SUBJECT: PAYROLL/PERSONNEL

CHAPTER TITLE: ATTENDANCE, LEAVE AND OVERTIME

Effective: 5/1/2013

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SUBJECT: PAYROLL/PERSONNEL

CHAPTER TITLE: ATTENDANCE, LEAVE AND OVERTIME

I. INTRODUCTION

Effective: 9/15/2003

This procedure references the state Division of Personnel (DOP) Administrative Rule and Policies. The intent is to interpret these DOP guidelines as they apply to the policies and processes of the Department of Transportation (DOT), excluding the Parkways Authority. In any case where DOP guidance appears to conflict with this procedure, contact Transportation Human Resources Division for further guidance.

The DOT employs several categories of personnel with varying degrees of eligibility for leave and overtime. The policies expressed in this Procedure apply only to permanent employees unless otherwise noted. For a quick reference to determine whether an employee is eligible for a certain kind of leave or overtime compensation, see Appendix A, in the back of this Chapter. Categories of employment are defined in Appendix B.

DEFINITIONS OF SUPERVISORY TITLES AND OTHER DESIGNATIONS

- Immediate Supervisor:
  The employee's supervisor, normally a section manager. (For Highways this includes the County Highway Administrators.)
- Organization Manager:
  The next level manager of the employee's office/division. Normally the chief manager of an office, division or district within the agency.
- Chief Executive Officer:
  The chief manager of the agency. The Commissioner, Director, etc.
- Payroll/Personnel Coordinator:
  The person in a section or organization who is responsible for handling employee benefit matters and processing of various personnel-related forms. The entering of employees' time into the computer (REMIS) from Form DOT-12's may also be a duty.

II. WORK SCHEDULES AND ATTENDANCE

Effective: 9/1/2003

A. NORMAL WORK SCHEDULES OF DOT AGENCIES

It is the intent of the DOT to report 40 hours of work and/or leave each week for all full-time employees. Normal work schedules, and policies on whether lunch is paid or unpaid, vary from agency to agency, as follows:

1. Division of Highways (DOH): 7:30 a.m. to 4:00 p.m., Monday through Friday, with ½ hour unpaid lunch.

2. Division of Motor Vehicles (DMV): 8:30 a.m. to 4:30 p.m., Monday through Friday, with ½ hour paid lunch.

3. Division of Public Transit: 8:00 a.m. to 4:00 p.m., Monday through Friday, with ½ hour paid lunch.

4. Aeronautics Commission: 7:30 a.m. to 4:00 p.m., Monday through Friday, with ½ hour unpaid lunch.

5. Port Authority: 7:30 a.m. to 4:00 p.m., Monday through Friday, with ½ hour unpaid lunch.

6. State Rail Authority: 8:00 a.m. to 4:00 p.m., Monday through Friday, with ½ hour paid lunch.

7. Office of Administrative Hearings: 8:00 a.m. to 4 p.m., Monday through Friday, with ½ paid lunch.

B. **BREAKS**

Effective: 01/30/2010

1. Lunch breaks may need to be staggered to provide coverage for phones and other essential services. Appropriate supervisors will prescribe staggered lunch breaks when necessary, while considering the preferences of the employees involved.

2. Employees may not work lunch breaks to make up for absences during the day without specific authorization from their organization managers. In no case is such an arrangement permissible on a regular basis.

3. Employees may take short breaks for refreshment or other personal matters, but break periods cannot be accumulated, used to shorten a workday, or used to extend a lunch period.

C. **ALTERNATIVE SCHEDULING POLICIES**

1. Permanent

   a. An appointing authority (such as the Commissioner of an agency) or his or her designee may establish a permanent or seasonal workweek schedule that is different from the applicable agency's normal schedule, provided that:

i. full-time employees will have 40 scheduled reporting hours,

ii. it is established to better serve the organization's objectives, and

iii. it is applied to whichever employees and whatever number of employees as is necessary to meet the objective of the alternate schedule, and it specifies the day and time that the workweek begins and ends, and the time that each work shift begins and ends.

b. Within the Division of Highways, District Engineers, Division Directors, or other appropriate managers may grant individual employees permission to alter their start/end time by one hour per day (e.g. 6:30 a.m. to 3:00 p.m. or 8:30 a.m. to 5:00 p.m.).

i. This alternative scheduling authority does not preclude Highways work scheduling policies, provided for in Section II.C.1.a. of this Chapter, in which an entire organization is assigned a different work schedule (e.g., four ten-hour shifts per week).

ii. Alternative scheduling must either represent the employee's regular schedule or must be for a specific time period. Employees may not be granted permission to work altered hours sporadically or at their own discretion.

iii. If an employee who is working an altered schedule must be absent from work during his or her work hours, the absence must be charged to the appropriate leave category.

iv. These guidelines do not necessarily preclude other arrangements in situations of extreme need on the part of employees. Supervisors should, in any case where some additional indulgence may be appropriate, submit the employee's request and the supervisory recommendation to Human Resources Division for further consideration.

2. <u>Temporary</u>

Any workweek schedule may be changed due to circumstances including, but not limited to, project deadlines, seasonal workload, changed priorities, vacancies, inclement weather, occurrence of a paid holiday, or other factors. Schedules may be revised, and it should be understood that:

a. Employees will not receive an adjustment in pay as a result of the change unless more than 40 hours are reported that week.

b. When a workday must be shortened by management due to unforeseen circumstances not referenced in Section II.C.3 (Emergency), each employee reporting to the work site is guaranteed, by management, the right to perform at least two hours of actual work activity. (This circumstance applies, primarily, to hourly employees involved in road maintenance. These employees, when this circumstance arises, will be

paid for the two hours and allowed, but not required, to take annual leave to make up the rest of the shift.)

(1) If the employee desires, annual leave may be charged for the number of hours needed to compensate for those hours that were scheduled to have been worked that day. If the employee does not want to charge annual leave, no other type of leave or leave of absence can be used.

(2) The immediate supervisor may allow employees to make up the hours they were not able to work later in the week or on the weekend, if possible.

