Lay Off Years of Service	No	Yes
Retirement Years of Service	Yes	Yes

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Appendix E

Attendance, Leave, and Overtime Scenarios

Scenario 1 – Employee is scheduled for a 60-hour work week. Employee was on five (5) hours of approved Sick Leave Monday. *This is an employee who is eligible for overtime as described previously in this policy.

Sat	Sun	Mon	Tues	Wed	Thurs	Fri
10-Scheduled	OFF	10-Scheduled	10-Scheduled	10-Scheduled	10-Scheduled	10-Scheduled
10-Work	OFF	5-Work 5-SL	10-Work	10-Work	10-Work	10-Work

*Using the example above, the employee would be compensated the following: **5 hours (Sick Leave) + 40 (regular hours) + 15 (premium overtime) = 60 Hours**

Scenario 2 – Employee in an office setting scheduled for a 40-hour workweek. An employee must request overtime in advance and receive approval from their supervisor. An employee may not “flex” time.

Sat	Sun	Mon	Tues	Wed	Thurs	Fri
OFF	OFF	8-Scheduled	8-Scheduled	8-Scheduled	8-Scheduled	8-Scheduled
		10-Worked	10-Worked	6-Worked 2-SL	6-Worked 2-SL	8-Worked

*This employee would be required to submit a request for overtime on Monday and Tuesday. The employee would also be required to submit a leave slip for the two (2) hours of sick leave on Wednesday and Thursday. The employee would be compensated the following: **40 hours worked + 4 hours (Sick Leave) = 44 Hours.**

12.0 CHANGE LOG

February 8, 2022 and earlier –

- Work Schedules and Attendance Section.
- Overtime and Holiday Work Leave of Absence Without Pay. Unauthorized Leave added.
- Table of Leave Eligibility.
- Table of Benefits for Employees on Leaves of Absence and Receiving TTD Benefits.
- Management Review of Hours that Exceed the Standard Workweek.
- Table of Authorization Numbers for Leave with Pay.

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- Authorized Leave with Pay.
- Policies for Management Review of Hours that Exceed the Standard Workweek.
- Overtime Classification and Pay.
- Table of Annual and Sick Leave Accrual and Carry-Forward Rates updated.
- Change the overtime cap for exempt employees. Section 5.4, Policies, Payment to Exempt Employees.
- Updated 4.4 A, Overtime and Holiday Work. Changed the WVDOT workweek for overtime purposes to match the computer system's workweek schedule for WVDOT. Updated 7.3, Sick Leave (Immediate Family) to 80 hours from 40 hours per year.
- Changed format.
- Updated 7.3 A, Sick Leave (Immediate Family).
- Updated Table of Annual and Sick Leave Accrual and Carry-Forward Rates.
- Updated Section 7.0, 2nd paragraph, Page 14. Change in additional hours paid after the accumulation of 40 hours of work time and/or leave time. This change is per memo from Acting HR Director, Drema Smith, dated 2/16/18.
- Updated Section 6.0, to include previous DOH 2.10 Excess Hours Policy.
- Overtime eligibility for executive and management levels of WVDOT agencies were clarified and limited.
- Policy revised to include grandchild in the definition of "immediate family" in Section 7.3 Sick Leave (Immediate Family) and identified the Payroll Section being under Human Resources Division, throughout document.

November 4, 2022 –

- Updated Section 4.0 to clarify lunch and breaks.
- Updated the location of the Payroll Section. Formally in Finance Division, now located in HR Division.
- Updated Division references to include Division of Multimodal Transportation Facilities and removed individual references to State Rail, Public Transit, and Aeronautics Commission.

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June 17, 2023 –

- Updated definitions to include all WVDOT agency designations.
- Updated Section 4.3 E. Snow Removal and Ice Control (SRIC) to remove language that this is only applicable during winter months.
- Updated Section 7.0 Authorized Leave with Pay. Employees will be paid for hours of actual work performed that occur after the accumulation of 40 hours for the workweek, notwithstanding the fact that annual or sick leave may have been attributed to reaching the 40-hour threshold.
- Deleted previous Section 10.0 Enforcement & Authority; duplication.
- Added Section 7.10 First Responder Leave.
- Revised Section 5.0. Will pay overtime for eligible employees; no longer credit back time; updated overtime exclusions.

August 2, 2023 –

- Added new form DOT 3-15 and specified when it is used to request an alternation or adjustment in regular work schedule.
- Returned original language specifying schedule and work hour changes are not made at the discretion of the employee.
- Added definition of exempt computer employee.
- Updated list of exempt employees (attorneys and certain high level computer employees) in compliance with FLSA.
- Clarified work or leave required before or after a holiday to be paid for holiday.

February 12, 2024 –

- Section 4.2 deleted the last sentence as unnecessary.
- Section 4.3.A.1 combined C and D.
- Section 4.3.C clarified that if an overtime eligible essential employee works over 40 hours during an emergency, they receive overtime.
- Section 4.3.C added number 5.
- Removed State Highway Engineer from the list in Section 5.3.C.

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- Added Deputy General Counsel to HR Division to the list in Section 5.3.C.
- Section 7.2.E. and 7.2.F. Clarified leave abuse will not be tolerated; some balances are required; supervisor will notify employee if leave balance becoming low. Reiterated that approval of annual leave is discretionary based on the needs of employer and employee.
- Section 7.2.E. Employees will receive reminder letters and counseling if leave balances are low.
- Section 7.3.A. Reiterated that supervisors and employees have duty to manage work and time.
- Removed reference to part-time permanent employees in Section 8.4.B.1.; we don't have part-time permanent employees.
- Corrected Appendix A, employees are required to work or be on approved paid leave for their full scheduled workday before and after a holiday in order to receive holiday pay.

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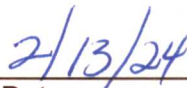
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Approved by:



Jimmy D. Wriston, P.E.
Secretary of
Transportation
Commissioner of
Highways



Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.

I acknowledge receipt of this policy.

Employee Name

Date