**R477. Government Operations, Human Resource Management.**

**R477-8. Working Conditions.**

**R477-8-1. Workweek.**

(1) The state's standard workweek begins Saturday at midnight and ends the following Friday at 11:59 p.m. FLSA non-exempt employees may not deviate from this workweek.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Management may adopt alternative business hours under Section 67-27-103.

(3) Management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with Section R477-8-4.

(4) An employee shall work the assigned schedule and be at work on time. When an employee is late, regardless of the reason, including inclement weather, management may require the employee to use accrued leave, leave without pay, or adjust their work schedule to account for the lost time.

(5) An employee's time worked is calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

**R477-8-2. Telework.**

Telework is a management option, not a universal employee benefit. Management utilizing a telework program shall:

(1) establish a written policy governing telework;

(2) enter into a written agreement with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;

(3) require participating employees to comply with overtime standards;

(4) prohibit compensation for normal commute time;

(5) require participating employees and their managers to complete telework training provided or approved by DHRM; and

(6) document telework authorization.

**R477-8-3. Lunch, Break, and Exercise Release Periods.**

(1) Management may require each full time work day to include a minimum of 30 minutes non-compensated lunch period. An employee's lunch period may not be at the beginning or end of their work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked. Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Management may allow compensated exercise release time up to three days per week for 30 minutes.

(a) Management in participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Management shall document authorization for exercise time in writing.

(5) As requested and after consultation with an employee, management shall grant reasonable, daily break periods for the first year following the birth of a child to allow an employee to express breast milk for her child. Management shall provide:

(a) a private location, other than a restroom; and

(b) appropriate temporary storage for expressed milk.

**R477-8-4. Overtime Standards.**

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act of 1938, 29 U.S.C. 201, et seq., 29 CFR Parts 500 to 899(2002), and Section 63A-17-502.

(1) Management may direct an employee to work overtime. Management in each agency shall develop internal policies and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for any overtime worked;

(b) recordkeeping guidelines for any overtime worked; and

(c) verification of sufficient funding in the budget to compensate employees for overtime worked.

(2) Overtime compensation designations are identified for each job title in the human resource information system as either FLSA non-exempt or FLSA exempt. An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 63A-17-602, 67-19a-301, and Title 63G, Chapter 4, Administrative Procedures Act may not be applied for FLSA appeals purposes.

(3) An FLSA non-exempt employee may not work more than 40 hours a week without management approval. Overtime accrues when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period are not hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety, or property.

**R477-8-5. Compensatory Time for FLSA Non-Exempt Employees.**

(1) An FLSA non-exempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one-half.

(a) An FLSA non-exempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the DHRM Division Director may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency, or seasonal employees. Once an employee reaches the maximum, management shall pay any additional overtime on the payday for the period in which it was earned.

(b) Management shall pay compensatory time balances for an FLSA non-exempt employee down to zero at the rate of pay in the old position in the same pay period that the employee is:

(i) transferred from one agency to a different agency; or

(ii) promoted, reclassified, reassigned, or transferred to an FLSA exempt position.

(c) Management may pay down any portion of compensatory time balances for FLSA non-exempt employees at any time.

**R477-8-6. Compensatory Time for FLSA Exempt Employees.**

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time accrues when the employee works more than 80 hours in a work period. Leave and holiday time taken within the work period are not hours worked when calculating compensatory time. Management shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee accrues an hour of compensatory time.

(2) Management shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If management fails to establish a uniform overtime year, the DHRM Division Director and the Director of Finance, Department of Government Operations, will establish the date for the agency as the last pay period of the calendar year. Management may change the established overtime year for the following calendar year by notifying DHRM of the change by December 31 of the current year. Management may not change the pay period during the current overtime year unless justifiable reasons exist and the DHRM Division Director has granted a written exception.

(a) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(b) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency;

(iii) change in FLSA status to non-exempt;

(iv) change from a benefited to a non-benefited position; or

(v) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

**R477-8-7. Non-Exempt Public Safety Personnel.**

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall:

(a) meet the requirements of 29 CFR 553.211(a) or (f);

(b) be POST certified or scheduled for POST training; and

(c) perform over 80% law enforcement duties.

(2) For employees of the Department of Natural Resources, management shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA non-exempt and covered under this rule:

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Management shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement of correctional officers designated FLSA non-exempt and covered under this rule:

(a) 160 hours in a work period of 28 consecutive days; or

(b) 80 hours in a work period of 14 consecutive days.

(4) Management shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees:

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(5) Management may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) Section 207(k), Fair Labor Standards Act;

(b) 29 CFR 553.230;

(c) the state's payroll period; and

(d) the approval of the DHRM Division Director.

**R477-8-8. Time Reporting.**

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;

(b) on-call time;

(c) stand-by time;

(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(e) approved leave time.

(2) Management may discipline an employee who fails to accurately record time.

(3) Management may not develop or use time records unless the records have the same elements of the state approved time record and are approved by the Department of Government Operations, Division of Finance.