3. Emergency

The Governor, or designee, may order all state employees or all in an affected area to not report to work due to emergency situations, except for employees who are essential to efforts of dealing with the emergency. In this situation, the non-essential employees who were scheduled to work are paid as if they had worked (up to eight hours) and their time is credited by the payroll/personnel coordinator to "other leave", for accounting purposes. The essential employees (who do work) are compensated either through adjusted work schedules or through monetary overtime payments, if applicable, when an employee actually works more than 40 hours in the workweek. Work schedules should be adjusted as soon as practical, preferably within the same workweek, or, if not possible, within the same pay period, but no later than 30 days following the occurrence. If it is not practical to give the time off within the 30-day time period, an extension may be requested through Transportation Human Resources Division.

a. When state offices are closed by Executive Order, as explained above, non-essential employees scheduled to work non-standard hours will be paid for their regularly scheduled work hours, not to exceed 10 hours per day or 40 hours per week.

b. When offices are closed by Executive Order, part-time employees are paid eight hours or the hours they were scheduled to work, whichever is less, not to exceed eight hours.

c. Employees who are already scheduled for whole days of annual or sick leave on these days will be charged for leave as planned and will not be given eight additional hours of "other leave."

d. If nonessential employees report to work at the usual time when an Executive Order has been given which specifies a delayed reporting time, they will be allowed to take off the number of hours of delay later that day or that same week.

e. When employees are unable to report to work because of inclement weather or other emergencies but state offices are not closed, they will be granted annual leave or their workweek will be adjusted to allow make-up for the hours missed, if possible. If no accrued annual leave is

available, a personal leave of absence may be granted. However, employees must call in as soon as possible if they cannot report.

4. Unscheduled Duty

Employees who have completed their normal workday and have left the work site may be required to return to work before the next scheduled shift in order to meet agency needs, owing to power interruptions requiring equipment or operations (computer) to be checked or restarted, robberies or break-ins at the office requiring statements or information for law enforcement, and other situations. Management will assign employees to respond to any situations such as these that are expected to occasionally occur. Employees who are required to report for unscheduled duty will be paid reasonable travel time from their residences to the reporting and/or work locations and back to their residences, as well as for the actual time spent performing the required work activities. In such situations, employees shall be credited with no less than 2 hours of work time.

5. Snow Removal and Ice Control (SRIC)

Certain Division of Highways employees are expected to work SRIC duty during the winter months as an essential function of their jobs. The conditions of that function are as follows:

a. Individuals involved in SRIC and designated to work on a particular shift shall personally contact by phone (at the work location or, if necessary, at home) his or her County Highway Administrator, Expressway Supervisor, or Assistant Supervisor/ Supervisor in Charge, when snow is predicted during off-duty hours. The employee will then receive instructions on reporting for duty.
b. Work time commences when an employee reports to the prescribed work location as previously established by management levels noted above.
c. If an employee is not needed for one shift, he or she will contact the Supervisor prior to the next assigned shift if snow is still predicted.
d. If an employee has been away from home and returns, then becomes aware of the formation of snow or ice conditions, he or she is expected to call the Supervisor for instructions.
e. If any employee desires to be away from home for an extended period, such as a weekend when snow is a possibility, he or she will contact the Supervisor to determine if an alternate employee can cover the employee's assignment.
f. An employee on call or standby is not required to remain on call on the Division's premises or at home, but is required to leave word at home or with the Supervisor where the employee may be reached.

D. **OVERTIME AND HOLIDAY WORK**
Effective: 9/15/2003

The organization manager, or designee, may require employees to work more than the normal working hours or on official holidays, when necessary to the public interest. Overtime work and work on holidays will be controlled and compensated for in accordance with the Division of Personnel's Administrative Rule, the Fair Labor Standards Act, *West Virginia Code* § 21-5C-1 *et seq*., and the provisions of this Administrative Procedure.

1. The DOT workweek, for overtime purposes, is from 12:01 a.m. on Monday through midnight Sunday.

2. Overtime is approved hours actually worked in excess of 40 hours for a workweek. No leave time, including holiday leave, is to be counted in the workweek's accumulation of 40 hours for overtime consideration.

3. Hourly and non-exempt salary employees who exceed 40 hours of actual work in a workweek are paid at one-and-one-half times the normal rate (time and a half) for the overtime hours. For salaried employees, the normal rate is calculated by dividing the annual salary by the standard annual work hours (2,080 hours). Salaried, exempt employees are paid according to the specifications of their individual job classification and this Administrative Procedure.

4. Full-time employees who are required to work holidays will be paid for the actual number of hours worked plus an additional eight hours for the holiday. Part-time employees are entitled to receive payment in accordance with provisions of the Division of Personnel's Administrative Rule.

5. In the case of agencies that must modify holiday schedules to accommodate around-the-clock shifts or other special needs, the organization manager, or designee, may implement altered holiday schedules. Each agency should notify employees in advance of altered holiday work schedules and should schedule the altered holiday as close as possible to the officially scheduled holiday.

III. **<u>OVERTIME CLASSIFICATION AND PAY</u>**
Effective 1/1/2014

This procedure is to apply federal labor standards, as specified in the Fair Labor Standards Act (FLSA) and the Code of Federal Regulations (CFR), regarding eligibility for premium overtime pay to the employees of the Department of Transportation. It specifies positions that are considered clearly ineligible from premium overtime pay within the organizational hierarchy and those considered clearly eligible for such. Further, it specifies a process by which the overtime status of all other positions will be determined and addresses the method of payment for regular overtime

hours to employees who are ineligible for premium overtime pay under the Fair Labor Standards Act. This procedure does not apply to any positions with salaries specified by statute.

A. **POLICIES**

1. Overtime Classification and Pay Definitions

   a. Exempt: Not entitled to premium overtime compensation under the Fair Labor Standards Act.
   b. Hours Worked: Hours during which an employee is actually engaging in work, as defined by federal law and regulations. Does not include ordinary travel between home and work, meal periods, or leave time.
   c. Non-Exempt: Entitled to premium overtime compensation under the Fair Labor Standards Act.
   d. Premium Overtime: Payment for hours actually worked that exceed 40 in a workweek, computed at the employee's standard hourly rate, times one-and-one-half.
   e. Regular Overtime Hours: Hours actually worked by agency-defined exempt employees that exceed 40 in a workweek, computed at the employee's standard hourly rate.
   f. Excess Hours: Non-work hours paid in excess of 40 in a workweek, computed at the employee's hourly rate for the pay period in which the hours occur.

