

LEGISLATIVE REPORT

WORK HOURS & LEAVE STUDY

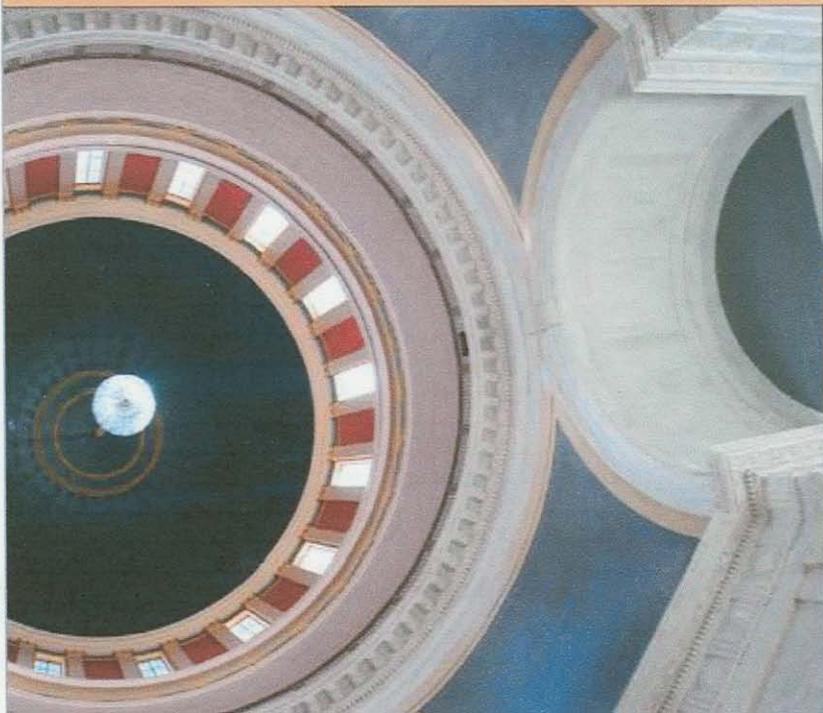
AS OF SEPTEMBER 30, 2010

REPORT OVERVIEW

*54% of State agencies work 7.5 hour days (excluding overtime and lunch)

*65% of State agencies give employees a 30 minute lunch period

*33% of State agencies are excessively paying employees for meal periods when they are off duty



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WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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The Joint Committee on Government and Finance:

Upon the request of the Legislative Post Audit Sub-Committee, we surveyed 165 State agencies under the Executive branch and Legislative branch of government on their work hours and leave policies, of which 133 agencies responded. We have included the agencies responses on the following pages of this report. We did not perform any additional audit procedures to ensure the agencies responses were accurate; we solely relied on the agencies responses for the basis of our report.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stacy L. Sneed".

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

**WORK HOURS & LEAVE STUDY
AS OF SEPTEMBER 30, 2010**

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**WORK HOURS & LEAVE STUDY
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STATE AGENCIES SURVEYED

Agencies under the Executive Branch:

1. Department of Administration - Cabinet Secretary's Office
2. Aviation Division
3. Children's Health Insurance Program
4. Consolidated Public Retirement Board
5. Equal Employment Opportunity Office
6. Ethics Commission
7. Finance Division
8. General Services Division
9. Personnel, Division of
10. Prosecuting Attorneys Institute
11. Public Defender Services
12. Public Employees Grievance Board
13. Public Employees Insurance Agency
14. Purchasing Division
15. Real Estate Division
16. Risk and Insurance Management, Board of
17. Technology, Office of
18. * Department of Commerce - Cabinet Secretary's Office
19. Development Office, WV
20. Energy, Division of
21. Forestry, Division of
22. Geological and Economic Survey
23. Labor, Division of
24. Miners' Health, Safety and Training
25. Natural Resources, Division of
26. Tourism, Division of
27. Workforce West Virginia
28. * Department of Education and the Arts - Cabinet Secretary's Office
29. Culture and History, Division of
30. Library Commission
31. Professional Development, Center for
32. Educational Broadcasting Authority
33. Rehabilitation Services, Division of
34. Department of Environmental Protection – Cabinet Secretary's Office
35. Air Quality Board
36. Air Quality, Division of
37. Environmental Quality Board
38. Land Restoration, Division of

