



# Virginia Department of Corrections

## Human Resources

### Operating Procedure 110.2

#### *Overtime and Schedule Adjustments*

**Authority:**

Directive 110, *Time Utilization*

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None

<b>Content Owner:</b>	Luke E. Black Deputy Chief Human Resource Officer	<i>Signature Copy on File</i>	4/21/25
		Signature	Date
<b>Reviewer:</b>	Lucinda R. Childs-White Chief Human Resource Officer	<i>Signature Copy on File</i>	4/21/25
		Signature	Date
<b>Signatory:</b>	Joseph W. Walters Senior Deputy Director	<i>Signature Copy on File</i>	4/21/25
		Signature	Date

### REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

### COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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## DEFINITIONS

**Base Point** - Designated place, office, or building where the employee performs their duties on a routine basis; multiple base points are not allowed.

**DOCTime** - DOC's web-based time, attendance, leave and scheduling system that automates the time capture, roster management and leave administration processes.

**Dual Employment** - When a full-time employee routinely performs work in a second, separate and distinct position within the Department of Corrections.

**Exempt Employee** - An employee who is not covered by the overtime provisions of the Fair Labor Standards Act; generally, includes salaried executive, administrative, professional, and information technology employees.

**Law Enforcement Exemption** - This applies to job classifications that meet the regulatory requirements for a partial overtime exemption from the Fair Labor Standards Act (includes Corrections Officers and Probation Officers). Law enforcement employees may be assigned a work period of between seven and 28 consecutive days. The number of hours that must be physically worked within the work schedule before a law enforcement employee is entitled to overtime compensation will be based on the length of the established work period and the employee's position classification under the law enforcement exemption.

**Non-exempt Employee** - An employee covered by the overtime provisions of the Fair Labor Standards Act including wage employees, unless specifically ruled as exempt (such as physicians and dentists) and employees covered by the Law Enforcement Exemption.

**Pre-Approved Paid Leave** - Leave that has been requested by an employee and approved by management before the day on which it is taken.

**Premium Pay** - Pay at one and one-half time the regular hourly rate (time and a half) for actual hours worked in excess of those normally scheduled and defined herein for each work period.

**Straight Time Rate** - Pay at the regular hourly rate for hours exceeding those normally scheduled during the work period that are not eligible to be compensated at the premium pay rate. These could be hours that include paid leave or hours physically worked beyond the usual schedule that do not meet the threshold for premium pay.

**Workday** - Normal work schedule (excluding authorized leave time) for the individual responsible for taking the required action.

**Work Period** - Any established, regularly recurring period of work and rest for which an employee is scheduled and based upon which overtime compensation may be earned. The work period for non-security, non-exempt, employees is seven days (also defined as workweek). The work period for Corrections Officers and Probation Officers will be 28 days unless an exception is approved.

**Workweek** - A fixed period of seven consecutive 24-hour periods established by the employer for each employee; the standard workweek for all non-security employees is Monday 12:01 a.m. to Sunday 12:00 a.m. Full-time employees normally work a five-day, 40-hour schedule during a workweek.



**PURPOSE**

This operating procedure establishes uniform protocol for the awarding of overtime and compensation for overtime in the Department of Corrections and to ensure compliance with the Fair Labor Standards Act (FLSA) and the Virginia Overtime Wage Act (VOWA).

**PROCEDURE**

I. Fair Labor Standards Act Eligibility

A. *Category I* - Non-exempt employees, except those covered by the law enforcement exemption; wage employees (unless ruled as exempt); and any other specific positions approved as non-exempt by Human Resources.

1. These employees are eligible for premium pay for hours physically worked in excess of 40 in a workweek. Determination of exemption status is made by Human Resources.
2. Paid leave is not considered hours physically worked.
3. Additional time worked beyond the regular schedule that is not over the 40 hours physically worked standard should be paid at straight time. In special identified classes, this time may be awarded as compensatory time.

B. *Category II* - Non-exempt law enforcement employees, those qualifying for the law enforcement exemption of the Fair Labor Standards Act. Employees in this category are those in security positions, including Non-certified Corrections Officers, Corrections Officers from their date of hire until the beginning of the first full 28-day work period following their certification as a Corrections Officer, Corrections Officers, Corrections Officers Senior, Corrections Sergeants, Corrections Investigators Probation Officers, Senior Probation Officers, and other specific positions approved as qualifying for the law enforcement exemption by Human Resources.

1. Employees in these classifications will normally be assigned a work period of 28 days as permitted by the Fair Labor Standards Act. Law enforcement employees will earn premium pay for hours physically worked in excess of those listed below for each work period.