2. Exempt Employees

   The positions listed below, by virtue of the inherent and traditional duties associated therewith, are considered to fall within the Executive, Professional, and/or Administrative exemptions under the Fair Labor Standards Act and are therefore exempt from premium overtime compensation.

   a. Department of Transportation

      Secretary

   b. Aeronautics Commission

      Director

   c. Division of Highways

      Commissioner
      C and H Level Staff
      District Engineers/Managers
      Division Directors

Assistant District Engineers
District Comptrollers
District Equipment Supervisors
District Right of Way Managers
District Administrative Services Managers
County Highway Administrators
Assistant District Maintenance Engineers (Maintenance Assistants)
District Area Construction Engineers
Regional Maintenance Engineers

d. Division of Motor Vehicles

Commissioner
Division Directors
Regional Office Managers

e. Division of Public Transit

Executive Director

f. Office of Administrative Hearings

Chief Hearing Examiner

g. Public Port Authority

Director

h. State Rail Authority

Executive Director

3. **Non-Exempt Employees**

Employees who do not meet the Executive, Administrative, Professional or Computer employee exemptions under the FLSA and the federal regulations are considered non-exempt and therefore eligible for premium overtime pay. Such employees typically:

- Perform non-administrative duties;
- Have no supervisory responsibilities;
- Do not hold any professional licensure and do not primarily perform work in a field requiring advanced knowledge or a postsecondary education degree in fields such as law, accounting, engineering, architecture, or physical/chemical/biological sciences; and

- Do not primarily perform computer systems design, analysis or programming duties.

4. **Tested Positions**

All positions not falling in the exempt and non-exempt categories described above will be evaluated by Human Resources Division under applicable federal law and regulations, using the West Virginia Division of Personnel White Collar Exemption Worksheet. The test will be conducted at the time an employee is hired or enters a new position or at such time as an agency manager requests an updated FLSA review.

5. **Payment to Certain Exempt Employees**

Except those employees delineated below, exempt employees will receive straight time pay for hours actually worked in excess of forty (40) per week, up to a maximum of 225 hours per calendar year. Once the maximum hours have been reached, exempt employees may be required to work additional hours with no additional compensation.

Overtime hours worked during or as a result of declared states of emergency will not be counted toward the 225-hour limit. The Secretary or his designee may also exempt hours from the limit in situations where employees must work overtime to meet work demands. Requests for such hours to be exempted must be made to the appropriate C-level manager and must be approved in writing by the Secretary of Transportation or his designee.

Individuals serving in the following positions will receive no additional compensation in any form when they work more than 40 hours per workweek:

- Secretary, Department of Transportation
- Director, Aeronautics Commission
- Commissioner, Division of Highways
- Commissioner, Division of Motor Vehicles
- Executive Director, Division of Public Transit
- Chief Hearing Examiner, Office of Administrative Hearings
- Director, Public Port Authority
- Executive Director, State Rail Authority

IV. MANAGEMENT AND REVIEW OF HOURS THAT EXCEED THE STANDARD WORKWEEK

Effective: 5/1/2007

A. INTRODUCTION

The purpose of this Policy is to ensure that hours worked that exceed an employee's standard workweek are reasonable and necessary to carry out the goals and mission of the Department of Transportation. The procedures required by this Policy are designed to ensure that such hours are either planned and approved in advance or reviewed after their unanticipated occurrence.

The requirements contained herein are predicated on the fact that the Department of Transportation's public service responsibilities often involve necessary work outside normal working hours that cannot be foreseen. In addition, it is recognized that many hours worked outside of the standard workweek are routine, even though unplanned, for common activities such as snow removal and other weather-related events or other situations that affect transportation throughout the state.

B. POLICIES

Effective: 10/22/2013

1. SCHEDULED HOURS THAT EXCEED THE STANDARD WORKWEEK

Hours credited to an employee over 40 in a workweek that are planned by organizational supervisors must be approved in advance by the District Engineer/Manager or Division Director (DEM/DD) for the Division of Highways, or by the agency head or his or her designee of other DOT agencies ("relevant authority"). Requests for such hours are to be submitted to the relevant authority prior to the start of the week in which the work is to be performed. The relevant authority will approve, disapprove or modify the requested hours and communicate his/her action to the requesting supervisor.

The Division of Highways District Comptroller, DOH division payroll administrator or DOT agency payroll administrator will generate the Weekly Time Report (TSO REPORT 100, HWDD-100A) for any week in which such scheduled hours are worked and forward it to the organization/unit supervisor at the conclusion of that week. The supervisor will reconcile the hours worked with those approved. If the hours worked are less than the hours approved, the supervisor will sign the Weekly Time Report, attach documentation of the hours approved, and file that material at the organization level. If the hours worked exceed the hours approved, the supervisor will follow, for those hours worked but not previously approved, the procedure for unscheduled hours outlined herein.

2. UNSCHEDULED HOURS THAT EXCEED THE STANDARD WORKWEEK

Hours credited to an employee over 40 in a workweek that are not planned but must be worked as a result of unanticipated work demands (e.g. weather conditions, traffic accidents, changes in contractor schedules, etc.) must be justified to the relevant authority by organizational supervisors.

The Division of Highways District Comptroller, DOH division payroll administrator or DOT agency payroll administrator will generate the Weekly Time Report (TSO REPORT 100, HWDD-100A) for any week in which such unscheduled hours are worked and forward it to the organization/unit supervisor, who will review the report to quantify the hours, sign it to denote that the review has been made, and submit that document, as well as a signed justification for the hours, to the relevant authority. The relevant authority will affix his/her signature to the same documents to verify review and acknowledgement of the information received.