39. Mining and Reclamation, Division of
40. Oil and Gas Conservation Commission
41. Solid Waste Management Board
42. Surface Mine Board
43. Water and Waste Management, Division of
44. Department of Health & Human Resources – Cabinet Secretary’s Office
45. Barbers and Cosmetologists, Board of
46. Behavioral Health and Health Facilities, Bureau for
47. Catastrophic Illness Commission
48. Child Support Enforcement, Bureau for
49. Children and Families, Bureau for
50. Deaf and Hard-of-Hearing, Commission for the
51. Developmental Disabilities Council
52. Health Care Authority, WV
53. Human Rights Commission, WV
54. Inspector General, Office of the
55. Medical Services, Bureau for
56. Medicine, WV Board of
57. Public Health, Bureau for
58. Women’s Commission, WV
59. Department of Military Affairs and Public Safety – Cabinet Secretary’s Office
60. Adjutant General's Office
61. * Armory Board
62. Corrections, Division of
63. Fire Commission, State
64. Homeland Security and Emergency Management, Division of
65. Justice and Community Services, Division of
66. Juvenile Services, Division of
67. Parole, Board of
68. Protective Services, Division of
69. Regional Jail & Correctional Facility Authority
70. State Police, West Virginia
71. Veterans Affairs, Division of
72. Department of Revenue – Cabinet Secretary’s Office
73. Alcohol Beverage Control Administration
74. * Athletic Commission
75. Banking, Division of
76. Budget Office, State
77. Insurance Commissioner
78. Lottery Commission
79. Municipal Bond Commission
80. Racing Commission
81. Tax Appeals, Office of
82. Tax Department
83. Department of Transportation – Cabinet Secretary’s Office
84. Aeronautics Commission
85. Highways, Division of
86. Motor Vehicles, Division of
87. * Parkways, Economic Development, and Tourism Authority

- 88. Public Port Authority
- 89. Public Transit, Division of
- 90. * Rail Authority, State
- 91. Agriculture, Department of
- 92. * Attorney General, Office of
- 93. * Bar, WV State
- 94. Coal Heritage Highway Authority
- 95. * Courthouse Facilities Improvement Authority
- 96. Economic Development Authority
- 97. Education, State Department of
- 98. Governor's Office
- 99. Hospital Finance Authority, WV
- 100. * Housing Development Fund
- 101. Network, WV
- 102. Public Service Commission
- 103. * Real Estate Commission
- 104. School Building Authority
- 105. Secretary of State, Office of
- 106. Senior Services, Bureau of
- 107. State Auditor, Office of
- 108. State Treasurer, Office of
- 109. Supreme Court of Appeals
- 110. * Water Development Authority
- 111. WV Board of Accountancy
- 112. * WV Board of Acupuncture
- 113. WV Board of Architects
- 114. * WV Board of Chiropractic
- 115. WV Board of Dental Examiners
- 116. * WV Board of for Licensed Practical Nurses
- 117. WV Board of Examiners for Registered Professional Nurses
- 118. WV Board of Examiners for Speech, Language, Pathology, and Audiology
- 119. WV Board of Examiners in Counseling
- 120. WV Board of Examiners of Psychologists
- 121. * WV Board of Funeral Service Examiners
- 122. * WV Board of Landscape Architects
- 123. * WV Board of Licensed Dietitians
- 124. * WV Board of Occupational Therapy
- 125. * WV Board of Optometry
- 126. * WV Board of Osteopathy
- 127. * WV Board of Pharmacy
- 128. WV Board of Physical Therapy
- 129. WV Board of Professional Surveyors
- 130. * WV Board of Registration for Foresters
- 131. WV Board of Registration for Professional Engineers
- 132. * WV Board of Respiratory Care
- 133. WV Board of Social Work Examiners
- 134. WV Board of Veterinary Medicine
- 135. * WV Job Investment Trust Board
- 136. WV Massage Therapy Licensure Board

- 137. * WV Medical Imaging & Radiation Therapy Technology Board of Examiners
- 138. * WV Real Estate Appraiser Licensing & Certification Board
- 139. * WV Statewide Addressing & Mapping Board
- 140. WV Higher Education Policy Commission
- 141. Bluefield State College
- 142. Blue Ridge Community & Technical College
- 143. Bridgemont Community & Technical College
- 144. Concord University
- 145. Eastern WV Community & Technical College
- 146. Fairmont State University
- 147. Glenville State College
- 148. * Kanawha Valley Community & Technical College
- 149. Marshall University
- 150. Mountwest Community & Technical College
- 151. New River Community & Technical College
- 152. Pierpont Community & Technical College
- 153. Potomac State College of WVU
- 154. Shepherd University
- 155. Southern WV Community & Technical College
- 156. West Liberty University
- 157. WV Northern Community College
- 158. WV School of Osteopathic Medicine
- 159. West Virginia State University
- 160. West Virginia University
- 161. * WVU at Parkersburg
- 162. WVU Institute of Technology

Agencies under the Legislative Branch:

- 163. Joint Committee on Government and Finance
- 164. * Senate
- 165. * House

*The agency did not respond to our survey; their response was incomplete; or they responded they had no full-time employees, or did not receive State funds.

