



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

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December 28, 2021

His Excellency, Christopher T. Sununu
And the Honorable Council
State House
Concord New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 21-I: 14, I (b) (7); RSA 541-A: 1, XV; and RSA 4:15, the Department of Administrative Services requests approval of amendments to chapter MOP 1300 of the Department of Administrative Services Manual of Procedures ("DAS MOP"), with alteration of the title of that chapter from "Reimbursement of Travel, Meal and Lodging Expenses" to "Compensation for Travel Time," effective 60 days after approval by the Governor and Executive Council. Approval of this request would result in DAS MOP Chapter 1300 reading as shown in Attachment A hereto.

EXPLANATION

DAS MOP 1300 is currently entitled "Reimbursement of Travel, Meal and Lodging Expenses." At present, the chapter is limited in scope and primarily refers the reader to a document adopted by the Governor and Executive Council in 2006, identified as the "Department of Administrative Services - Manual of Procedures, 'Section 1100,' Reimbursement of Travel, Meals and Lodging Expense." Section 1100, was produced prior to the establishment of the DAS Manual of Procedures in its current format. It is not numbered or structured in accordance with the remainder the Manual and covers a multitude of fairly complex issues relating to employee travel. DAS MOP 1300 currently contains a provision rescinding a certain provision of 'Section 1100' relating to insurance, which rescission would remain effective upon adoption of these amendments, as it has been since 2014.

The current relationship between DAS MOP 1300 and the existing "travel rules" of "Section 1100" is confusing and, over the course of several years, the Department of Administrative Services, working in conjunction with the Department of Justice, has endeavored to clarify, organize and update the state's directives concerning employee travel, meals and lodging, working within the structure of the Federal Fair Labor Standards Act, pertinent New Hampshire statutes, and the terms of collective bargaining agreements. In the course of the departments' efforts, it became clear that it would be advisable to divide matters relating to travel, meals and lodging into several discrete chapters of the Manual of Procedures, one (MOP 1300) dealing with "Compensation for Travel Time," one (MOP 1301) dealing with "Reimbursement of Travel" and one (MOP 1302) dealing with "Purchases of Food, Meals and Lodging When Not on Travel Status." Based upon the State's experience in applying the former travel rules in practice, the Department of Administrative Services and the Department of Justice have endeavored to include pertinent provisions of the pre-existing travel rules ("Section 1100") into the proper new or revised chapters of the MOP, expanding upon those provisions as deemed necessary. "Section 1100" only briefly addresses compensation for travel time. The proposed amendments to Chapter 1300 address this matter in greater detail and are intended to supersede similar matters relating to compensation for travel time addressed in "Section 1100" Ideally, DAS MOP chapters 1300, 1301 and 1302, which relate to similar but not identical topics, would be adopted simultaneously. Doing so would result in clarity by fully superseding the existing "Section 1100."

Of the travel-related provisions proposed, or to be proposed, for inclusion in the Manual of Procedures, only MOP 1300 contains preexisting text. Accordingly, it is necessary that this text be amended. For informational purposes, the specific changes made to existing Chapter 1300 are shown in Attachment B hereto.

Respectfully submitted,



Charles M. Arlinghaus
Commissioner

MOP 1300 Compensation for Travel Time**I. Purpose, Scope and Interpretation****A. Purpose**

The purpose of this chapter is to set forth the policies and procedures that govern compensation of employee travel time. The chapter does not address policies relating to reimbursement of employees for travel, meal and lodging expenses while traveling, nor the purchase of food, meals and beverages while not on travel status. Those matters are to be addressed in Chapters MOP 1301 and 1302.

The adoption of this chapter is not intended to alter the rescission of certain motor vehicle insurance requirements formerly found in Chapter MOP 1300 and, to the extent that an expired administrative rule, Adm 308.03 (c), (which was at one time adopted as a portion of the DAS Manual of Procedures) was considered operative prior to 2014, Adm 308.03 (c) was repealed. That repeal remains in effect. This chapter does not impose any insurance requirements for privately-owned vehicles beyond those which are otherwise imposed by law.