3. UPPER MANAGEMENT REVIEW

At the end of each calendar year quarter, the DEM/DD for the Division of Highways, or the agency head or his or her designee of other DOT agencies, will submit a report of all hours worked during the quarter to the appropriate C or H level manager. The report will include the number of hours, the extent to which the hours were justified, and any remedial action that was taken to curtail the working of unnecessary hours.

4. RECORDS RETENTION

The Weekly Time Reports, documents relating to approved scheduled hours that exceed the normal workweek, and documents justifying unscheduled hours that exceed the normal workweek will be maintained at the organization level and by the relevant authority for a period of three (3) years. Where federal aid projects are involved, this supporting documentation **must** be retained for a period of three (3) years beginning with the date final expenditure information has been submitted to the FHWA. (This date can be verified by reviewing the specific authorization's 'Delete Date' using HWIQ, Menu Item 2- Authorization.) The quarterly reports will be maintained by the relevant authority and C & H levels for the same time period.

5. INTERNAL AUDIT ACTIVITY

The Internal Audit section of the Transportation Auditing Division will perform occasional reviews of files to ensure that organizations are complying with this Policy. The sampling rate for this activity will be at the discretion of the Auditing Division Director.

V. AUTHORIZED LEAVE POLICIES

Effective: 2/15/2010

A. LEAVE WITH PAY POLICIES

All types of leave with pay (except Holiday Leave) require employees to:

- obtain approval of the immediate supervisor for planned leave as early as possible (a minimum advance request time may be established by the organization manager),
- obtain approval of the immediate supervisor for unplanned leave (such as personal emergencies and sick leave) at least by the organization's established reporting time (the time by which employees must call in for unexpected absences, set at the organization manager's discretion),
- complete and submit Form DOP-L1 to document the request and the approval or disapproval,
- have sufficient "earned" leave balance to cover the absence (Computer maintained REMIS displayed leave balances may be inaccurate. See DOT Volume III, Chapter 4, *LEAVE ACCRUALS, CHARGES AND BALANCES* item 2 for additional information), and
- Charge a minimum of 1/4 hour.

Violations of these leave with pay policies may subject the employee to penalties described under Section VI of this Chapter including disciplinary action, up to and including dismissal.

Leave with pay is not permitted after an employee has accumulated 40 hours of work time and/or paid leave within a workweek. If an employee performs work after the accumulation of 40 hours of work time and/or paid leave, any leave hours attributable to the first 40 hours are still paid.

Leave usage is recorded on Form DOT-12 for daily work reporting. (See Chapter 4, Labor Reporting, of this Volume for processing information.) At the back of this Chapter, Appendix "C" provides a listing of leave accrual and carry-forward rates, while Appendix "D" provides a listing of the leave with pay authorization numbers.

1. Annual Leave:

   a. All permanent and provisional employees accrue annual leave.
   b. Approval for taking annual leave is based on the absence not affecting the efficient operation of the organization.
   c. Annual leave shall also be granted, upon request, to employees who have exhausted their sick leave, sick leave for immediate family, and sick leave for death in the immediate family.
      (1) A completed, signed Form DOP-L3, Physician's/Practitioner's Statement, is also required upon return from annual for a sick absence of more than three days.

(2) Do not confuse this use of annual leave with parental/family leave.

d. Provisional employees must use all of their accrued annual leave, prior to the termination of their employment, in order to receive payment for it.

2. Sick Leave:

a. Permanent and provisional employees accrue sick leave for personal illness, medical operations and recovery, routine dental and medical appointments, etc.

b. Time for travel to and from appointments may be charged to sick leave up to three hours per sick leave request.

c. The maximum charge is one work year per substantially continuous absence, after which time the employee should consider disability retirement.

d. Within two days of returning to work from sick leave of more than three consecutive workdays, employees must submit a completed Physician's/Practitioner's Statement, Form DOP-L3.

(1) For extended periods of sick leave, a physician's statement confirming the necessity for continued leave must be submitted every 30 calendar days.

(2) The organization manager, or designee, may also require a physician's certification for all sick leave approval of an employee when it is deemed that the employee has a pattern of sick leave abuse. Abuse of sick leave will result in disciplinary action being taken against the employee. Factors potentially signaling leave abuse include the following:

- Numerous and frequent short-term absences.
- Numerous absences due to sick leave of three days or less.
- Patterns of sick leave usage involving Mondays and/or Fridays or holidays.

(3) In the absence of the Physician's Statement, the time will be charged as unauthorized leave.

e. Employees must submit the required Forms DOP-L1 and L3 at the earliest practical time. If an employee is unable to furnish a completed Form DOP-L1 or Physician's Statement in time to meet payroll deadlines because of extreme circumstances, the immediate supervisor (with approval of the organization manager) may approve sick leave without the required documentation. In this event, a letter explaining the circumstances must be attached to the organization's Form(s) DOT-12, Daily Work Report.

f. Exposure to a contagious disease is a valid reason for sick leave approval when a physician states in writing that the employee has been exposed and that his or her presence at work may jeopardize the health of others.

g. Employees who become ill while on approved annual leave and are treated at a hospital emergency room or are admitted to a hospital may request that all or part of the time for treatment be charged to sick leave.
   (1) The employee must make the request immediately upon return to work.
   (2) The employee must provide a physician's statement or hospital statement listing the specific dates of hospitalization or emergency room services.

h. Employees injured on the job:
   (1) may not receive sick leave at the same time they are receiving Temporary Total Disability (TTD) benefits through the Workers Compensation Fund, and
   (2) must choose at the outset of their absence whether to use sick leave or accept TTD benefits.
   (3) If an employee elects to accept TTD, sick leave may be paid until the claim has been ruled compensable and the first benefit check is received. However, the employee must reimburse the DOT the net value of sick and annual leave benefits paid, in accordance with Division of Personnel policy.

i. Accrued sick leave balances of provisional employees terminate at the end of their employment.

3. Sick Leave (Immediate Family):

All employees who are eligible for paid sick leave may use up to 40 hours of their accrued sick leave per calendar year for illnesses and/or routine dental and medical appointments of members of their immediate family.

a. "Immediate family" members include father, mother, son, daughter, sister, brother, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, grandson, granddaughter, step-mother, step-father, step-sister, step-brother, stepchild, and individuals in a legal guardianship relationship.

b. The organization's payroll/personnel coordinator is responsible for tracking employee sick leave hours which are used for "Sick (Immediate Family)."

c. All other "sick leave" rules apply.

