

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 129.06

EFFECTIVE DATE: 01 June 2023

**SUBJECT: HOURS, SCHEDULES, AND
OVERTIME**

POLICY DIRECTIVE

PURPOSE:

To ensure guidelines consistent with the federal Fair Labor Standards Act, as well as requirements of the West Virginia Division of Labor and the West Virginia Division of Personnel regarding minimum wages and maximum hours and to ensure all employees working for the West Virginia Division of Corrections and Rehabilitation receive that compensation to which they are entitled.

REFERENCE:

Fair Labor Standards Act (FLSA) and WV Division of Labor; and 143CSR1 Title 143 Legislative Rule of the West Virginia Division of Personnel.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject including DCR Policy Directive 129.06, dated 08 August 2022.

APPLICABILITY:

All facilities and work units within the Division of Corrections and Rehabilitation (DCR). This Policy is to be reviewed in **all** employee orientation, on-the-job, basic, and in-service training. This Policy is available for general distribution.

DEFINITIONS:

Employee: Any permanent status employee (including probationary employees) of the State of West Virginia working at Central Office, a correctional facility or other work unit within the West Virginia Division of Corrections and Rehabilitation (DCR). For the

purposes of this policy, this does not include temporary employees, contractors and their employees or volunteers.

Non-Exempt Employee: Employees whose work is regulated by the FLSA minimum wage, overtime, and record keeping provisions.

Workday: Any portion of the twenty-four (24) hour calendar day that an employee is scheduled to work, for which the employee is compensated for hours worked. (e.g., an employee may be scheduled to work four (4) hours of the twenty-four (24) hour calendar day, or sixteen (16) hours of the twenty-four (24) hour calendar day. Either would constitute a workday.)

Workweek: The designated workweek for DCR shall consist of seven (7) consecutive twenty-four (24) hour periods beginning at 0001 hours on Saturday and ending at 2400 hours on Friday.

POLICY:

- I. Superintendents, and work units supervisors and directors as appropriate, are authorized to develop employee work schedules, in accordance with the provisions of this Policy and other applicable policies, to ensure that staff coverage is adequate to accomplish the work of the facility or work unit. Employees may not deviate from their set schedule without prior approval from their supervisor.
 - A. Schedules shall be completed as far in advance as feasible so that each employee is aware of his/her work schedule and can make necessary arrangements. Every effort shall be made to give employees at least one full pay periods notice of their schedule.
 - B. Changes to the schedule model at any location require a minimum of one pay periods notice.
 - C. To the extent practical, employees that are actually working the schedule should have some input as to what schedule is worked.
 - D. The schedule for a workweek (as defined above) shall have a minimum of forty (40) work hours scheduled. In the event an employee works less than forty (40) hours in a workweek, the employee must use sick or annual leave or holiday hours; otherwise, it will result in the employee being placed on unpaid leave of absence.
- II. While all employees serve a vital role for the Division, the staffing of mandatory security posts is essential to public safety and shall take precedence over all other staffing functions of the Division. Security vacancies and other situations that occur in a correctional facility do necessitate that appropriately trained employees of all job classifications be required to work security posts throughout the facility to achieve DCR's mission.

- III. When completing Correctional Officer schedules, each shift should consist of an equal number of ranking officers, firearms qualified (if applicable), OC qualified (if applicable), Correctional Officer I's and Correctional Officer II's.
- A. Officers of the same gender as the inmate population at that facility shall also be evenly distributed to ensure coverage twenty-four (24) hours a day, seven (7) days a week.
 - B. Prior to changing correctional officer schedule models, proposed changes shall be submitted through the chain-of-command to the applicable Assistant Commissioner and the DCR Director of Security Services.
- IV. An employee will typically be relieved from his/her duty station for a daily meal period not to exceed thirty (30) minutes of paid time. When absences for paid or unpaid leave include the meal period, the appropriate leave must also be charged for the meal period. Meal periods are considered compensable work time and may not be accumulated or used to begin the workday later or end the workday earlier.
- A. If it is not possible to relieve the employee for his/her meal period, the employee may be required to eat at his/her duty station. An employee who has worked six (6) hours without an opportunity to eat, must be given a twenty (20) minute break at that time, absent an emergency situation.
 - B. Eating at one's duty station does not entitle the employee to additional compensation, as he/she is being paid for a forty (40) hour workweek, to include paid meals.
- V. Supervisors must permit employees to have two fifteen (15) minute breaks per day if work activities permit. These short break periods are considered compensable work time and may not be accumulated or used to begin the workday later, end the workday earlier, or extend meal periods. Break periods are forfeited if unused.
- VI. All employees are required to accurately record all time worked and leave taken through the use of a time clock, or other process as approved by wvOASIS/UKG.
- A. Falsification of work time records, including the omission of time worked, shall result in disciplinary action, up to and including dismissal.
 - B. All employees will clock in no more than seven (7) minutes prior to the beginning of the scheduled work time and clock out no more than seven (7) minutes after the scheduled end of shift, unless otherwise authorized or relieved late, with written justification.
 - 1. Early or late punches up to seven (7) minutes before and after each quarter of an hour shall be rounded to the nearest quarter of an hour when calculating hours worked for each shift. Punch-in times and punch-out times shall be rounded individually and NOT added together and then rounded. (e.g., A punch-in time of 6:53 and a punch-out time of 3:06 would constitute an eight (8) hour shift for the

day. Likewise, a punch-in time of 7:05 and a punch-out time of 2:54 would also constitute an eight (8) hour workday.)