<u>Work Period</u>	<u>Law Enforcement Category</u>	<u>Hours Threshold</u>
28 days	Certified Corrections Officers (CO1) Corrections Officers Senior (CO2) Lead Corrections Officer (CO3) Master Corrections Officer (CO4) Corrections Sergeants (S1) Lead Sergeant (S2) Probation Officers Probation Officers Senior Corrections Investigators	160 hours
28 days	Non-certified Corrections Officers	171 hours

2. Holidays, annual leave, sick leave, workers' compensation leave, compensatory leave, and any other type of leave are not considered hours worked. Hours exceeding the hours threshold in the work period that include leave hours should be paid at straight time rate. If hours physically worked exceed the hours threshold, compensation for those hours is at premium rate.
3. Non-certified Corrections Officers are expected to have a regular work schedule in each 28-day period of at least 160 hours but no more than 171 hours.
  - a. As long as their actual hours worked falls within this range, no additional hours are incurred, and no additional payment will be provided.
  - b. After Corrections Officers are certified, they are placed on the 160-hour work period beginning with the next 28-day work period.



C. *Category III* - Exempt employees, both law enforcement and non-law enforcement. These employees are not normally eligible for straight time pay, premium pay, or compensatory time for hours worked over their defined work period and hours (for law enforcement it is 28 days and 160 hours, for non-law enforcement it is 7 days and 40 hours).

D. Special Pay Circumstances

1. Corrections Nurse Technicians (CNT) and Licensed Practical Nurses (LPN) are non-exempt.
  - a. CNTs and LPNs work a 40-hour workweek.
  - b. CNTs and LPNs must be paid premium pay or adjust their hours, for all hours physically worked over 40 in the assigned workweek.
  - c. CNTs and LPNs use DOCTime to record all hours worked and leave taken.
  - d. CNTs and LPNs who receive medically necessary telephone calls from the facility after regularly scheduled work hours are entitled to compensation or schedule adjustment for time worked on the call (these hours should be included in the normal workweek overtime calculation). A log must be kept of such calls to include time, duration and reason.
2. Registered Nurses (RN) are exempt; however, for agency purposes only, RN pay will be managed as follows:
  - a. RNs work a 40 hour, 7-day work period.
  - b. With prior approval, RNs receive time and one-half overtime or have their hours adjusted, for all hours physically worked over 40 during the 7-day work period.
  - c. Special effort should be made to adjust off time for RNs during the 7-day work period to ensure minimum overtime liability for the department.
  - d. RN Supervisors and Health Authorities may receive additional compensation at straight time for hours physically worked providing clinical care that are in excess of 40 during their 7-day work period with prior approval from the Chief Nurse and Human Resources.
  - e. Regional Nurses are exempt and will not receive additional time or payment.
  - f. All RNs use DOCTime to record hours worked and leave taken.
  - g. RN Supervisors use DOCTime to record all clinical care hours worked outside of their normal job duties that are pre-approved for additional compensation at straight time.
3. Designated employees, generally P&P Officers and Surveillance Officers (non-exempt staff assigned to resolution for electronic monitoring alerts), who are assigned GPS on-call responsibilities approved by the Unit Head may receive on-call pay in the following conditions:
  - a. GPS calls, email notifications, or text messages received from the monitoring center, outside of established unit customer service hours, will receive a minimum of two hours compensation, even if the call does not necessitate a visit. If the call resolution exceeds two hours, the actual time worked will be compensated.
    - i. If an additional call is received within two hours of the first call, there will not be an additional two hours received unless actual time worked to resolution exceeds two hours.
    - ii. If additional calls are received more than two hours after the first call in the same night (or day for weekends/holidays), two hours will be received for each call, up to a maximum of six hours.
    - iii. If time worked to resolution exceeds the six hours, staff should be compensated for actual time worked.
    - iv. If the time worked toward resolution begins on one day (i.e. 11:45 pm) but is not completed until after midnight, only two hours will be received for the call as it is a single incident. If the time needed to resolve that call exceeds the two hours, compensation will be the actual time worked.
  - b. On-call pay time should be included in hours worked in DOCTime with comments indicating “GPS call received” and the actual time spent resolving the issue(s).