The following guidelines are consistent with the federal Fair Labor Standards Act and shall be used for the determination of compensation of time spent in travel. To the extent that the Fair Labor Standards Act, or other legal requirements, may be changed to require payments which are more generous to the employee than those which are set forth in this chapter, this chapter shall be applied in a manner that complies with the amended requirements.

B. Scope

1. This chapter applies only to the compensation of travel time for hourly employees in the Executive Branch of New Hampshire state government.

C. Interpretation, Application and Relationship to Collective Bargaining Agreements

1. The provisions of this chapter shall be construed in a manner that seeks to avoid conflicts with controlling statutes, regulations, case law, operative collective bargaining agreements of the State, other provisions of the Manual and

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requirements that may simply be described in the MOP but which may originate from other sources. To the extent that provisions of this chapter may conflict with provisions of operative collective bargaining agreements, including past practice established thereunder, the provisions of the collective bargaining agreement shall control. State officials responsible for conducting collective bargaining shall consider the provisions of this and other chapters of the Manual of Procedures when engaged in collective bargaining.

2. This chapter shall be applied in such a manner as to avoid excessive or unnecessary costs to the State. Its provisions shall be applied in a manner which does not result in the State's payment for travel time where that payment might reasonably be avoided. Department Heads or Designees shall endeavor to assure that this chapter is applied according to its terms, but in a manner which encourages employees to travel in a way which most efficiently reduces the State's obligation to provide compensation for time spent solely in travel and which accounts for other extenuating circumstances. For example, if the shortest distance by road to a particular location would require substantially more travel time because of traffic congestion or road construction, than the use of a longer but less congested route that will result in arriving at the destination faster, may be appropriate, even though this will raise mileage reimbursement costs under Chapter MOP 1301, if it will avoid greater cost of paid travel time under this chapter.

II. Definitions

For the purposes of this chapter (DAS MOP 1300), the following definitions shall apply:

- A. "Collective Bargaining Agreement" (CBA) The current, in-force bargaining agreement with the State Employees Association of New Hampshire or other applicable bargaining unit.
- B. "Department Head or Designee": An officially appointed, elected, or designated individual who directs, and who is ultimately responsible for, the overall operations of an Executive Branch agency, institution, board or commission, or an employee who has been granted power of attorney or limited power of attorney from that person to act in regard to matters addressed in this chapter.
- C. "Hourly Employee": an employee in the Executive Branch of the State of New Hampshire who is paid based on the number of hours that he or she works, at a designated hourly rate.

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- D. "Official Headquarters": The address or addresses designated by the Department Head or Designee of the hiring authority as the employee's current workplace(s) that are intended to continue indefinitely, from which address or addresses an agency conducts official state business.
- E. "Overnight Stay": The remaining, for the entire night, at a place or destination on official business when such place or destination is at least 50 miles from the employee's Official Headquarters and also at least 50 miles from the employee's Residence.
- F. "Residence" or "Home": The primary residence of any State employee. In no instance shall an employee's residence be deemed the Official Headquarters of the employee without the prior written approval of the Department Head or Designee. Mere approval of an employee's ability to telecommute shall not constitute a designation of the employee's residence as the employee's Official Headquarters.
- G. "Special Assignment": A special, one day assignment to work in a city other than that in which an employee's Official Headquarters is located. A Special Assignment is not an assignment which is intended to continue indefinitely. This term only applies to assignments for workers whose job duties do not provide that travel away from the Official Headquarters can be a required duty.
- H. "Work time": is time for which the individual is eligible to be compensated in some form. The rate at which an employee is compensated is not addressed in this chapter.