4. Sick Leave (Death in Immediate Family):

All employees who are entitled to paid sick leave may use up to three days of accrued sick leave (per occurrence) for death in their immediate families (as it is defined in Section V.A.3.a.) provided their sick leave balances are adequate to cover the use.

5. Leave Time for Organ Donation:

   a. Full time employees shall receive up to 120 hours of leave with pay during each calendar year to use when the employee is absent from work because of the employee's donation of any portion of an adult liver or because of the employee's donation of an adult kidney.
   b. Full time employees shall receive up to 56 hours of leave with pay during each calendar year to use when the employee is absent from work because of the employee's donation of adult bone marrow.
   c. Eligibility includes time spent for pre-operative testing to determine the potential donor's surgical fitness and compatibility. This is the case whether or not the potential donor is found to be compatible or the organ donation occurs.
   d. The employee must request paid leave and provide verification of the pre-operative testing and/or organ donation on the forms prescribed by the Division of Personnel.
   e. Leave may be taken continuously or intermittently.
   f. Leave taken for this purpose shall not be charged against employee's accrued sick or annual leave balance.

6. Holiday Leave:

   Employees are entitled to time off with pay for official holidays subject to the following.

   a. To receive pay for any holiday, an employee must, at a minimum, work or be on approved paid leave for his or her full scheduled workday immediately preceding and following the holiday. An employee is not eligible to be paid for any holiday that occurs prior to his or her first day of work or after his or her date and time of separation.
   b. Full time employees receive eight hours of holiday leave for each official holiday.
   c. Part time employees receive payment for holidays in proportion to the amount of time worked as compared to the employer's standard workweek.
   d. Employees who work alternative schedules that require them to work on holidays will be given the time off on another day (see Section II.C.5. for details) or may be paid for eight hours of holiday leave in addition to being paid for the hours actually worked.
   e. In accordance with West Virginia Code § 2-2-1 *et seq*., official holidays are: New Year's Day, Martin Luther King's Birthday, Presidents' Day, Memorial Day, West Virginia Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, any day on which an election (primary, general or special) is held throughout the State, and such other days as the President, Governor or other duly

constituted authority shall proclaim to be legal holidays. See § 14.1(a) of the Division of Personnel's *Administrative Rule* for details.

7. Military Leave:

All employees who are members of the National Guard or of any of the Reserve Components of the Armed Forces of the Federal Government are entitled to paid military leave without loss of status or efficiency rating on all days during which they are engaged in drills or parades during business hours ordered by proper authority, or for field training or active service, for a maximum period of 30 working days in any one calendar year ordered or authorized by proper authority.

Additionally, all employees who are ordered or called to active duty by the President of the United States are eligible for an additional paid leave of absence without status or efficiency rating for a maximum period of 30 working days.

a. Holiday leave will be paid and official holidays are not included in figuring the "30 working day" limit for military leave, provided that the eligibility requirements for being paid holiday leave are met.
b. This "paid" status is unaffected by any other compensation these employees may receive.
c. This paid leave policy does not apply under the provisions of any Selective Training and Service Act. Employees in this situation may request and will be granted an unpaid leave of absence (see Section V.B.3.).
d. Organization managers are authorized to approve military leave. The employee must submit a copy of the official orders from the appropriate military authority in advance of leave being granted. The official orders must be attached to the organization's copy of the Time Report for subsequent audit.

8. Witness/Jury Service Leave:

Permanent employees will be granted witness/jury service leave with pay when, in obedience to a subpoena or direction by proper authority, they serve on a jury or appear as a witness before any court or judge, any legislative committee, or any officer, board or body authorized by law to conduct any hearing or inquiry.

a. The organization manager, or designee, will require the employee to furnish written confirmation of the employee's need to be on witness/jury service leave.

(1) Failure of an employee to submit a summons or other appropriate documentation in advance of taking witness/jury service leave will result in accrued annual leave being charged.

(2) Failure to submit the required documentation at all will result in the employee being placed in unauthorized leave status for the absence.

(3) The employee must furnish official written documentation from the court or hearing officer immediately upon returning to work.

b. The DOT will not support an employee's request to be excused from jury duty unless an employee's absence from work would cause significant problems in the agency's work progress.

c. If the jury duty or duty as a subpoenaed witness does not occupy a full working day, the employee must report back to work for the remaining scheduled work time, unless the remaining time would be less than one hour (making a reasonable allowance for travel time).

d. If an employee who normally works evening or night shift must serve as a juror, the employee should be placed on day shift, if practicable, for the length of such service and be given time off on witness/jury service leave.

(1) Schedule adjustments are recommended because of the fatigue factor, which may contribute to increased errors, security risks, and safety infractions.

(2) Employees who are subpoenaed to be witnesses and normally work evening or night shift may also request a schedule adjustment.

(3) If an employee is appearing in court on behalf of and at the request of the Division of Highways, the employee is not required to submit documentation and is to be paid for actual hours incurred from the organization's administrative overhead account.

e. This Policy does not apply in cases where the employee is a litigant, defendant or other principal party or has a personal or familial interest in the case or proceeding.

f. This Policy does not apply to involvement in grievance proceedings. See Volume III, Chapter 5 of *DOT Administrative Procedures* for that information.

B. <u>LEAVE OF ABSENCE WITHOUT PAY</u>
Effective: 9/15/2003

Employees on a leave of absence without pay:

- do not accrue annual leave or sick leave;
- are not eligible for holiday leave;
- are not eligible for salary advancements; and

- do not gain leave accrual rate increases, incremental increases, layoff consideration or tenure for retirement.

These stipulations do not apply to employees on military leave of absence.

Contact Transportation Human Resources Division for details about worker's compensation claims.

