



**NEW MEXICO JUDICIAL BRANCH
GENERAL PERSONNEL POLICY AND PROCEDURE:
ON-CALL/STAND-BY & CALL-BACK PAY**

Policy No. 2014.NMJB.160

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ON-CALL/STAND-BY & CALL-BACK PAY POLICY

1. PURPOSE

The purpose of this policy is to establish uniform guidelines for determining when and to what extent employees will be compensated for work performed outside their regular work hours in an on-call/stand-by status, and to ensure the compensation is in compliance with the New Mexico Judicial Branch Personnel Rules and the Federal Fair Labor Standards Act. This policy applies to all classified FLSA Non-Exempt and Exempt employees; it does not apply to Judges, Justices, or At-Will employees who are FLSA Exempt.

2. REFERENCES

- A. Department of Labor and the Fair Labor Standards Act (FLSA)
- B. New Mexico Judicial Branch Personnel Rules Part I and Part II
- C. New Mexico Judicial Branch On-Call/Stand-by and Call-back Pay Request and Agreement Form

3. DEFINITIONS

- A. **Call-Back** – A circumstance when an employee is required by an authorized supervisor to remotely or physically return to the workplace to perform duties at times when the employee is not scheduled to work. If an employee is required to physically return to the workplace, paid time shall commence at the time the employee begins to travel to report to work and ends at the completion of the call-back assignment including their return travel time; reasonable travel time to the employee's location and back prior to the call will be considered paid time as stated in Section 5. E. and 6. D. Call-Back worked hours will be considered time worked for the purpose of determining overtime compensation.
- B. **Department of Labor (DOL)** – The FLSA is a federal statute, regulated and administered by the United States Department of Labor.



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- C. Employee** - A person who holds a permanent or term position within the Judicial Branch excluding a justice, judge, or at-will employee.
- D. Fair Labor Standards Act (FLSA)** – The FLSA is a federal labor law governing and regulating working conditions, record keeping, and compensation calculations for covered employees. 29 USC §§201 et seq.
- E. On-Call/Stand-by Time** - Time defined as non-duty hours when an employee is required to remain available by telephone or other electronic contact in order to assist in resolving a critical issue and/or be available to return to the workplace within a reasonable and pre-determined time if called.
- F. On-Call/Stand-by and Call-back Pay Request and Agreement Workplace** – A site for the performance of work. This includes work premises, buildings, and grounds for such sites. It also includes the location of any work-related travel between work sites or work-related travel in the course and scope of employment as previously approved by the supervisor.
- G. Work Week** – Regularly scheduled work hours between 12:01 a.m. on Saturday and 12:00 p.m. midnight the following Friday.

4. DESIGNATION, NOTIFICATION, AND RESPONSE

In order for an employee to be eligible for on-call/stand-by, they **must** be designated in advance by their Administrative Authority using the *NMJB On-Call/Stand-by and Call-back Pay Request and Agreement Form* which requires AOC Director approval prior to any on-call/stand-by hours being worked, or call-back hours paid out. The prior designation must be communicated in writing along with the requirements of what being on-call/stand-by means, and the employee must consent to and sign the acknowledgment.

There must be a bona fide activity that requires the on-call/stand-by status, which includes a high likelihood of circumstances occurring that would need to be addressed immediately and could not wait until the next business day.

The Administrative Authority or designee shall in advance, designate, and inform an employee that they are required to be on on-call/stand-by status and shall set specific and reasonable time limits for expected employee response. In order for an employee to receive on-call or stand-by pay, they must be pre-designated and must have signed the *NMJB On-Call/Stand-by and Call-back Pay Request and Agreement Form* approved by the AOC Director.



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An employee on on-call/stand-by status is not restricted or designated to his or her home, duty station, or any other location, but is restricted in their personal life and in their movement as they must be in electronic or telephone contact and (if needed, for actual on-call issues) have computer access in order to respond to an emergency situation.

The employee must be able to return to the workplace within a predetermined amount of time not to exceed two (2) hours, and upon return back to the workplace, will be paid a minimum of two (2) hours of call-back Pay as outlined in Section 6.0 below.

Under no reasonable circumstances, can employees designated in advance as on on-call/stand-by refuse to respond to a call. An employee who fails to respond or who cannot be reached while on compensated on-call/stand-by status may be subject to disciplinary action.