WORK HOURS & LEAVE STUDY AS OF SEPTEMBER 30, 2010

SUMMARY

We surveyed 165 agencies on work hours and leave, of which 133 agencies responded to the survey.

Work Schedules & Lunch

Survey Question 1 & 3: On a normal work day, how many hours would a full-time employee be on duty? In a normal workweek, how many total hours would a full-time employee be on duty? (Excluding Overtime and Lunch)

Approximately 54% of State agencies responded they worked 7.5 hour days (excluding overtime and lunch) or 37.5 hours per workweek.

Survey Question 7: How much time is an employee allotted for lunch?

Approximately 65% of State agencies responded they give employees a 30 minute lunch period. All agencies surveyed had at least a 30 minute lunch period.

Survey Question 8 & 9: Are employees completely relieved of all job duties during the time allotted for lunch? Are lunches paid or unpaid?

In accordance with Title 29 of the Code of Federal Regulations, employers are not required to pay employees for meal periods when off-duty. Survey responses reflected 44 agencies or approximately 33 percent surveyed are excessively paying employees for meal periods when they are off-duty.

Overtime & Compensatory Time

Survey Question 1& 2: When does the overtime rate of pay begin? What rate of pay is used for overtime?

The survey responses indicate all agencies are paying the rate of time-and-one half for time worked over 40 hours, in accordance with Title 29 of the Code of Federal Regulations.

Survey Question 5: Is annual increment included in the calculation of overtime pay?

The survey shows that approximately 31 percent of agencies surveyed are not properly including the annual increment pay in the calculation of overtime pay.

Survey Question 6: How is compensatory time accrued and at what rate is it accrued?

Title 29 of the Code of Federal Regulations requires compensatory time to be accrued at one-and-one half times the regular rate for all hours in excess of the forty hour workweek. The survey responses indicate 48 agencies or 36 percent surveyed do not accrue employee's compensatory time in accordance with the Fair Labor Standards Act. *Two of these agencies are exempt from following the FLSA.

Survey Question 8: Does an employee have to use compensatory time within an allotted time period before it expires? If yes, how long does an employee have to use compensatory time?

The agencies have a range of different time limits to use the accrued compensatory leave before it expires.

Annual & Sick Leave

Survey Question 1: How many hours/days of annual leave can be accrued per years of service? How many hours/days of sick leave can be accrued per month?

The survey results show that all 133 agencies or 100% follow the DOP rule in the accrual of annual and sick leave for full-time employees. Note: Higher education full-time non-classified employees and faculty with twelve-month appointments shall accrue 2.00 days per month from the date of employment.

Survey Question 2: When is annual leave (sick leave) accrued and available for employees to use?

Approximately 73% of State agencies are accruing leave to employees at the end of each pay period in accordance with the Division of Personnel rules.

Survey Question 4: How many hours/days of annual leave (sick leave) may be carried forward from one calendar year to another?

The survey results show that 95 agencies follow the Division of Personnel (DOP) rule in the carry forward of annual leave from one calendar year to another. The survey results show that 132 agencies or 99 percent follow the DOP rule in an unlimited amount of carry forward of sick leave from one calendar year to another.

**WORK HOURS & LEAVE STUDY
AS OF SEPTEMBER 30, 2010**

PART 1 – WORK SCHEDULES & LUNCH

Survey Question 1 & 3: On a normal work day, how many hours would a full-time employee be on duty? (Excluding Overtime and Lunch)

In a normal workweek, how many total hours would a full-time employee be on duty? (Excluding Overtime and Lunch)

Condition: Approximately 54% of State agencies responded they worked 7.5 hour days (excluding overtime and lunch) or 37.5 hours per workweek. The answers to the survey questions are detailed in the table below.

<u>Standard Work Day (Hours)</u>	<u>Standard Work Week (Hours)</u>	<u>No. of Agencies</u>	<u>Percentage (%)</u>
7	35	7	5.26
7.5	37.5	72	54.14
7.5 or 8	37.5 or 40	6	4.51
8	40	35	26.32
8 or 10	40	4	3.00
Other*	Other*	9	6.77
Total		133	100.00

* Includes the following responses: "6 to 7"; "7.25"; "7.5 or 9.375"; "7.5 or 9.5"; "7.5 or 10"; "7 or 9"; "9.5"; and "8 or 10 or other variations equaling 40 hours per workweek".