All leaves of absence without pay require the following:

- The employee must complete and submit a Form DOP-L2 to document the request and the approval or disapproval.
- The organization's payroll/personnel coordinator must complete and submit a Form GL-5 (with a copy of the Form DOP-L2) to Transportation Human Resources Division and Form DOT-129 to Transportation Finance and Administration Division to deactivate the employee.
- The organization's payroll/personnel coordinator, after the employee returns to work, must contact Transportation Human Resources Division to reactivate the employee, must complete and submit Form DOT-129 to Transportation Finance and Administration Division, Payroll Section, for leave balance adjustment payroll activation, and must submit Form GL-5 to Transportation Human Resources Division.
- Transportation Human Resources Division must report all leaves of absence to the Division of Personnel.

1. <u>Personal Leave of Absence</u>

   a. An agency's Chief Executive Officer (or designee) may grant any permanent, probationary or provisional employee a personal leave of absence for a specific period (normally a maximum of one year).
      (1) Periods exceeding one year may be granted by the Chief Executive Officer, based on the organization's personnel needs.
      (2) An organization manager may independently grant a personal leave of absence for a period of five consecutive working days or less.
      (3) Time spent by probationary employees for leaves of absence shall not be construed as time served in completing the probationary period. This section shall not be construed to extend the provisional period limitation.
   b. Employees must pay 100% of their medical and any optional insurance premiums for personal leaves of absence of one calendar month or more.
   c. Upon return to work, the employee will either be returned to his or her former position or one of comparable pay and duties without loss of rights, unless the position is no longer available due to a reduction-in-force.

2. Medical Leave of Absence

a. Medical leave is available only to permanent employees. Chief Executive Officers (or designees) will approve this leave if the employee meets all of the requirements.

b. Medical leave is limited to a maximum of six continuous calendar months in a 12-month period.

c. Application is made with Form DOP-L3, Physician's/Practitioner's Statement, completed and submitted to the immediate supervisor, along with Form DOP-L2.

(1) The physician must verify on Form DOP-L3 that the employee is ill or injured and unable to perform work duties and must provide a tentative date for returning to work.

(2) An employee must apply no later than 15 calendar days following the expiration of all sick and annual leave, no later than 15 calendar days following the day on which the employee files a claim for Worker's Compensation, or within 15 days after injury or illness that renders the employee unable to perform his or her duties.

(3) Upon the submission of a properly supported application, the employee may retain all, or any portion of, his or her annual leave balance. An employee may retain all, or any portion of, a sick leave balance if the injury or illness is one for which a Worker's Compensation claim will be filed.

(4) Following approval, a new Form DOP-L3 must be submitted each time the employee's condition is re-evaluated to confirm the necessity for continued leave.

d. The Chief Executive Officer, or designee, will mail (by certified mail) to the employee a written notice of the employee's right to a medical leave of absence without pay. This must be done at least fifteen days prior to (if possible) but no later than five days following the expiration of the employee's sick leave (if the employee has opted to use sick leave). A copy of the letter will be sent to Transportation Human Resources Division to be placed in the employee's personnel file.

e. Upon approval, the Chief Executive Officer, or designee, must notify the employee by certified mail that the request for a medical leave of absence has been granted. The letter will specify the beginning and ending date of the leave of absence, insurance information and what is required before the employee returns to work. A copy of the letter will be sent to Transportation Human Resources Division to be placed in the employee's personnel file.

f. Employees are required to remit to the Department of Transportation payment for their portion of the basic health insurance premium. The DOT will continue to pay the agency share.

(1) If an employee is enrolled for optional and/or dependent life insurance, 100% of the premium will be remitted by the employee.

(2) All applicable premiums are to be mailed to the Payroll Section of Transportation Finance and Administration Division no later than the fifth day of each month.

g. When an employee is approaching the last month on medical leave of absence without pay, the organization manager, or designee, will notify the employee (by certified mail) of his or her expected return date. The employee will also be reminded that failure to return for work promptly at the expiration of the medical leave of absence, except for satisfactory reasons submitted in advance, will be cause for recommendation for dismissal. A copy of the letter will be sent to Transportation Human Resources Division to be placed in the employee's personnel file.

h. After the expiration of a six-month medical leave of absence, if the employee is still unable to work, the Chief Executive Officer, or designee, may (but is not required to) grant a personal leave of absence. The request, granting and continuance of a personal leave of absence for an ill or injured employee will be governed by the same rules and regulations as the granting of a medical leave of absence. This includes the payment of insurance premiums. The agency's portion of insurance premiums for a non-Worker's Compensation illness or injury will be paid for a maximum of 12 months (six months of medical leave of absence plus six months of personal leave of absence).

i. If the employee is still unable to return to work after the expiration of six additional months of personal leave, the Director of Transportation Human Resources Division, or designee, may (but is not required to) grant an extension of personal leave. The decision of this officer, on whether or not to grant an extension, is final. The request and continuance for this extension will be subject to the same requirements as a medical leave of absence. The agency portion of insurance premiums for injured employees receiving Worker's Compensation will be paid by the DOT. All other employees will be responsible for paying 100% of the insurance premiums.

(1) If an employee's leave of absence is due to a Worker's Compensation illness or injury, the leave for a single injury is limited to the period during which Temporary Total Disability benefits are received or 24 months, whichever is longer.

(2) If an employee's leave of absence is due to a non-Worker's Compensation illness or injury, the maximum period of leave cannot exceed 24 consecutive months.

j. Upon returning to work, the employee will be reinstated to his or her former position, or one of comparable pay and duties, without loss of rights. At this time, the employee must furnish a statement from the attending physician (Form DOP-L3) indicating the ability of the employee to return to work.

(1) The Chief Executive Officer, or designee, may permit an employee to return to work at or before the expiration date of the leave of absence at less than full duty, but the terms of return shall be written and are subject to review and renewal through the Chief Executive Officer, or designee, every 30 calendar days. Such review may include the requirement of additional certification by a physician.

(2) Failure of the employee to report promptly at the expiration of a medical leave of absence, except for satisfactory reasons submitted in advance, is cause for recommendation for dismissal.