- c. Schedule adjustments are allowed if the employee prefers this method of compensation, and the office/unit is able to accommodate this preference.
  - d. Holidays, annual leave, sick leave, workers' compensation leave, compensatory leave, and any other type of leave are not considered hours worked.
    - i. Hours exceeding the hours threshold in the work period that include leave hours should be paid at straight time rate.
    - ii. If hours physically worked exceed the hours threshold, compensation for those hours is at premium rate.
4. Compensatory Time - In lieu of straight time payments not bound by FLSA or VOWA guidelines, the Chief Human Resource Officer or designee may grant approval to award compensatory leave upon request of the respective Regional Administrator.
5. Special Requests
- a. Based on a written request, the Chief Human Resource Officer may approve award of leave or additional compensation to employees not normally entitled to overtime pay.
  - b. Exceptional circumstances, such as emergency situations, escapes, disturbances, excessive accumulation of extra hours, severe long-term weather events, etc., may be considered on a case-by-case basis.
6. Security Management Staff
- a. Exempt law enforcement positions (Corrections Lieutenant and Corrections Captain) should be paid at straight time rates for hours worked beyond their scheduled hours as line staff (filling a post, etc.) that was required to cover staff shortages, but only in instances where a schedule adjustment cannot be made within the work period.
  - b. Shifts where exempt security staff work additional hours as line staff, should be documented in DOCTime.
7. Canine Handlers
- a. Canine handlers whose assigned canine is kenneled at a department facility:
    - i. Canine handlers whose assigned canine is kenneled at a department facility will be responsible for caring for the canine during normally scheduled work hours on scheduled workdays.
    - ii. Unless otherwise instructed, canine handlers should not normally be caring for Department kenneled canines on their rest days or outside of their regularly scheduled workday.
  - b. Canine handlers who maintain a kennel and care for their assigned canine at home:
    - i. Canine handlers who maintain a kennel and care for their assigned canine at home will be compensated for one hour per day for caring for their canine. If these tasks are accomplished during the scheduled workday, no additional compensation will be paid. The hours to be spent in care of the canine outside normal scheduled work hours will be approved in advance by the Supervisor and adjusted off where possible.
    - ii. Canine handlers who maintain a kennel and care for their assigned canine at home should have their home designated as their base point in accordance with Operating Procedure 323.1, *Vehicle Acquisition, Operation, and Maintenance*. Drive time to daily work locations will be compensated at a straight time rate but will not be counted as hours physically worked for the purpose of determining eligibility for overtime, i.e. these driving hours do not count towards the 160 hours that must be physically worked before premium pay is accumulated.
    - iii. Canine handlers will document work hours in DOCTime.

## II. Documentation

- A. DOCTime is the official system of record for time, attendance, and leave for the agency.
- B. Clock in and out methods for all staff is outlined in Operating Procedure 110.1, *Hours of Work and Leaves of Absence*.



### III. Schedule Adjustments

- A. Supervisors should carefully monitor schedule adherence.
- B. Non-exempt employees and others eligible for overtime should have their hours adjusted during the work period when feasible to avoid overtime liability for the DOC.
- C. Schedule adjustments may be made prior to the hours being worked, when hours are expected to exceed the work hours threshold.
- D. Management may reschedule or adjust employee work schedules as necessary to manage the operation or the financial resources of the agency.
- E. For exempt employees, there is no expectation that hours worked beyond the defined work period be adjusted off. However, in unique situations where an exempt employee has worked a significant number of extra hours, the Unit Head may allow for some adjustment, though not on an hour-for-hour basis.

### IV. Mandatory Overtime/Overtime Authorization

- A. All employees are required to work overtime as needed.
- B. Failure to work overtime as directed, instructed, or needed may result in disciplinary action in accordance with Operating Procedure 135.1, *Standards of Conduct*.
- C. Non-exempt employees must have prior authorization from their supervisors to work overtime.
- D. Working overtime that is not properly authorized in advance may result in disciplinary action in accordance with Operating Procedure 135.1, *Standards of Conduct*.

### V. Managing Work Time for Non-Exempt Staff

#### A. Adjusting Work Schedules

1. Employees should be given as much advanced notice as possible of any schedule adjustments, whether whole or partial days. Employees should be allowed to work half of their shift when reporting to work for normal scheduled hours prior to having their work hours adjusted, i.e. after four hours of an eight hour shift the remaining four can be adjusted off.
2. To the extent possible, employee requests and needs should be considered when making schedule adjustments.
3. Employee meal breaks cannot be extended involuntarily to accommodate schedule adjustments.
4. Security employees may be scheduled off as a regular schedule adjustment during their 28-day work cycle or to adjust off hours set to exceed 160 in the work period.
5. Call-ins
  - a. Employees who have worked extra hours and then call in sick should be allowed to use their sick leave if approved. Their hours should not be adjusted involuntarily; however, adjustments can be made if the employee agrees to use the adjustment and not the sick leave. Management reserves the right to apply applicable sick leave verification policies or appropriate discipline for absences even if an employee is allowed to adjust hours.
  - b. If employees who have worked extra hours call in and request to use any kind of leave other than sick leave, management may choose to void the leave request and utilize a schedule adjustment to reduce or eliminate the need for the employee to use leave. Approval from employees to void their leave request and adjust their hours is not needed under these circumstances unless the employee requests sick leave.
6. Pre-approved leave
  - a. Employees who have worked extra hours and have scheduled or taken pre-approved leave,