Criterion: **Note: The Division of Personnel rules are to be followed by all employees, except those detailed as exempt from coverage under the classified service in WVa. Code 29-6-4 and Higher Education institutions. We have included the DOP criteria and Higher Education institutions criteria; however, the agencies exempt from following the DOP rules have their own rules and their criteria are not included under this section.**

The West Virginia Division of Personnel Legislative Rule Title 143, CSR1, Series 1 states in part,

"...14.2. Agency Work Schedules - Each appointing authority shall establish the work schedule for the employees of his or her agency. The work schedule shall specify the number of hours of actual attendance on duty for full-time employees during a workweek, the day and time that the workweek begins and ends, and the time that each work shift begins and ends. The work schedule may include any work shifts the appointing authority determines to be appropriate for the efficient operation of the agency, including work shifts comprising work days of more than eight hours and/or work weeks of less than five days. The work schedules and changes must be submitted to the Director

within fifteen (15) calendar days after employees commence work under the schedule....”

Higher Education Policy Commission Procedural Rule Title 133, Series 8 states in part,

“...6.1 The workweek is a regularly recurring period of one hundred sixty-eight (168) hours in the form of seven (7) consecutive twenty-four (24) hour periods. It begins at 12:01 a.m. on Sunday and ends at 12 midnight the following Saturday. The institutional president or the president's designee may establish a workweek different from this provided that record keeping requirements are met as set forth in relevant law. A work schedule of thirty-seven and one-half (37 1/2) hours will be established within a workweek....”

Survey Question 7: How much time is an employee allotted for lunch?

Condition: Approximately 65% of State agencies responded they give employees a 30 minute lunch period. All agencies surveyed had at least a 30 minute lunch period. The answers to the survey questions are detailed in the table below.

<u>Lunch Period</u>	<u>No. of Agencies</u>	<u>Percentage (%)</u>
½ hour	87	65.41
½ Hour to one hour	25	18.80
One hour	<u>21</u>	<u>15.79</u>
Total	<u>133</u>	<u>100.00</u>

Criterion : Title 29, Part 516 of the Code of Federal Regulations, Section 785.19(a) states in part,

“...Ordinarily 30 minutes or more is long enough for a bona fide meal period....”

Survey Question 8 & 9: Are employees completely relieved of all job duties during the time allotted for lunch? Are lunches paid or unpaid?

Condition: In accordance with Title 29 of the Code of Federal Regulations, employers are not required to pay employees for meal periods when off-duty. Survey responses reflected 44 agencies or approximately 33 percent surveyed are excessively paying employees for meal periods when they are off-duty. The answers to the survey questions are detailed in the table below.

<u>Lunch Period</u>	<u>No. of Agencies</u>	<u>Percentage (%)</u>
On-duty & Paid	41	30.82
On-duty & Non-Paid	0	0.00
Off-duty & Paid**	44	33.08
Off-duty & Non-Paid	39	29.33
Other*	<u>9</u>	<u>6.77</u>
Total	<u>133</u>	<u>100.00</u>

*Includes a combination of the categories.

**The off-duty & paid category reflects those agencies which are excessively paying employees for meal periods when they are off-duty.

Criterion: Title 29, Part 516 of the Code of Federal Regulations, Section 785.19(a) states in part,

“...Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating...”

**WORK HOURS & LEAVE STUDY
AS OF SEPTEMBER 30, 2010**

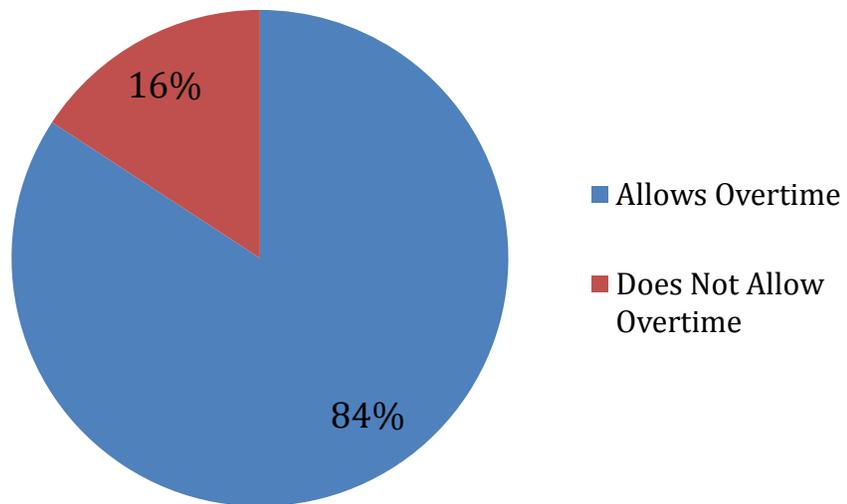
PART 2 – OVERTIME & COMPENSATORY TIME

Informational:

Based on the survey responses, we prepared a pie chart detailing the percentage of agencies that allow overtime.