3. Military Leave of Absence

Any employee entering the U.S. Armed Services in time of war, national emergency or, under compulsory provisions of U.S. law in time of peace, may be granted a military leave of absence without pay. Upon completion of and discharge from any such Armed Service (and within the applicable time period described by federal statute, rule, or regulation), the employee shall have the right to return to DOT service without any prejudice whatsoever to status, merit rating, or standing by reason of such absence. An employee will be credited with all annual leave and sick leave not used at the commencement of his or her military leave of absence.

a. When applying for such leave, the employee must submit a copy of the official orders from the appropriate military authority to the organization's payroll/personnel coordinator, who will then submit the orders and other documentation to Transportation Human Resources Division and Transportation Finance and Administration Division.

b. When returning from such leave, the employee must submit a copy of the official military discharge papers and a completed Form GL-5 to Transportation Human Resources Division. A completed Form DOT-129 must be submitted to Transportation Finance and Administration Division, Payroll Section.

c. Military leave will not be allowed to be used as an attempt to enlarge or extend the length of employment of any temporary employee or to create a definite term in a position where none existed before.

d. If any of the rules or regulations expressed in this section are found to be in conflict with federal statutes, rules or regulations, the federal law shall prevail.

e. Employees who enter the Armed Services under circumstances other than those specified above must resign, but are eligible for reemployment in accordance with and subject to the provisions of the Veteran's Reemployment Rights Act (contact Transportation Human Resources Division for details).

4. Educational Leave of Absence

Employees may apply for a leave of absence without pay for the purpose of pursuing additional education. The agency's Chief Executive Officer has the authority to approve or disapprove an application for such leave.

a. Employees requesting educational leave are advised to thoroughly and explicitly express their reason for requesting this leave on Form DOP-L2 or on a separate letter attached to this Form.
b. Each agency's policy on the granting of this leave may vary, along with requirements for additional documentation and applications. It is the responsibility of the agency's Chief Executive Officer, or designee, to provide such details to the employee.
c. Educational pursuits may be subsidized, non-subsidized or reimbursable, depending on the employee's reason for requesting educational leave and the agency's policy on education. However, in no case will educational leave be considered paid leave.

5. Parental/Family Leave of Absence

Any permanent employee who has worked for at least 12 consecutive weeks may take an unpaid parental/family leave of absence. This Policy and the provisions thereof are in compliance with the Federal Family and Medical Leave Act of 1993 and the West Virginia Parental Leave Act, over which the federal act takes precedence if there is any conflict between the two.

a. This unpaid leave may be taken at one of the following times:
   (1) At the birth of a child of the employee.
   (2) At the placement of a child by adoption.
   (3) For the care of an employee's child, spouse, parent, or dependent who has a serious health condition. This leave can be taken intermittently when medically necessary.
   (4) At an employee's own serious illness.
b. The qualifications and conditions of family leave are as follows:
   (1) Leave is restricted to 12 weeks in a 12-month period.
      (a) This may be taken on a part-time leave schedule, but may not exceed 480 hours, and must be mutually arranged between the employee and supervisor.
      (b) If a husband and wife are both state employees, both are entitled to the 12 weeks.
      (c) An employee may substitute any part of this unpaid 12 weeks with paid leave, if available (documentation must be made on Form DOP-L1).
   (2) The employee must submit Form DOP-L5 and give two weeks' notice to the immediate supervisor that he or she will be taking parental/family leave, if practical.

(3) The immediate supervisor may require certification of a serious illness of the employee's family member from a health care provider before granting leave (use Form DOP-L4, Physician's/Practitioner's Certification or the physician's own written statement).

c. During parental/family leave, or at its conclusion:

(1) The employee's job position will be held and he/she will be returned to the position.

(2) Employees are entitled to the same insurance coverage (and premium obligation) they would have if working, while on leave.

(3) If the employee fails to return to work, the DOT may seek to recover the health insurance premiums paid by the DOT.

VI. UNAUTHORIZED LEAVE POLICIES

Effective: 9/15/2003

When an employee is absent from work without authorization, for sick or annual leave, the employee is on unauthorized leave. This is a disciplinary action that results in the loss of an employee's pay. This unpaid time is not counted as tenure for leave accrual purposes, incremental increase, or as tenure with DOT if a reduction in force is effected. Unauthorized leave is counted in increments of one-quarter of an hour and no time is reported for this form of absence on DOT-12 Forms.

Immediate supervisors are to document the unauthorized leave with the completion and submission of Form RL-544 and Form RL-546 (disciplinary action forms). Also, Form GL-5, "Personnel Transaction Form" (to reduce the employee's tenure), must be submitted to Transportation Human Resources Division.

Immediate supervisors may place an employee in unauthorized leave status, whether the affected employee has accrued leave available or not, under the following circumstances:

- Failure of an employee to notify the immediate supervisor of the reason for an absence prior to the call-in time established for the organization (see Section V.A.). (Supervisors should not apply this discipline when unusual or emergency situations make this rule difficult or impossible for the employee to follow.)
- If, when the employee does call in, the supervisor feels that the reason the employee gives for not calling in at the proper time is an acceptable reason, he or she may allow the employee to apply retroactively for paid leave or a leave of absence for the time missed from work.
- Failure of an employee to report for work at a time for which annual leave was previously requested but denied by the supervisor.
- Failure of an employee to report for work on time, subject to the conditions below.

(1) If an employee is tardy for work and has failed to notify the immediate supervisor in advance, he/she may be placed in unauthorized leave status.

(2) If this action is taken and the tardiness is less than 1/4 hour (or not on the quarter hour: e.g. beginning of shift is 7:30 and employee comes in at 8:05), the employee is not to be allowed to begin work until such time as the total unauthorized leave can be counted in 1/4 hour increments.

(3) The immediate supervisor is to instruct the employee (in the presence of one witness) that he or she may either leave the work premises or sit in the supervisor's office for the period of time needed to complete the 1/4 hour increment.

(4) If the employee is allowed to begin work, he or she must be paid for the 1/4 hour in question and cannot be placed in unauthorized leave status for that portion of his tardiness.

