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Applicability: All DDSN State Employees

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### **FEDERAL REQUIREMENTS**

This directive establishes the Department of Disabilities and Special Needs (DDSN) policies relative to the Fair Labor Standards Act (FLSA). FLSA establishes minimum wage rates, maximum work hours, overtime pay requirements, equal pay standards, and child labor restrictions for employees subject to its provisions.

## **EXEMPT/NON-EXEMPT STATUS UNDER THE FLSA**

Employees are considered “exempt” if their job duties and their salaries meet certain thresholds within the FLSA. These exempt employees are not subject to the FLSA minimum wage, overtime, or record keeping requirements. As such, exempt employees are expected to work as many hours as required to perform the duties of the position. The exempt status of an employee in a bona fide executive, administrative, professional, or computer employee position shall be determined by the Director of Human Resources.

“Non-exempt” employees are covered by, or subject to, the minimum wage, overtime, and recordkeeping requirements of the FLSA. All employees who are not considered exempt from the FLSA will be considered non-exempt. Managers shall be advised of the exemption status of positions under their supervision. The exemption status of each position is recorded in the appropriate DDSN Regional Center or Central Office of Human Resource, and shall be reflected in each Position Description (PD) and position data profile.

## **OVERTIME AND COMPENSATORY TIME**

**Overtime** is all hours worked in excess of 40 in a seven (7) consecutive day work period. A non-exempt employee shall be paid no less than one and one-half (1½) times her/his regular rate of pay for all hours worked over 40 in a workweek, or granted compensatory time at a rate of one and one-half (1½) hours for each hour of overtime worked. Non-exempt employees, who have a scheduled workweek of 37.5 hours, shall not receive additional compensation or compensatory time for hours worked between 37.5 and 40.0 hours per workweek.

The requirements that overtime pay must be paid or compensatory time granted to non-exempt employees after 40 hours of work in a workweek shall not be waived by agreement between the supervisor and the employee.

Non-exempt employees may accumulate up to 240 hours of compensatory time. For overtime worked for a non-exempt employee with an accumulation of 240 hours of compensatory time, the overtime must be paid in the employee’s next regular paycheck.

## **OVERTIME USAGE**

The use of overtime should be an exception to the regular work schedule in any unit. An employee should only be required to work overtime on an occasional basis to meet a sudden increase in workload; to overcome productive time lost due to some mechanical failure; or to meet the demands of a crisis situation.

When a service area and/or employee is found to be consistently charging overtime, the functions of that service area and/or employee should be reviewed by appropriate management. Every attempt should be made to avoid the repetitive and chronic use of overtime.

It shall be the responsibility of each manager to determine that the provisions of this policy are administered in the best interest of DDSN. Each manager is responsible for the prior approval of

hours worked that will result in overtime; however, unauthorized overtime must be compensated. Unauthorized overtime may result in disciplinary actions for managers and/or employees.

### **HOURS WORKED**

Hours worked include all time that the employee is required to be on duty or at the prescribed workplace and all time during which the employee is permitted to work. The hours worked include any bona fide work which the employee performs on or away from the premises, if the supervisor knows or has reason to believe that the work is being performed. Time spent in leave status is not considered hours.

Under warranted circumstances, a non-exempt employee may be allowed to work in excess of the normal workday and may be given time off during the same workweek at the rate of an hour for an hour to avoid working over 40 hours in a workweek. This adjustment is not allowed for hours worked between 37.5 and 40.0 hours during any workweek. This type of work rescheduling precludes working over 40 hours in a workweek and eliminates the need for overtime payment.

Regional nursing personnel may be scheduled to work 12 hours/day (maximum allowable), and will be paid overtime ***based upon hours worked*** in excess of 40.0 hours over the 7-day workweek.

### **GENERAL PROVISION ON HOURS WORKED**

#### ***On Call***

On-call time is not regarded as work time unless an employee is required to remain at the employer's premise or prescribed work place or is so restricted that the employee cannot use the time effectively for his or her own purposes. If the employee is not confined to his or her home or any particular place, but only required to leave word where he or she can be reached, then the hours are not considered working hours.

#### ***Meal Period***

A bona fide meal period of 30 minutes or more which occurs during the scheduled workday is not hours worked if the employee is completely relieved from duty for the purpose of eating a meal. For DDSN, the meal period (lunch period) is one (1) hour each workday.

Direct care employees should be allowed to take an appropriate meal break during their shift, provided another employee is covering their duties during this period.

#### ***Breaks***

Breaks of short duration must be counted as hours worked. One morning and one afternoon break of no more than 15 minutes each may be permitted if the employee's workload allows.

DDSN may establish breaks, but are not obligated to establish breaks, as breaks are a privilege and not a right. Breaks shall not be used to allow an employee to come to work late, to leave early or to extend the lunch period.