Of the 133 agencies that responded to our survey, 21 agencies do not allow employees to work any overtime, while 112 do allow employees to work overtime.

Overtime



Survey Question 1 & 2: When does the overtime rate of pay begin?

What rate of pay is used for overtime?

Condition: The survey responses indicate all agencies are paying the rate of time-and-one half for time worked over 40 hours, in accordance with Title 29 of the Code of Federal Regulations. The answers to the survey questions are detailed in the table below.

<u>Overtime Rate of Pay</u>	<u>No. of Agencies</u>	<u>Percentage (%)</u>
Time-and-one half over 40 hours	112	84.20
Do not work overtime	<u>21</u>	<u>15.80</u>
Total	<u>133</u>	<u>100.00</u>

Criterion: Title 29, Part 516, of the Code of Federal Regulations, Section 778.100 states in part,

“...the maximum weekly hours of work permitted for the employment of such employees in any workweek without extra compensation for overtime, and a general overtime rate of pay not less than one and one-half times the employee’s regular rate which the employee must receive for all hours worked in any workweek in excess of the applicable maximum hours...”

Section 778.101 states in part,

“...As a general standard, section 7(a) of the Act provides 40 hours as the maximum number that an employee subject to its provisions may work for an employer in any workweek without receiving additional compensation at not less that the statutory rate for overtime...”

Survey Question 5: Is annual increment included in the calculation of overtime pay?

Condition: In accordance with the Code of Federal Regulations and W.Va. Code, annual increment should be included in the calculation of overtime pay. However, the survey shows that approximately 31 percent of agencies surveyed are not properly including the annual increment pay in the calculation of overtime pay. The answers to the survey questions are detailed in the table below.

Annual Increment Included in Overtime Pay?	No. of Agencies	Percentage (%)
Yes	67	50.37
No	41	30.83
Did Not Answer	4	3.00
Do Not Work Overtime	<u>21</u>	<u>15.80</u>
Total	<u>133</u>	<u>100.00</u>

Note: W.Va. Code §5-5-2 requires every eligible employee with three or more years of service to receive an annual increment each fiscal year on the first day of July equal to sixty dollars times the employee’s years of service.

Criterion: Title 29, Part 516 of the Code of Federal Regulations, Part 778 – Overtime Compensation, Section 778.108 states in part,

“...“regular rate” of “all remuneration for employment paid to, or on behalf of, the employee” except payments specifically excluded by paragraphs (1) through (7) of that subsection....”

Section 778.109 states in part,

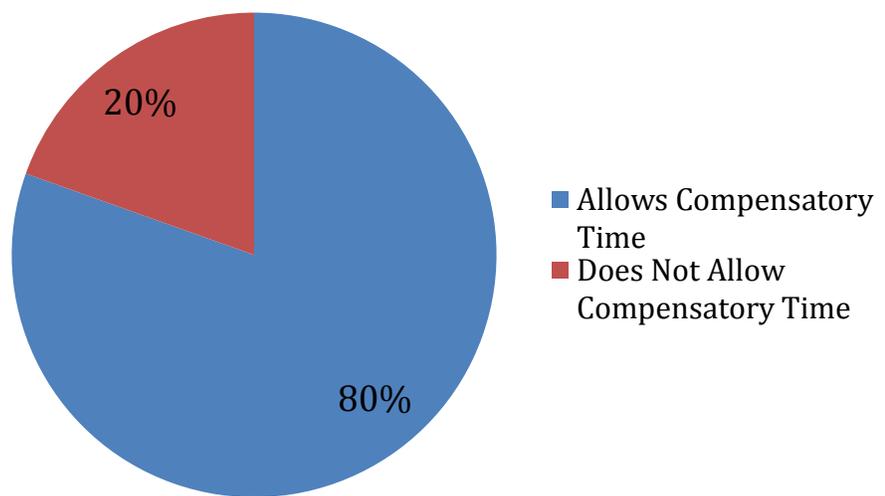
“...The “regular rate” under the Act is a rate per hour. The Act does not require employers to compensate employees on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission, or other basis, but in such case the overtime compensation due to employees must be computed on the basis of the hourly rate derived therefrom and, therefore, it is necessary to compute the regularly hourly rate of such employees during each workweek...”