Effective: 2/15/2005

TABLE OF LEAVE ELIGIBILITY

KINDS OF LEAVE	**PERM. FT**	**PERM. PT**	**PROB.**	**PROV.**	**TEMP.**
Annual (all types)	yes	yes **1**	yes	yes	no
Sick (all types)	yes	yes **2**	yes	yes	no
Holiday	yes **3**	yes **3**	yes **3**	yes **3**	no
Military	yes	yes	yes	yes	no
Witness/Jury Service	yes	yes	yes	yes	no
Personal LOA **4**	yes	yes	yes	yes	no
Medical LOA	yes	yes	yes	yes	no
Military LOA	yes	yes	yes	yes	no
Education LOA	yes	yes	yes	yes	no
Parental/Family LOA	yes	yes	yes	yes	no

1- Permanent part-time employees earn annual leave based on a percentage of the amount of time they report as compared to the normal 40 hour week.

2- Permanent part-time employees earn sick leave based on a percentage of the amount of time they report as compared to the normal 40 hour week.

3- Any employee is eligible to receive payment for a holiday provided the employee works or is on approved paid leave status for 1) either the full scheduled workday before or after the holiday, **AND** 2) either works or is on approved paid leave status for any fraction of the scheduled workday before or after the holiday. It is necessary for one of the days to be a day for which the employee receives payment for a full scheduled workday. Part-time employees receive payment for holidays in proportion to the amount of time they would normally be scheduled to work.

4- LOA: unpaid leave of absence.

Effective: 9/15/2003

CATEGORIES OF EMPLOYMENT:

1. **Covered and Non-covered** Employees: *Covered* employees work under the rules and regulations of the state Division of Personnel. *Non-covered* employees are not subject to DOP rules and regulations.
2. **Full-Time and Part-Time**: *Full-time* DOT employees report 40 hours per week. *Part-time* employees report less than 40 hours per week, but are required to work a weekly schedule, the hours of which equal at least 1040 hours per year.
3. **Exempt and Non-Exempt**: *Exempt* employees are full-time and are not eligible for time and a half overtime pay for more than 40 hours of work in a week. *Non-exempt* employees are eligible for time and a half overtime. Exempt employees who work overtime may receive straight time (their normal pay rate), compensatory time (paid time off not charged to the employee's leave balance, to be taken later), or no additional compensation, depending on the specifications of their particular job classification.
4. **Permanent and 160 Day Temporary**: *Permanent* employees are hired for no specific duration of employment, whereas *160 day Temporary* employees may not work for more than 160 calendar days. Permanent employees may or may not be covered by the State Division of Personnel. Temporary employees are not covered.
5. **Probationary**: Permanent employees hired from a Division of Personnel certified register are in a *probationary* status for the first six calendar months of their employment. During this period, new hires may not have the same Division of Personnel rights or share some of the benefits to which post-probationary employees are entitled.
6. **Provisional**: *Provisional* employees are hired to fill a position pending the administration of a competitive examination and the establishment of a DOP register for that position, after which they may apply for the position. These employees are entitled to the same benefits that permanent employees have (their annual and sick leave balances, however, terminate at the end of their employment).
7. **Student:** *Student employees* are college students hired for a specific period during the summer with no extension possible. They are not eligible for holiday pay or any other employee benefit.

Effective: 9/15/2003

TABLE OF ANNUAL AND SICK LEAVE ACCRUAL AND CARRY-FORWARD RATES

Type of Leave	Length of Service*	Accrual Rate	Maximum Annual Carry-Forward Rate
Annual	Less than 5 years	10 hours per month	240 hours or 30 days
Annual	5 years but less than 10	12 hours per month	240 hours or 30 days
Annual	10 years but less than 15	14 hours per month	280 hours or 35 days
Annual	15 years or more	16 hours per month	320 hours or 40 days
Sick	Any length	12 hours per month (.06923 per hour)	Unlimited

* The DOT will accept service from certain non-covered agencies as qualifying service for determining the rate of accrual for annual leave and transfer of accrued annual and sick leave. Contact Transportation Human Resources Division for details. A general list of agencies from which service and leave will be accepted is as follows:

All state agencies under the Executive branch, including boards, commissions and authorities.

State colleges and universities (non-faculty employees only).

State constitutional offices, including full time employees of the legislature and any state funded board, commission or authority appointed by constitutional officers.

This list is intended as guidance and is not to be taken as exhaustive or exclusive. The intent of the agency is to accept service and leave from state funded entities that adhere to the same leave accrual and usage policies as those prescribed in the Division of Personnel's Administrative Rule. Where there is a question as to acceptance, contact Transportation Human Resources Division for details. In all cases of leave balance transfer, such transfer will be on an hour for hour basis, with no consideration given to any differences in work hours between the transferring agency and the DOT.

Effective: 1/1/2008

TABLE OF AUTHORIZATION NUMBERS FOR LEAVE WITH PAY

STANDARD AUTHORIZATIONS:	
ANNU123	Vacation/Annual leave
SICK124	Sick leave
SICK128	Sick leave - family
HOLD125	Holiday leave
SPECIAL AUTHORIZATIONS:	
ANNU121	Annual leave paid after termination
JURY126	Jury duty (court/witness leave)
MILT122	Military leave
OTHE119	Other paid leave
WOCO127	Workers' Comp. Requested Medical Exam*

* Limited to actual travel time and examination time only. Requires copy of letter from BrickStreet Insurance and/or Transportation Human Resources or Legal Division to be attached to the employee's time report, Form DOT-12. Use Receiving Organization 0083.

Effective: 11/1/2005

TABLE OF BENEFITS FOR EMPLOYEES ON LEAVES OF ABSENCE AND RECEIVEING TTD BENEFITS

MERIT SYSTEM BENEFIT	**PREVIOUS ENTITLEMENT**	**PRESENT ENTITLEMENT** ***EFFECTIVE: 7/6/2005***
Annual Leave Accrual	No	Yes
Service for Accrual Rate	No	Yes
Sick Leave Accrual	No	No
Holiday Pay	No	No
Annual Increment Pay	Yes	Yes
Annual Increment Seniority	No	Yes
Lay Off Years of Service	No	Yes
Retirement Years of Service	Yes	Yes