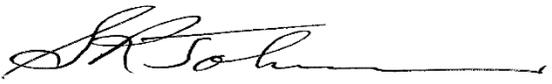




CALL-BACK PAY POLICY	
Policy #: To be assigned.	Authority: Merit Rule 4.16, State Budget Act
Effective Date: November 20, 2019	Supersedes: State of Delaware Call-Back Pay Guidelines and Recommended Procedure - May 13, 2007
Application: Executive Branch Agencies	Signature: 

1. POLICY PURPOSE STATEMENT

The State of Delaware (State) requires work to be completed, on occasion, outside employees’ regular work hours. The eligible employees will be entitled to Call-Back Pay if called back to perform work after the employees’ regular work hours.

2. SCOPE

Fair Labor Standards Act (FLSA)-covered employees and any others that may be identified shall be eligible for Call-Back Pay.

3. DEFINITIONS AND ACRONYMS

- **Call-Back Pay** - Pay that is provided to an eligible FLSA-covered employee once the employee arrives at the worksite at a minimum total payment equivalent to four (4) times their regular straight time hourly rate or the hours worked on the call-back at overtime, whichever is greater, not both through the time the employee has completed all call-back requests and has left the worksite.
- **Eligible Employee** - An FLSA-covered Merit¹ employee who has left the worksite, generally after the end of his/her scheduled shift and is then notified to return to work (to a worksite designated by his/her supervisor or manager) and is not currently on a call-back at another location.
- **FLSA** – The FLSA, Fair Labor Standards Act, establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments.
- **FLSA-Covered Employees** – Positions that are covered by the FLSA (also known as FLSA non-exempt).
- **HERT** - Employees designated to the Highway Emergency Response Team at the Delaware Department of Transportation.

¹ Probationary employees may be required to respond to an Agency’s call back to work and will also be eligible for Call Back Pay.

- **Qualified Call-Back Event** – Time during which an employee who has left the worksite and has been notified to return to work (to a worksite designated by his/her supervisor or manager) and is not currently on a call-back at another location.
- **SERT** - Employees designated to the State Emergency Response Team by the Delaware Department of Natural Resources and Environmental Control.

4. POLICY

- a. The Merit Rule provides FLSA-covered employees who have left the worksite at the end of their scheduled shift and are on call-back for overtime service shall be paid for such service in accordance with the provisions for overtime pay, provided that minimum total payment is equivalent to four (4) times their regular straight time hourly rate. Employees shall be paid according to this call-back provision or the overtime provision, whichever is greater, not both. Overtime at the rate of time and one half will commence after the employee has accrued 40 compensable hours that week.
- b. If the HERT is activated after an employee has left the worksite, and the employee is required to report back to work, then the employee is eligible for Call-Back Pay regardless of his/her FLSA status.
- c. If the SERT is activated after an employee has left the worksite, and the employee is required to report back to work, then the employee is eligible for Call-Back Pay regardless of his/her FLSA status.
- d. If social workers providing direct child or adult protective services are on call-back to work after having left the worksite, then these employees are eligible for Call-Back Pay regardless of their FLSA status.
- e. Call-Back Pay is paid to the employee from the time the employee arrives at the designated worksite and begins work until the time the employee has completed all call-back requests and has left the worksite.
- f. If an employee is on a qualified call-back event, completes the work, leaves the worksite, and is then called back, each qualified call-back event is to be considered independently.
- g. If an FLSA-covered employee who has left the worksite is contacted for assistance, and can provide the assistance by phone, the employee may do so and be compensated, unless the assistance takes seven (7) minutes or less, in accordance with the overtime provisions, not the call-back provisions.
- h. Supervisors shall not unnecessarily create call-back situations by purposely waiting until after the employee has ended his/her work period for that day and left the worksite to tell the employee that his/her services are needed when the supervisor had previous knowledge of the need for the employee's services. Supervisors shall be held accountable for their conduct if caught creating unnecessary call-back situations.
- i. Disciplinary measures up to and including dismissal shall be taken for just cause.

j. Agencies are required to record:

- 1) the time the supervisor made the call;
- 2) the time the employee reported to the worksite;
- 3) the reason for the call-back; and
- 4) the time the employee completed the work related to the call-back and departed the worksite.

The supporting documents for Call-Back Pay must be available upon request. Records must be audited quarterly by Agencies to ensure appropriate payment to employees.