III. Compensation of Travel Time

A. Commuting Time Generally

An employee who travels from Home before his or her regular workday and returns to his or her Home at the end of the workday is engaged in ordinary Home to work travel which is a normal incident of employment. This is true whether the employee works at a fixed location or at different work sites. Normal travel from Home to work (or from work to Home) is not work time, except as set forth in paragraph B.

B. Direct Travel to or from Home to or from a Worksite Other Than Official Headquarters

An Employee's supervisor shall make the determination as to whether or not the employee shall travel directly from his or her home to or from a work site other than his or her Official Headquarters at the beginning and end of a workday. When

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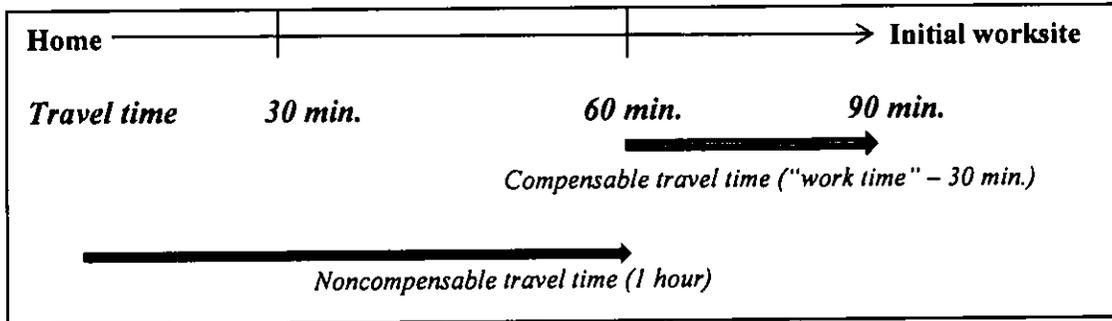
an Employee's duties, as determined by his or her supervisor, require travel from his or her Home to a work site other than the Official Headquarters at the beginning of the workday, or when an employee's duties require travel from a work site other than the Official Headquarters to their Home at the end of the day, the calculation of work time shall be as set forth in paragraph C.

C. Calculation of Compensable Time Under Paragraph B, when not on Special Assignment (for "special assignments, see paragraph F below)

1. The Employer may require that an Employee report to work at a work site at the regular hour the Employee would begin work at the official headquarters. If an employee's duties require travel from their Home directly to a work site (other than the Official Headquarters) at the beginning of the work day, the employee's "work time" shall begin at one of the following times, whichever is earlier:
 - a) Arrival at his or her initial work site; or
 - b) After the first one hour of travel to the initial work site has passed.

See illustration MOP 1300, III, C. 1 below: Compensability of time to first jobsite if an employee's duties require travel from their Home to different work sites (other than the Official Headquarters) during the course of a day.

Illustration MOP 1300, III, C. 1



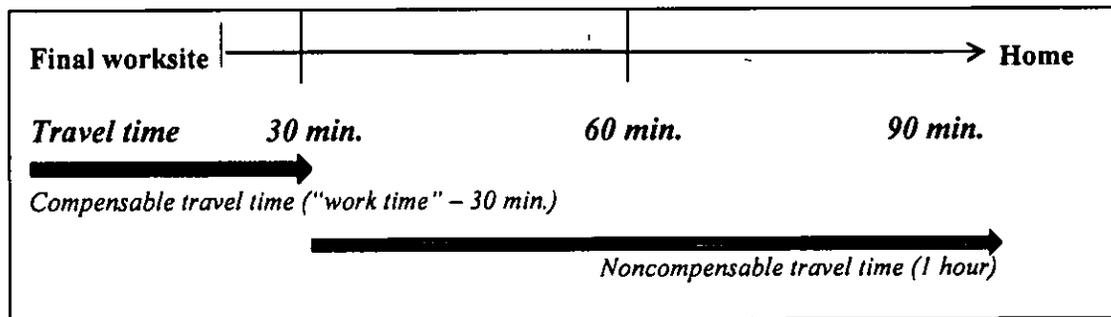
2. If an employee's duties require travel from a worksite (other than the Official Headquarters) directly to their Home at the end of the work day, the employee's "work time" shall end at one of the following times:
 - a) Leaving the last worksite of the day; or

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b) If the employee's travel time to Home is greater than one hour, one hour prior to the time that the employee arrives Home from the last worksite of the day.