2. Time clocks that are not already programmed to calculate hours worked in this manner will require manual calculation of hours worked for comparison to recorded hours on timesheets and the submission of overtime hours worked for each pay period.
 3. A Missed Punch/Punch Adjustment Form (**Attachment #1**) will be completed when an employee who regularly uses the time clock has a “missed punch.” The form should be completed within the same pay period.
- C. Though time clocks afford a seven (7) minute window, consistent attendance and adherence to the scheduled start and end time for shifts is expected and any patterns of consistently clocking in after the start of scheduled shifts, clocking out before the end of scheduled shifts, or clocking in too early may be grounds for disciplinary action.
 - D. Supervisors are required to review employee work time schedules and monitor time to ensure accuracy and to avoid unplanned overtime.
- VII. Non-exempt employees who are projected to exceed forty (40) hours in a workweek may be directed to adjust/reduce their work schedule during the remainder of the workweek. Supervisors are responsible for ensuring that the facility’s and agency’s mission is not compromised prior to approval and/or that adjusting the work schedules does not create other overtime liabilities. Supervisors may require employees to adjust their work schedules to avoid the accrual of overtime, with no advance notice. All such adjustments must take place within the same workweek.
- VIII. Supervisors may use their discretion in authorizing overtime to fill mandatory posts. Established mechanisms for the justification, approval and tracking of all overtime shall be followed.
- A. Non-exempt employees are entitled to overtime compensation for all hours worked in excess of forty (40) hours in the workweek.
 - B. Hours worked are when an employee is performing business on the agency’s behalf. Hours worked do not include time scheduled off work (e.g., paid sick leave, annual leave, paid holidays, or unpaid time scheduled off work, disciplinary reasons, or unpaid leaves of absence.)
 - C. The FLSA requires employers to pay nonexempt employees at a rate at least equal to the federal minimum wage and an overtime rate of one and one-half (1 ½) times the employees regular rate of time worked in excess of forty (40) hours in a workweek. However, a public agency which is a state, a political subdivision of a state, or an interstate governmental agency, may provide compensatory time off in lieu of monetary overtime compensation.

- IX. When necessary, employee schedules may be adjusted to include scheduling mandatory overtime on what was previously a day off. Superintendents shall ensure that employees are given as much notice as possible when this does occur.
- X. Nothing in this Policy limits or precludes any of the current processes pertaining to voluntary overtime.
- XI. An exemption from minimum wage and overtime pay requirements is provided for any employee engaged in bona fide professional, executive, or administrative capacity per U.S. Department of Labor's Fair Labor Standards Act (FLSA) 29 CFR, Part 541 (2004).
- XII. There shall be no compensatory time given as overtime compensation.
- XIII. Time spent in approved meetings and training is generally counted as work time, unless all the following criteria are met:
 - A. Attendance occurs outside of the employee's regular working hours.
 - B. Attendance is voluntary.
 - C. The program, meeting, or lecture is not directly related to the employee's job; and
 - D. The employee performs no productive work related to his or her job while attending.
- XIV. Normal travel time to and from work, even if the employee works at different work sites, is not considered work time; except as specified below:
 - A. Employees will only be paid actual travel time to any off-site training or work assignment, not to exceed the actual time it would take to travel from their primary work site to the work site.
 - B. If an employee must report to an alternate work location his/her work time starts at the time he/she would have left his/her primary work site to get to the alternative location.
 - C. Time spent by an employee in travel, if it is part of his/her job duty, is work time.
- XV. Time spent by an employee who is required to remain on-call on the employer's premises or so close thereto that the time cannot be used for the employee's own purposes is considered work time.
 - A. If an employee is "on-call" and calls are so frequent or conditions are so restrictive that the employee is not able to use the free time while "on-call" effectively for personal benefit, the time must be considered work time.
 - B. An employee who is "on-call," but is free to engage in personal activities, is not considered to be working while "on-call," even if the employee is required to leave a

phone number or other mechanism that enables the supervisor to contact them. Such time is not considered time worked.

- XVI. Emergency callouts must be justified and approved on each occurrence by the superintendent or other work unit supervisor or director as appropriate.
- A. Emergency situations are interpreted as being of a nature that poses a threat to the safety and/or security of staff, inmates/residents, or property of the state.
 - B. Documentation of approval shall be maintained for inspection by either internal or external audits.
 - C. Excluding the callout of staff to cover shifts due to call-offs, the callout of staff to report for an unscheduled shift shall be supported by a narrative of the emergency situation warranting the callout.
 - D. The narrative shall include a description of the event posing a threat to the safety and/or security of staff, inmates/residents, or property of the state along with the date, time, and staff involved in the decision to callout someone to respond to the situation.
 - E. When called out in an emergency situation, employees should clock in and out, if the situation allows, just as they would for any other shift.
- XVII. Rotating shifts will be posted, and schedules must be retained on record for a period of five (5) years.

ATTACHMENT(S):

#1 Missed Punch/Punch Adjustment Form

APPROVED SIGNATURE: _____


William K. Marshall III, Commissioner


Date

WV Division of Corrections and Rehabilitation

Missed Punch / Punch Adjustment Form

Employee Name: _____
(please print)

Facility / Section: _____

DAY	DATE	Missed Punch Time	
		In	Out
Saturday			
Sunday			
Monday			
Tuesday			
Wednesday			
Thursday			
Friday			

Reason for Adjustment: _____

Employee Signature: _____ **Date:** _____

Supervisor Signature: _____ **Date:** _____

Entered in Kronos by: _____