Informational:

Based on the survey responses, we prepared a pie chart detailing the percentage of agencies that allow compensatory leave.

Of the 133 agencies that responded to our survey, 26 agencies do not allow employees to receive compensatory time, while 107 do allow employees to receive compensatory time.

Compensatory Time



Survey Question 6: How is compensatory time accrued and at what rate is it accrued?

Condition: Title 29 of the Code of Federal Regulations requires compensatory time to be accrued at one-and-one half times the regular rate for all hours in excess of the forty hour workweek. The survey responses indicate 48 agencies or 36 percent surveyed do not accrue employee’s compensatory time in accordance with the Fair Labor Standards Act. The answers to the survey questions are detailed in the table below.

<u>Compensatory Time Accrual Rate</u>	<u>No. of Agencies</u>	<u>Percentage (%)</u>
Straight-time up to 40 hours; time-and-one half over 40 hours	59	44.40
Straight-time for all hours over regular workweek; time-and-one half for holidays	48 *	36.00
Do not accrue compensatory time	<u>26</u>	<u>19.60</u>
Total	<u>133</u>	<u>100.00</u>

*Two of these agencies are exempt from following the FLSA.

Criterion: Title 29, Part 516 of the Code of Federal Regulations, Section 553.21 states in part,

“...Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hour for each hour of employment for which overtime compensation is required by this section....”

W.Va. Code §21-5C-3(a) states in part,

“No employer shall employ any of his employees for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.”

Survey Question 8: Does an employee have to use compensatory time within an allotted time period before it expires? If yes, how long does an employee have to use compensatory time?

Condition: The agencies have a range of different time limits to use the accrued compensatory leave before it expires. The answers to the survey questions are detailed by a range in the table below.

Time Allotted to Use Accrued Compensatory Time	No. Agencies	Percentage (%)
One month or less	25	18.80
More than one month – three months	6	4.51
Six months – 1 year	27	20.30
End of calendar year	3	2.26
End of fiscal year	4	3.00
No limit	39	29.32
Do not accrue compensatory time	26	19.55
Reasonable period of time	<u>3</u>	<u>2.26</u>
Total	<u>133</u>	<u>100.00</u>

Criterion: Title 29, Part 516 of the Code of Federal Regulations, Section 553.21(5)(B) states in part,

“Who has requested the use of such compensatory time, shall be permitted by the employee’s employer to use such time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt the operations of the public agency.”

**WORK HOURS & LEAVE STUDY
AS OF SEPTEMBER 30, 2010**

PART 3 & 4 – ANNUAL AND SICK LEAVE

Survey Question 1: How many hours/days of annual leave can be accrued per years of service?

How many hours/days of sick leave can be accrued per month?

Condition: The survey results show that all 133 agencies or 100% follow the DOP rule in the accrual of annual and sick leave for full-time employees.

Note: Higher education full-time non-classified employees and faculty with twelve-month appointments shall accrue 2.00 days per month from the date of employment.

Criterion: The West Virginia Division of Personnel Legislative Rule Title 143, CSR1, Series 1, Section 14.3(a) states in part,

“...Length of Service Category	Accrual Rate: Hours Equal To	Carry-forward Rate: Hours Equal To
Less than 5 years of qualifying service	1.25 days/month	30 days
5 years but less than 10 years of qualifying service	1.50 days/month	30 days
10 years but less than 15 years of qualifying service	1.75 days/month	35 days
15 years or more of qualifying service	2.00 days/month	40 days...”

Section 14.3(b) states in part,

“...Qualifying service for length of service category is based on State employment or employment in the classified service....”

Section 14.4(a) states in part,

“...Sick leave is computed on the basis of hours equal to 1.5 days per month for full-time employees....”

The Higher Education Policy Commission Procedural Rule Title 133, Series 38, Section 3.1 states in part,

“Full-time non-classified employees and faculty with twelve-month appointments shall be eligible for up to twenty-four (24) days leave per year calculated at the rate of 2.00 days per month from the date of employment....”