See illustration MOP 1300, III, C., 2. below: Compensability of time Home from final jobsite if an employee's duties require travel from their Home to different work sites (other than the Official Headquarters) during the course of a day.

Illustration MOP 1300, III, C. 2.



D. For the purposes of MOP 1300, III, A. through C. above:

1. If requested by the agency, the employee must satisfactorily demonstrate that time spent in travel constitutes "work time."

E. **Travel in the Course of A Day**

In the case of employees who travel between worksites during the course of a day after arriving at the first worksite or Official Headquarters, travel between worksites and/or the Official Headquarters shall be considered work time.

F. **Travel to and From Special Assignments**

When an employee who normally works at a fixed location and whose duties do not include travel during the course of a workday travels from Home to work on a Special Assignment in a city other than that in which his or her Official Headquarters is located, if the employee returns Home the same day, the time spent traveling to and returning from the other city is work time, but the State will deduct from that travel time the time that the employee would normally spend in ordinary Home to work travel. In other

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words, the employee would be compensated from the time they leave Home until the time they return, less the time of the ordinary travel from Home to work or from work to Home.

G. Overnight Stays

1. Travel To and From Overnight Stays

Time spent traveling to or returning from an Overnight Stay is compensable, regardless of whether or not this travel takes place during hours that are within the employee's standard workday.

2. Travel During Overnight Stays

a) Travel while away from Home on an Overnight Stay is "work time" when it is done during hours that are within the employee's standard workday.

b) Travel while away from Home on an Overnight Stay is also work time if it is undertaken on non-standard work days (weekends, holidays), during hours that correspond to the employee's normal workday hours, or hours that are mutually agreed upon with the employer to constitute a work day.

c) Travel outside of work hours while on an Overnight Stay is not compensable as "work time," except for time spent traveling to or from the Overnight Stay itself. See G. 1. above.

IV. Inquiries Regarding Compensation of Travel Time

Supervisors and other agency personnel whose duties include managing and/or approving travel time are encouraged to contact the payroll manager in the Department of Administrative Services Division of Accounting Services with any questions as to the application of this chapter. Such inquiries should, if possible, be made prior to the time that a dispute arises with an Employee regarding the application of this chapter. Employees should initially address any inquiries that they have regarding compensation for travel time with their agency human resources administrators/representatives. If that person is unable to answer the employee's question, the administrator/representative should initially contact the payroll manager in the Department of Administrative Services Division of Accounting Services. The agency shall follow the guidance provided by the DAS payroll manager when addressing the employee's inquiry.

V. Effective Date

MOP 1300

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Adopted 10/29/2014

Approved 10/29/2014

Most recently amended: __/__/22

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The 2022 amendments to this chapter shall take effect 60 days after approval by the Governor and Executive Council.

VI. Other Sources and Information

A. Statutes and Regulations

The Fair Labor Standards Act – 29 USC 201, et seq.

RSA 21-I: 14, I (b) (7) (DAS Manual of Procedures may include provisions relating to reimbursement of travel, meals and lodging) .

29 CFR, Part 785 (Hours Worked)

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ATTACHMENT B

Deletions from current version of MOP 1300 are in ~~strike-through~~. New material is in **bold underlining**.

