

**Department of Health & Human Services
Public Health Service
Health & Human Services Administration
Bemidji Area Indian Health Service
Bemidji, Minnesota**

Bemidji Area Indian Health Service Circular No. 01-11

Overtime - Hours of Employment While on Travel

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1. Purpose

This circular provides guidance in determining hours of work while in travel status for both Fair Labor Standards Act (FLSA) exempt and non-exempt (covered) employees. This policy applies to both General Schedule and prevailing rate employees who are nonexempt from the FLSA and exempt from the FLSA but covered by the overtime pay provision of title 5, United States Code. These rules do not apply to members of the Senior Executive Service nor to Commissioned Corp staff.

Whether an employee receives overtime pay or compensatory time is partly determined by employee position status and grade level. The Fair Labor Standards Act (FLSA) classifies federal civil service employees as non-exempt and exempt status relative to wages and overtime entitlement and provides procedures or compensatory covered work time. The Act does not cover all federal employees (executives, administrative employees, professional employees, trainees, personal services contracts and volunteers are not covered by the Act). To determine whether you are FLSA exempt or non-exempt, check your SF-50. Your status will be listed in Box 35. It is important to note that the GS grade is not the determining factor classifying an employee as non-exempt or exempt. There are a number of criteria applied by the servicing personnel office which focus on duties and which will not be listed here.

See U.S.C.5542(b)(2) and 5544 (a)(3). 5 CFR 551.401(h) and 551.422 apply to all FLSA non-exempt employees.

2. Policy

Whenever possible an employee's travel should be scheduled within his/her regularly scheduled work hours. It is recognized that situations will develop when the employee will be required to travel away from his/her official duty station outside his/her regularly scheduled work hours; when this travel is performed under one of the four conditions listed in 5 CFR 550.112(g), or below in section 3, it is hours of employment for pay purposes. When the travel **is not** performed under one of the four conditions listed, it is not hours of employment and the employee **will not** receive overtime or compensatory time. Overtime/compensatory time must be requested and approved in advance. Non-exempt FLSA employees who would like to earn compensatory time in lieu of overtime pay must request so in writing. Any exceptions to this policy are to be fully documented and justified.

3. Conditions Under Which Travel is Considered Hours of Work While on Government Business or to Attend Training.

Time in travel status away from the official duty station of an employee is deemed employment and considered overtime only when it is ordered/requested in advance, travel is outside the employee's official duty station, **and**:

- A. Travel occurs within the employee's regularly scheduled administrative workweek; or
- B. Travel involves the performance of work
This generally means, within the statutes and regulations, work which can only be performed while traveling, such as air pilots, a nurse who travels with a patient in an ambulance, a motor vehicle operator transporting patients, etc;
- C. Travel is carried out under such arduous and unusual conditions that it is inseparable from work
This means travel over unusually adverse terrain, during severe weather conditions, or to remote, barely accessible facilities by foot, horseback or a truck; or
- D. Travel results from an event which cannot be scheduled or controlled administratively
The phrase "could not be scheduled or controlled administratively" refers to the ability of an executive agency to control the event which necessitates an employee's travel. The control is assumed to be the agency's whether the agency has sole control, or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by or for a group of federal agencies. (See Note in Section 7)

4. Holiday Premium Pay While on Travel

Employees generally are not entitled to holiday premium pay for time they spend in work-related travel during holiday hours of their tour of duty (whether driving or riding). Holiday premium pay is paid only to employees who perform work on a holiday. (See 5 U.S.C. 5546 (b)). Time spent in a travel status is not hours of work for the purpose of paying premium pay, including holiday premium pay, unless it meets one of the criteria in 5 U.S.C. 5542 (b)(2)(B) for crediting irregular or occasional hours of work for travel. The criteria state that time spent in travel status away from the official duty station is not hours of employment unless the travel involves the performance of work while traveling; is incident to travel that involves the performance of work while traveling (such as "deadhead" travel performed by a truck driver to return an empty truck after unloading); is carried out under arduous and unusual conditions; or results from an event which could not be scheduled or controlled administratively.

Although most employees do not receive holiday premium pay for time spent traveling on a holiday, they continue to be entitled to pay for the holiday in the same manner as if the travel were not required.

5. Home to Work Travel

An employee who travels from home before the regular work day begins and returns home at the end of the work day is engaged in normal "home to work" travel; such travel is not hours of work. If an employee is required to drive a vehicle, or perform other work while traveling, and travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work for overtime pay.

6. Alternate Mode of Transportation - Hours of Work

If an employee is offered one mode of transportation, but is permitted to use an alternative mode of transportation, or an employee who travels at a time other than that selected by the agency, he/she shall be credited with the lesser of:

- A. The actual time which is hours of work under this section; or
- B. The estimated travel time which should have been considered hours of work under this section had the employee used the mode of transportation offered by the agency, or traveled at the time selected by the agency.

7. Training

- A. For FLSA non-exempt employees, time spent outside regular working hours to attend training (including preparatory time for attendance at training) shall be considered overtime if the employee is **directed** by the agency to attend the event (This means that the training/event is required by the agency and the employee's performance or continued retention in the current position will be adversely affected by non-enrollment in such training).

Note: Attendance at training centers located away from an employee's duty station may require the employee to travel outside his normal hours of work. If the training, conference, etc. which necessitates an employee's travel, is scheduled/sponsored by a government agency, the control is assumed to be the agency's. Since the agency which is conducting the training course **can** schedule the hours of training, **the training course is an event which can be scheduled or controlled administratively** and employees who attend the course will not be paid for time in travel status regardless of whether employed by the agency conducting the training course or another agency.

8. Conference/Meetings - Overtime

Time spent outside regular working hours to attend lectures, meetings, or conferences shall be considered overtime if the employee:

- A. Is directed by the agency to attend the event; or
- B. Performs work for the benefit of the agency during such attendance.

Travel will be considered hours of work when it results from unforeseen circumstances (e.g., a breakdown of equipment or from an event which is scheduled or controlled by someone or some organization outside of Government).

9. Saturday/Sunday Travel - Hours of Work - Overtime

Weekend travel (hours outside of the employee's regularly scheduled work week) for non exempt employees will be considered hours of work if travel was ordered, the hours correspond with the regularly scheduled work week AND travel involves one of the following:

- (i) the performance of work while traveling;
- (ii) is incident to travel that involves the performance of work while traveling;
- (iii) is carried out under arduous conditions; or
- (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return from such event to his or her official duty station.

10. Effective Date

The policy and procedures contained in this Circular are effective upon signature by the Area Director, Bemidji.

Kathleen Annette, M.D.
Director
Bemidji Area Indian Health Service

Date