5. PROCEDURES ASSOCIATED WITH THIS POLICY

- a. An Agency HR office must notify an employee and his/her supervisor that his/her position is required to respond when called back to work and is eligible for Call-Back Pay.
 - 1) Each Agency representative (may be HR or supervisor) must explain the details of the required documentation procedures and when an employee starts and ends getting paid Call-Back Pay. This notification can be done upon hire or during New Employee Orientation.
 - 2) The employee must acknowledge receipt of this policy, and the Agency HR office must maintain all eligible employees' acknowledgements in the Agency DHR personnel file.
- b. FLSA-covered employees who have left the worksite at the end of their scheduled shift and are called back for overtime service shall be paid for such service a minimum total payment equivalent to four (4) times their regular straight time hourly rate or overtime, if eligible. Employees shall be paid according to this call-back provision or the overtime provision, whichever is greater, not both. Overtime at the rate of time and one half will commence after the employee has accrued 40 compensable hours that week.
 - 1) If after being on call-back, the employee works 2.5 hours or less, the employee is compensated for four (4) hours at his/her regular straight time rate including premium pays for which the employee may be eligible.
 - 2) If after being on call-back, the employee works 2.75 hours or more, the employee is compensated for actual hours worked at the overtime rate including premium pays for which the employee may be eligible.
- c. Call-Back Pay is paid to the employee from the time the employee arrives at the designated worksite and begins work until the time the employee has completed all call-back requests and leaves the worksite.

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- d. If an employee is on a qualified call-back event, completes the work, leaves the worksite, and is then called back, each qualified call-back event is to be considered independently. Examples follow:

Employee works regular schedule from 8:00 a.m. to 4:30 p.m. Employee is called back at 5:00 p.m. and arrives to Building A worksite at 5:30 p.m.	Four (4) hours at the greater of four (4) times his/her straight time rate OR the call-back time worked at his/her overtime rate, but not both.
While working at Building A, employee receives a second call-back at 5:45 p.m. for work at Building B. Upon completion of work at Building A, employee reports to Building B until 6:30 p.m.	

Employee works regular schedule from 8:00 a.m. to 4:30 p.m. Employee receives a call-back at 5:00 p.m., arrives to Building A worksite at 5:30 p.m., works until 6:15 p.m., and employee leaves the worksite.	Eight (8) hours at the greater of four (4) times his/her straight time rate OR the call-back time worked at his/her overtime rate, but not both.
Employee receives a call-back at 7:30 p.m. and arrives at Building B worksite at 8:00 p.m. Employee works until 8:30 p.m. and employee leaves the worksite.	

- e. Whether an employee is being paid in accordance with the call-back provision **OR** the overtime provision, premium pays (i.e., stand-by pay, shift differential and hazardous duty pay) must be included in the rate.
- f. If an employee is on call-back multiple times during the same 24-hour period, each qualified call-back event is to be considered independently, if it meets the criteria in “d.” of this section.
- g. If the SERT or HERT is activated when team members are already working their regular work schedule, the employee is not eligible for Call-Back Pay since s/he was already at the worksite.
- h. The Agency representative (may be HR or supervisor) must maintain, and be able to produce, the following upon request as supporting documentation for pay:
- the time the supervisor made the call,
 - the time the employee reported to work,
 - the reason for the call-back, and
 - the time the employee completed the work and was released from the call-back assignment.
- i. Employees are to respond to the worksite indicated upon receipt of the supervisor’s call. At the worksite, employees are to document their arrival times and their departure times.
- j. If an FLSA-covered employee who has left the worksite is contacted for assistance and can provide the assistance by phone, the employee may be compensated in accordance with the overtime provisions, not the call-back provisions. If the time spent resolving the issue over the phone is between

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eight (8) and fifteen minutes, the employee is compensated for 15 minutes of overtime work. If the time spent resolving the issue is seven (7) minutes or less, the time is not compensable.

6. EXCLUSIONS OR EXCEPTIONS

Related situations where this policy does not apply:

- a. Casual Seasonal Employees
- b. Merit employees not covered by the FLSA.

7. DISSEMINATION AND TRAINING

- a. The Agency HR office shall provide current employees a review of this policy and procedure within 30 days of its effective date and shall provide employees who are new to their respective Agencies a review of this policy and procedure within 30 days of the employee’s hire date.
- b. Employees must read and acknowledge receipt of this policy in the Delaware Learning Center, or if not applicable by other means within 30 days of its effective date.
- c. Agencies must review the Agency’s Call-Back Pay time recording process, with all new employees who may be eligible for Call-Back Pay, all supervisors, and all existing employees and new supervisors 30 days from the effective date of this policy.

8. DATA REQUIREMENTS/REPORTING

Agencies are to audit their records regularly to ensure accurate employee pay.

9. ASSOCIATED POLICY/REGULATIONS/INFORMATION

- Any Statewide compensation related policies and guidelines.
- [State of Delaware Merit Rules](#)

10. FORMS ASSOCIATED WITH THIS POLICY

This policy is not intended to create any individual right or cause of action not already existing and recognized under State and Federal law.