MOP 1300 Reimbursement of Travel, Meal and Lodging Expenses Compensation for Travel Time

I. Purpose, Scope and Interpretation

A. Purpose

~~This chapter of the Manual of Procedures is reserved to address matters relating to the reimbursement of travel, meal and lodging expenses. When this chapter is complete, it will supersede the requirements found in earlier versions of the Manual, including but not limited to the document known as "Department of Administrative Services — Manual of Procedures, Section 1100, Reimbursement of Travel, Meals and Lodging Expense," adopted by the Governor and Executive Council on September 27, 2006 (as amended on November 15, 2006). That document was produced prior to the establishment of the new DAS Manual of Procedures format and is currently available on the State's "Sunspot" intranet page at:~~

~~<http://sunspot.nh.gov/finance/accounting.aspx>~~

The purpose of this chapter is to set forth the policies and procedures that govern compensation of employee travel time. The chapter does not address policies relating to reimbursement of employees for travel, meal and lodging expenses while traveling, nor the purchase of food, meals and beverages while not on travel status. Those matters are to be addressed in Chapters MOP 1301 and 1302.

The adoption of this chapter is not intended to alter the rescission of certain motor vehicle insurance requirements formerly found in Chapter MOP 1300 and, to the extent that an expired administrative rule, Adm 308.03 (c), (which was at one time adopted as a portion of the DAS Manual of Procedures) was considered operative prior to 2014, Adm 308.03 (c) was repealed. That repeal remains in effect. This chapter does not impose any insurance requirements for privately-owned vehicles beyond those which are otherwise imposed by law.

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The following guidelines are consistent with the federal Fair Labor Standards Act and shall be used for the determination of compensation of time spent in travel. To the extent that the Fair Labor Standards Act, or other legal requirements, may be changed to require payments which are more generous to the employee than those which are set forth in this chapter, this chapter shall be applied in a manner that complies with the amended requirements.

B. Scope

1. This chapter applies only to the compensation of travel time for hourly employees in the Executive Branch of New Hampshire state government.

C. Interpretation, Application and Relationship to Collective Bargaining Agreements

1. The provisions of this chapter shall be construed in a manner that seeks to avoid conflicts with controlling statutes, regulations, case law, operative collective bargaining agreements of the State, other provisions of the Manual and requirements that may simply be described in the MOP but which may originate from other sources. To the extent that provisions of this chapter may conflict with provisions of operative collective bargaining agreements, including past practice established thereunder, the provisions of the collective bargaining agreement shall control. State officials responsible for conducting collective bargaining shall consider the provisions of this and other chapters of the Manual of Procedures when engaged in collective bargaining.
2. This chapter shall be applied in such a manner as to avoid excessive or unnecessary costs to the State. Its provisions shall be applied in a manner which does not result in the State's payment for travel time where that payment might reasonably be avoided. Department Heads or Designees shall endeavor to assure that this chapter is applied according to its terms, but in a manner which encourages employees to travel in a way which most efficiently reduces the State's obligation to provide compensation for time spent solely in travel and which accounts for other extenuating circumstances. For example, if the shortest distance by road to a particular location would require substantially more travel time because of traffic congestion or road construction, than the use of a longer but less congested route that will result in arriving at the destination faster, may be appropriate, even though this will raise mileage reimbursement costs under Chapter MOP 1301, if it will avoid greater cost of paid travel time under this chapter.

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II. Insurance Provision Rescinded Definitions

~~A. Since 2006, paragraph 1105 (D) of Section 1100, Reimbursement of Travel, Meals and Lodging Expense has provided that:~~

~~*Owners of privately owned motor vehicles that are used for state travel shall procure and maintain public liability and property damage insurance in amounts equal to or greater than \$250,000/\$500,000 bodily liability limits and proof of such insurance coverage must be provided by the employee to the State.*~~

~~B. This provision evolved from Adm 308.03 (e), an administrative rule also adopted as part of the DAS Manual of Procedures in the 1980's. Adm 308.03 (e) at one time provided that:~~

~~*Owners of privately owned vehicles used for state travel shall procure and maintain public liability and property damage insurance. Proof of such insurance coverage shall be maintained on file in the employee's departmental files. It shall be the responsibility of each department head to enforce this ruling.*~~