Employees who are placed on on-call/stand-by status must be able to perform their duties as required under the New Mexico Judicial Branch Drug-Free and Alcohol-Free Workplace Policy and be fit for duty. Employees who are placed on on-call/stand-by status may not be impaired or under the influence of alcohol or illegal drugs, controlled substances without a valid prescription; or controlled substances with a valid prescription, which renders the employee unable to appropriately perform the employee on-call/stand-by duties.

5. ON-CALL/STAND-BY PAY

- A. On-call/stand-by hours shall be compensated at the rate of one and one-half (1.5) hours of pay for every eight (8) hours of on-call/stand-by at the employee's hourly pay rate.
- B. In consideration of a judicial entity's budget limitations the Administrative Authority may, with prior approval by the AOC Director, and notification to the employee, approve the on-call/stand-by compensation to be accrued as compensatory time for future use in lieu of payment.
- C. The Time Reporting Code (TRC) used in SHARE for reporting this time is "Stand-by Hours Worked" (STDBY). The employee should enter the total number of on-call/stand-by hours worked using this TRC.
- D. To pay out the on-call/stand-by hours worked, the Judicial Entity's Human Resources Administrator will use the SHARE time reporting code "Stand By Hours Paid" (STBYP). To use on-call/stand-by hours as a form of leave the employee



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will use the SHARE time reporting code “Stand-by Hours Taken” (STBYT). The Judicial Entity’s Human Resources Professional must manage and track on-call/stand-by hours worked, paid, and including the employee names, job titles, and payout amount, and be able to provide them to the AOC Director when requested.

- E. No on-call/stand-by compensation shall be offered for a call-back occurring when the employee is already on the Judicial Entities' premises working or during regularly scheduled work hours.
- F. No on-call/stand-by compensation shall be made for duplicate resources, or when another employee is on-call/stand-by for the same hours and is able to respond to the call.
- G. On-call/stand-by time, other than actual time spent responding to an emergency is not considered work time for overtime calculation purposes.
- H. Reasonable travel time from the employee’s off-premises location to the Judicial Entities premises and back shall be included as part of the actual hours worked and paid, (see the call-back pay definition).

6. ON-CALL/STAND-BY DESIGNATION CONSIDERATIONS

When determining if on-call/stand-by pay is appropriate, the Administrative Authority should consider the business operations and if there is a manager or director available who could respond rather than designating on-call/stand-by. Managers or Directors may report any hours worked after regularly scheduled work hours as extra hours worked in SHARE.

7. CALL-BACK PAY

- A. As soon as an employee reports to work, or if authorized begins to work from an alternate location he or she will go “on the clock” at his or her regular rate of pay.
- B. When an employee responds to an on-call/stand-by request to work remotely or returns to the workplace the employee will enter this time in SHARE as “Call-back Hours Worked” (CLLBK). Call-Back worked time becomes regular hours worked for the purposes of determining overtime compensation.
- C. When called back to work from on-call/stand-by status, employees shall be guaranteed a minimum of two (2) hours.



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- D. All actual call-back hours worked in excess of the minimum of two (2) hours or 120 minutes will be entered in fifteen (15) minute increments.
- E. Reasonable travel time from the employee's off-premises location to the Judicial Entities premises and back shall be included as part of the call-back hours worked.
- F. Call-back worked may be compensated at the employee's applicable straight time or overtime hourly rate, as appropriate and based on their FLSA designation at the discretion of the Administrative Authority.
- G. The Judicial Entity may verify calls received, and require employee documentation of the emergency/non-emergency request, including but not limited to: date, time, length of call, issue addressed, customer, the reason for the critical issue or required work, and signature of employee and supervisor.
- H. Employees cannot be compensated for on-call/stand-by and call-back worked simultaneously, that is, employees must record hours as either on-call/stand-by or call-back worked as appropriate.
- I. Employee may be designated on-call/stand-by following periods of approved leave. For example, an employee may have PTO in the same 24-hour period that they have on-call/stand-by or call-back time, provided the PTO leave is not for their own illness.
- J. No more than 15 hours may be claimed on any given regularly scheduled workday and no more than 24 hours may be claimed on any given non-scheduled workday.

Effective Date: February 22, 2024



Arthur W. Pepin, Director
Administrative Office of the Courts

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Date