Section 3.2 states in part,

Employees occupying full-time classified positions shall be eligible for annual leave on the following basis:

- 3.2.1 Less than 5 years' service: 1.25 days per month;
- 3.2.2 5 but less than 10 years' service: 1.50 days per month;
- 3.2.3 10 but less than 15 years' service: 1.75 days per month;
- 3.2.4 15 or more years' service: 2.00 days per month.

Section 5.1 states in part,

“Full-time employees shall accumulate sick leave at the rate of 1.5 days per month.”

Survey Question 2: When is annual leave (sick leave) accrued and available for employees to use?

Condition: Approximately 73% of State agencies are accruing leave to employees at the end of each pay period in accordance with the Division of Personnel rules. The answers to the survey questions are detailed in the table below.

<u>When Leave is Accrued</u>	<u>No. of Agencies</u>	<u>Percentage (%)</u>
Semi-Monthly	97	73.00
Monthly*	32	24.00
Annual Leave - Semi-Monthly; Sick Leave - Monthly	1	0.75
Daily**	2	1.50
Weekly	<u>1</u>	<u>0.75</u>
Total	<u>133</u>	<u>100.00</u>

*14 of the agencies that accrue leave on a monthly basis are Higher Education institutions and, therefore, are exempt from the DOP rules.

**These are Higher Education institutions and are exempt from the DOP rules.

Criterion: **Note: The Division of Personnel rules are to be followed by all employees, except those detailed as exempt from coverage under the classified service in WV Code 29-6-4 and Higher Education institutions. We have included the DOP criteria and Higher Education institutions criteria; however, the agencies exempt from following the DOP rules have their own rules and their criteria are not included under this section.**

The West Virginia Division of Personnel Legislative Rule Title 143, CSR1, Series 1, Section 14.3(a) states in part,

“...Annual leave is accrued at the end of each pay period or on the last workday for separating employees....”

Section 14.4(a), states in part,

“...Sick leave is accrued at the end of each pay period or on the last workday for separating employees....”

The Higher Education Policy Commission Procedural Rule Title 133, Series 38, Section 3.1 states in part,

“Full-time non-classified employees and faculty with twelve-month appointments shall be eligible for up to twenty-four (24) days leave per year calculated at the rate of 2.00 days per month from the date of employment....”

Section 3.2 states in part,

Employees occupying full-time classified positions shall be eligible for annual leave on the following basis:

- 3.2.1 Less than 5 years' service: 1.25 days per month;
- 3.2.2 5 but less than 10 years' service: 1.50 days per month;
- 3.2.3 10 but less than 15 years' service: 1.75 days per month;
- 3.2.4 15 or more years' service: 2.00 days per month.

Section 5.1 states in part,

“Full-time employees shall accumulate sick leave at the rate of 1.5 days per month.”

Survey Question 4: How many hours/days of annual leave (sick leave) may be carried forward from one calendar year to another?

Condition: Annual Leave

The survey results show that 95 agencies follow the Division of Personnel (DOP) rules in the carry forward of annual leave from one calendar year to another.

Annual Leave Carry-forward	No. of Agencies	Percentage (%)
DOP Rule	95	71.43
2X Annual Rate*	18	13.53
1X Annual Rate**	3	2.26
Other	<u>17</u>	<u>12.78</u>
Total	<u>133</u>	<u>100.00</u>

*16 of the agencies that accrue leave on a monthly basis are Higher Education institutions and, therefore, are exempt from the DOP rules.

**These are Higher Education institutions and are exempt from the DOP rules.

Sick Leave

The survey results show that 132 agencies or 99 percent follow the DOP rule in an unlimited amount of carry forward of sick leave from one calendar year to another.

Criteria:

Note: The Division of Personnel rules are to be followed by all employees, except those detailed as exempt from coverage under the classified service in WV. Code 29-6-4 and Higher Education institutions. We have included the DOP criteria and Higher Education institutions criteria; however, the agencies exempt from following the DOP rules have their own rules and their criteria are not included under this section.

The West Virginia Division of Personnel Legislative Rule Title 143, CSR1, Series 1, Section 14.3(a) states in part,

“...Length of Service Category	Accrual Rate: Hours Equal To	Carry-forward Rate: Hours Equal To
Less than 5 years of qualifying service	1.25 days/month	30 days
5 years but less than 10 years of qualifying service	1.50 days/month	30 days
10 years but less than 15 years of qualifying service	1.75 days/month	35 days
15 years or more of qualifying service	2.00 days/month	40 days...”

Section 14.4 (a), states in part,

“...There is unlimited accumulation of sick leave...”