### Travel

Travel time for non-exempt employees may be hours worked under some conditions. Ordinary home-to-work travel or work-to-home travel is not working time. All time spent traveling on one-day assignments is considered time worked regardless of time or day of the week.

Travel away from home involving an overnight stay for non-exempt employees is considered time worked when it occurs during the employee's normal working hours. This provision is applicable not only on regular working days, but also during the corresponding hours of non-working days.

Overnight travel in the company of a DDSN consumer/resident is considered hours worked and must be compensated. Time spent on overnight trips that involve sleeping, eating or traveling as a passenger on an airplane, train, boat or automobile is not considered hours worked and does not have to be compensated, provided the employee is not in the company of a DDSN consumer/resident, and/or the travel cuts across the employee's regularly scheduled workday. Employees who make overnight trips of 24 hours or longer for the purpose of accompanying DDSN consumers/residents who are traveling will be paid for all actual time spent on the trip except eight (8) hours per day, which will be deducted for sleeping time provided that:

- (1) The employer and employee agree to the exclusion for sleep time;
- (2) Not more than eight (8) hours may be excluded for sleep; and
- (3) Unless an employee gets a minimum of five (5) hours sleep, all hours during sleep shall be credited as hours worked.

When a non-exempt employee, by reason of official responsibilities, is required to attend lectures, meetings, training programs, etc., such time shall be considered work time.

Time off for holidays, paid leave, and compensatory time are not counted as hours worked when calculating overtime.

### AGENCY'S WORKWEEK

The normal workweek for DDSN shall be 37.5 hours. However, no employee shall receive additional compensation or compensatory time for hours worked between 37.5 and 40.0 hours per workweek. For record keeping purposes, the workweek begins at 12:01 AM on Friday and ends at 12:00 midnight the following Thursday. An employee may be required to work up to forty (40) hours per workweek without additional compensation.

## **COMPENSATION**

The regular rate of pay for purposes of calculating overtime due includes all remuneration for employment paid to an employee, to include his/her base pay, and all compensation not included in base pay as outlined in the State Human Resources Regulations, with the exception of discretionary bonuses. Compensation of all employees is based on 40 hours per week or 2080 hours per year. Non-exempt employees must not be paid less than minimum wage.

## **IMPACT OF STATUS CHANGE**

If a non-exempt employee accepts a position that is considered exempt either within DDSN or with a separate state agency, compensatory time must be paid prior to the employee starting in the exempt position.

If a non-exempt employee separates from employment or moves to another state agency, any accrued compensatory time must be paid out prior to the separation or movement. Compensatory time must be paid at a rate of compensation not less than either the average regular rate received by the employee during the last three (3) years of employment or the final regular rate received by the employee, whichever is higher.

DDSN will pay non-exempt employees the balance of accumulated compensatory time after each fiscal quarter (90-day period), with the exception of when an employee's compensatory time exceeds the 240 hour balance.

## **HOLIDAYS**

An employee who is required to work on a legal holiday shall be given compensatory holiday leave credits in accordance with Section 19-708.04 of the State Human Resources Regulations. Time worked on a legal holiday shall be used in computing total hours worked. All non-exempt employees who are not allowed to take holiday compensatory time earned for working on a holiday within a 90-day period, shall be compensated for the holiday by DDSN at the straight hourly pay rate of the employee. The State Director or designee may extend the 90-day period for an additional 90 days because of limited staffing. All non-exempt employees will be paid for unused holiday compensatory time upon separation of employment from state government, movement to a position in another state agency (whether the new position is exempt or non-exempt), or upon an employee starting in an exempt position at DDSN. Exempt employees shall not be paid for unused holiday compensatory time under any circumstances.

## **EXEMPT EMPLOYEES AND COMPENSATORY TIME**

Exempt employees may receive compensatory time off in limited circumstances, to include for hours worked, for time spent traveling, or for attendance at lectures, meetings, training programs, etc., in excess of the normal workweek (40 hours per week). Under no circumstances shall an exempt employee accumulate more compensatory time than the FLSA allows for a non-exempt employee. (See Overtime/Compensatory Time section of the policy above.) If granted, the compensatory time must not be at a rate greater than one (1) hour of compensatory time for each

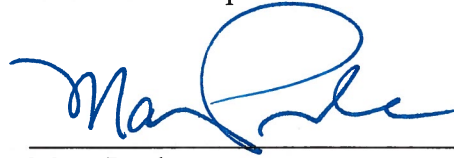
hour worked in excess of 40.0 in the official workweek and may be at a lesser rate. Exempt employees must not be paid for overtime.

**TEMPORARY EMPLOYEES**

The hourly rate is the “regular rate” for temporary employees. This rate is calculated by dividing the annual salary by 2080 hours. Temporary employees shall be compensated for all hours worked. All temporary employees must be designated as non-exempt.



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(Originator)



Mary Poole  
State Director  
(Approved)

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