(4) Management may discipline a supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the DHRM Division Director or designee.

**R477-8-9. Hours Worked.**

(1) An FLSA non-exempt employee shall be compensated for any hours worked. Management may discipline an employee who works unauthorized overtime.

(a) Any time that an FLSA non-exempt employee waits for an assignment while on duty, before reporting to duty, or before performing activities counts as hours worked.

(b) Time spent waiting after being relieved from duty is not hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time; or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

**R477-8-10. On-call Time.**

(1) Management may direct an employee to be available for on-call work.

(a) Management shall compensate an FLSA non-exempt employee for on-call time at a rate of one hour for every 12 hours the employee is on-call.

(b) Management may compensate an FLSA exempt employee at a rate equal to or less than one hour for every 12 hours the employee is on-call.

(2) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(3) Management may not enter into on-call agreements with employees unless the agency has a policy consistent with this rule and finance policy.

(4) On-call status shall be designated by management in writing on an annual basis. Carrying a pager or cell phone does not constitute on-call time without this written agreement.

(5) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record for the specific date the hours were incurred to be paid.

(6) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(7) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay are calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

(8) Management may not compensate on-call employees less than outlined in Subsections (1) through (7) but may provide additional compensation as permitted by budgets and consistent applications of rules, policies, and discretion.

**R477-8-11. Stand-by Time.**

(1) Management shall pay an employee restricted to stand-by at a specified location ready for work full time or overtime, as appropriate. Management shall pay an employee for stand-by time if required to stand-by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours are counted as working time, unless an express agreement excludes the time.

**R477-8-12. Commuting and Travel Time.**

(1) Normal commuting time from home to work and back is not hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule is hours worked.

(3) Time an employee spends traveling on a special one-day assignment is hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight is not hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger is hours worked if it is time spent during regular working hours. This applies to non-working days, as well as regular working days. However, regular meal period time is not counted.

(6) Management may compensate employees for travel and meal periods not required by federal law as implemented in Subsections (4) and (5).

**R477-8-13. Excess Hours.**

An employee may use excess hours the same way as annual leave.

(1) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(2) An employee may not use any leave time, other than holiday, military, and jury leave, that results in the accrual of excess hours.

(3) An employee may not accumulate more than 80 excess hours.

(4) Management shall pay out excess hours:

(a) for any hours accrued above the limit set by DHRM;

(b) when an employee is assigned from one agency to another; and

(c) upon separation.

(5) Management may pay out excess hours:

(a) automatically in the same pay period accrued;

(b) at any time during the year as determined appropriate by a state agency or division; or

(c) upon request of the employee and approval by management.

**R477-8-14. Dual State Employment.**

An employee who has more than one position within state government, regardless of schedule, is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary positions, regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status for any non-primary position shall be the same as the primary position.

(4) Leave accrual shall be based on the total number of hours the employee works during a pay period and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status may not accrue excess hours in either the primary or secondary positions. Management shall pay out any excess hours earned at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, an employee in dual employment status may not accrue compensatory hours and the employee's overtime or comp selection shall be paid as overtime regardless of FLSA status.

(7) Overtime is calculated at straight time or time and one-half, depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The employee and direct supervisors shall complete and sign the Accepting Terms of Dual Employment form and place it in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with Subsection R477-9-2(1).

**R477-8-15. Reasonable Accommodation.**

The agency ADA coordinator shall evaluate each request for reasonable accommodation from employees and applicants under state and federal law.

**R477-8-16. Fitness for Duty Evaluations.**

Management may require a fitness for duty medical evaluation under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

**R477-8-17. Temporary Transitional Assignment.**

(1) Management may place an employee in a temporary transitional assignment when an employee cannot perform essential job functions due to temporary health restrictions including:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position; or

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

(2) Time spent in a temporary transitional assignment may be counted as leave for purposes of Subsections R477-5-2(2) and R477-7-1(12).

**R477-8-18. Change in Work Location.**

Management may not change an employee's work location if the change requires the employee to commute or relocate 50 miles or more, one-way, beyond the current one-way commute, unless:

(1) the employee agrees to the change;

(2) the change in work location is communicated to the employee at appointment to the position requiring the change in location; or

(3) management complies with relevant finance policies to pay costs associated with the change in work location.

**R477-8-19. Agency Policies and Exemptions.**

Management may write agency policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

**R477-8-20. Background Checks.**

To protect the citizens of Utah and state resources, and with the approval of the agency head, management may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Management at agencies that have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The employing agency bears the cost of the background check.

**R477-8-21. Workers' Compensation Interference Prohibited.**

(1) Management may not interfere with an employee's effort to make a claim for workers' compensation.

(2) Management may not retaliate against an employee who makes or attempts to make a claim for workers' compensation, reports an employer's non-compliance with Title 34A, Chapter 2, Workers' Compensation Act or Title 34A, Chapter 3, Utah Occupational Disease Act, or testifies or intends to testify in a workers' compensation proceeding.

**KEY: breaks, telecommuting, overtime, dual employment**

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