- including compensatory and family personal leave, will be allowed to use their leave rather than a schedule adjustment unless they agree to void the leave and use that time as a schedule adjustment.
- b. If annual or compensatory leave is requested by the employee after working the extra hours, management may approve the time as a schedule adjustment.
7. On-Call Time, Emergency Call Back and Work-Related Phone Calls after Hours
- a. General availability of non-exempt employees for call back to the work site in the event of an emergency or as back-up for absent staff is not considered on-call time and is not compensable. Employees who are assigned a cellphone for specified periods on a rotating shift are considered to be on unrestricted time and in most instances this time is not compensable.
  - b. Non-exempt employees who, after their scheduled work hours and without pre-arrangement, are required to respond to a call to perform extra work must be compensated a minimum of two hours or the actual time worked whichever is longer. Time spent enroute, home to base point (commute), is not compensable.
  - c. Non-exempt employees who receive work related telephone calls from the agency after regularly scheduled work hours are entitled to compensation or schedule adjustment for time worked on the call. These hours should be included in the normal work period overtime calculation.
    - i. In order to ensure the accuracy of time spent on these calls, both the non-exempt employee receiving the call and the employee making the call should document the duration of the call and report it to the supervisor responsible for approving the employee time.
    - ii. Every effort should be made to adjust those hours off prior to the end of the work period; otherwise, the appropriate overtime must be paid.
    - iii. Whenever possible, work-related calls after regular scheduled work hours should be made to exempt staff in order to avoid any non-compliance issues under the FLSA.
8. Special Pay Situations
- a. Work-Travel Time for Non-Exempt
    - i. The following is considered work time for non-exempt employees within their scheduled hours:
      - (a) Time worked.
      - (b) Actual time spent in training (not scheduled time).
      - (c) Same day travel for work or training (other than normal commute time), including travel from basepoint/central work location to other work locations.
    - ii. Travel time for non-exempt employees to attend training that exceeds their scheduled hours is compensable as follows:
      - (a) Same day travel - Travel for the time that exceeds employees' normal home to work commute is considered work time.
      - (b) Overnight travel - Travel during assigned work hours even on a nonworking day (i.e., rest day) is considered work time. All travel for the time during assigned work hours that exceeds employees' normal home to work commute is considered work time.
  - b. When employees choose to commute each day to the Academy (or other training location) because of personal preference when overnight accommodations are provided, only one round trip is considered work time. In this case, employees will not be paid for multiple round trips.
  - c. No travel time will be paid to Corrections Officers to attend Basic Corrections Officer (BCO) training needed to meet Department of Criminal Justice (DCJS) certification requirements. This includes travel to the Academy or other location where BCO training is required as these sites are the designated work location for trainees during BCO training.
  - d. Non-exempt employees must be compensated for all hours they are required or permitted to work; they may not "volunteer" to work hours beyond their normally scheduled hours without appropriate compensation.
  - e. Dual Employment
    - i. Dual Employment should not be routinely used to address staffing shortages or agency needs.





- ii. The Chief Human Resource Officer must approve any arrangements of this nature in advance.
- iii. Number of hours worked, and overtime will be determined by totaling all hours worked during the work period.
- iv. Human Resources will determine proper overtime rates based on classification and exempt status of the employee.

## **REFERENCES**

*Fair Labor Standards Act*

*Virginia Wage Overtime Act, COV §40.1-29. Time and medium of payment; withholding wages; written statement of earnings; agreement for forfeiture of wages; proceedings to enforce compliance; penalties*

*Operating Procedure 110.1, Hours of Work and Leaves of Absence*

*Operating Procedure 135.1, Standards of Conduct*

*Operating Procedure 323.1, Vehicle Acquisition, Operation, and Maintenance*

*Operating Procedure 401.2, Security Staffing*

## **ATTACHMENTS**

*Operating Procedure 110.1, Hours of Work and Leaves of Absence Attachment 1, Tenths of an Hour Conversion Chart*

## **FORM CITATIONS**

None