The Higher Education Policy Commission Procedural Rule Title 133, Series 38, Section 3.4, states in part,

“Accumulated annual leave for continuing employees may be extended beyond that earned during a period of one (1) year by written approval of the president or her/his designee, but in no case shall it exceed twice the amount earned in any twelve-month period.”

Section 5.2 states in part,

“Sick leave may be accumulated without limit.”

APPENDIX 1
WORK HOURS & LEAVE SURVEY

LEGISLATIVE POST AUDIT DIVISION
SURVEY
AGENCY ATTENDANCE & LEAVE REGULATIONS

NAME OF SPENDING UNIT _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
EMAIL ADDRESS _____

If available, please provide our office with the web address of your most recently updated employee handbook _____

Part I – Work Schedules & Lunch

1. On a normal work day, how many hours would a full-time employee be on duty?
(Excluding Overtime and Lunch)

2. Is there any other classification of employee that is on duty for more or less hours a day than listed above? Yes_____ No_____
 - If Yes to Question 2, please provide a description of each classification of employee and work day that varies.

3. In a normal workweek, how many total hours would a full-time employee be on duty? *For example: 35, 37^{1/2}, 40, etc.* (Excluding Overtime and Lunch)

4. What days of the week do employees work? *For example: Monday through Friday*

5. Are employees allowed to choose when their work shifts begin and end?
Yes_____No_____

6. What work shift options are available to employees? *For example: 7:30a.m.-4:00p.m., 8:30a.m.-4:30, 9:00a.m.-5:00p.m., etc.*

7. How much time is an employee allotted for lunch? _____

8. Are employees completely relieved of all job duties during the time allotted for lunch?
Yes_____No_____

9. Are lunches paid or unpaid? If both, please specify the portion which is paid.

Part II – Overtime & Compensatory Time

1. When does the overtime rate of pay begin? *For example: After 40 hours on duty*

2. What rate of pay is used for overtime? *For example: Straight pay for the first 3 hours of overtime and then time and a half for any hours above that.*

3. How is overtime approved?

4. Is there a limited amount of overtime an employee may charge? Yes____ No____

- If yes, what is the maximum? _____

5. Is annual increment included in the calculation of overtime pay? Yes____ No____

6. How is compensatory time accrued and at what rate is it accrued? *For example: Every hour worked past a regular workweek counts as one hour of compensatory time.*

7. Is there a limited amount of compensatory time an employee may charge?

Yes____ No____

- If yes, what is the maximum? _____

8. Does an employee have to use compensatory time within an allotted time period before it expires? Yes____ No____

- If yes, how long does an employee have to use compensatory time?

Part III – Annual Leave

1. How many hours/days of annual leave can be accrued per years of service? *For example: Less than 5 years of service = 1.25days/month. If years of service affect this amount, please specify.*

2. When is annual leave accrued and available for employees to use? *For example: Semi-monthly on each pay day or at the end of each month.*

3. What amount of hours per month is the employee's annual leave accrued on? *For example: 8 hours * 1.25 days = 10 hours*

4. How many hours/days of annual leave may be carried forward from one calendar year to another?

5. When an employee requests annual leave for an entire work day, how many hours would he/she request?

6. When an employee requests annual leave for a partial work day, is their lunch hour included in their request? Yes_____No_____

Part IV – Sick Leave

1. How many hours/days of sick leave can be accrued per month? *For example: Full-time employees = 1.5 days/month. If years of service affect this amount, please specify.*

2. When is sick leave accrued and available for employees to use? *For example: Semi-monthly on each pay day or at the end of each month.*

3. What amount of hours per month is the employee's sick leave accrued on? *For example: 8 hours * 1.5 days = 12 hours*

4. How many hours/days of sick leave may be carried forward from one calendar year to another? _____
5. When an employee requests sick leave for an entire work day, how many hours would he/she request?

6. When an employee requests sick leave for a partial work day, is their lunch hour included in their request? Yes_____No_____

Part V – Special Survey Question

1. Does your agency run any state owned gasoline stations/pumps? Yes_____No_____
 - If yes, how many? _____

Comments or Additional Information

**Please submit the completed questionnaire by mail, email, or fax as follows,
by 4:30 p.m., Tuesday, August 31, 2010:**

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., East
Charleston, WV 25305-0610

Fax: (304) 347-4889

Elizabeth.kinsey@wvlegislature.gov

If you have any questions, please contact Michelle Hodge, Manager, or Elizabeth Kinsey, Auditor I, at (304) 347-4880. Thank you for your assistance in this matter.

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Stacy L. Sneed, CPA, CICA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 14th day of December 2010.



Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Governor; Attorney General; and State Auditor.