~~C. Shortly after the adoption of Section 1100, paragraph 1105 (D), it was determined that the \$250,000/\$500,000 limit should not be enforced and that agencies should instead follow the former guidelines stating that employees must have proof of insurance on file in their agency business offices in order to be eligible for reimbursement.~~

~~D. After consultation with its Risk Management Unit and other entities, the Department of Administrative Services has concluded that paragraph 1105 (D) as a whole is not necessary to protect the State's financial interests. Accordingly, the Governor and Executive Council have determined that this paragraph of "Section 1100" should be repealed.~~

~~E. Paragraph 1105 (D) of the "Department of Administrative Services Manual of Procedures, Section 1100, Reimbursement of Travel, Meals and Lodging Expense" is hereby repealed. To the extent that the provisions of Adm 308.03 (e) may be considered operative, those provisions are likewise repealed.~~

~~F. As the result of the foregoing, the Department of Administrative Services shall remove paragraph 1105 (D) from the document posted on the Sunspot intranet page~~

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and shall reletter the remaining paragraphs of 1105 so that, for example, paragraph 1105 (E) becomes new letter (D) and former paragraph 1105 (F) becomes new letter (E).

For the purposes of this chapter (DAS MOP 1300), the following definitions shall apply:

- A. “Collective Bargaining Agreement” (CBA) The current, in-force bargaining agreement with the State Employees Association of New Hampshire or other applicable bargaining unit.
- B. “Department Head or Designee”: An officially appointed, elected, or designated individual who directs, and who is ultimately responsible for, the overall operations of an Executive Branch agency, institution, board or commission, or an employee who has been granted power of attorney or limited power of attorney from that person to act in regard to matters addressed in this chapter.
- C. “Hourly Employee”: an employee in the Executive Branch of the State of New Hampshire who is paid based on the number of hours that he or she works, at a designated hourly rate.
- D. “Official Headquarters”: The address or addresses designated by the Department Head or Designee of the hiring authority as the employee’s current workplace(s) that are intended to continue indefinitely, from which address or addresses an agency conducts official state business.
- E. “Overnight Stay”: The remaining, for the entire night, at a place or destination on official business when such place or destination is at least 50 miles from the employee’s Official Headquarters and also at least 50 miles from the employee’s Residence.
- F. “Residence” or “Home”: The primary residence of any State employee. In no instance shall an employee’s residence be deemed the Official Headquarters of the employee without the prior written approval of the Department Head or Designee. Mere approval of an employee’s ability to telecommute shall not constitute a designation of the employee’s residence as the employee’s Official Headquarters.
- G. “Special Assignment”: A special, one day assignment to work in a city other than that in which an employee’s Official Headquarters is located. A Special Assignment is not an assignment which is intended to continue indefinitely. This term only applies to assignments for workers whose job duties do not

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provide that travel away from the Official Headquarters can be a required duty.

H. “Work time”: is time for which the individual is eligible to be compensated in some form. The rate at which an employee is compensated is not addressed in this chapter.

III. Compensation of Travel Time

A. Commuting Time Generally

An employee who travels from Home before his or her regular workday and returns to his or her Home at the end of the workday is engaged in ordinary Home to work travel which is a normal incident of employment. This is true whether the employee works at a fixed location or at different work sites. Normal travel from Home to work (or from work to Home) is not work time, except as set forth in paragraph B.

B. Direct Travel to or from Home to or from a Worksite Other Than Official Headquarters

An Employee’s supervisor shall make the determination as to whether or not the employee shall travel directly from his or her home to or from a work site other than his or her Official Headquarters at the beginning and end of a workday. When an Employee’s duties, as determined by his or her supervisor, require travel from his or her Home to a work site other than the Official Headquarters at the beginning of the workday, or when an employee’s duties require travel from a work site other than the Official Headquarters to their Home at the end of the day, the calculation of work time shall be as set forth in paragraph C.

C. Calculation of Compensable Time Under Paragraph B, when not on Special Assignment (for “special assignments, see paragraph F below)

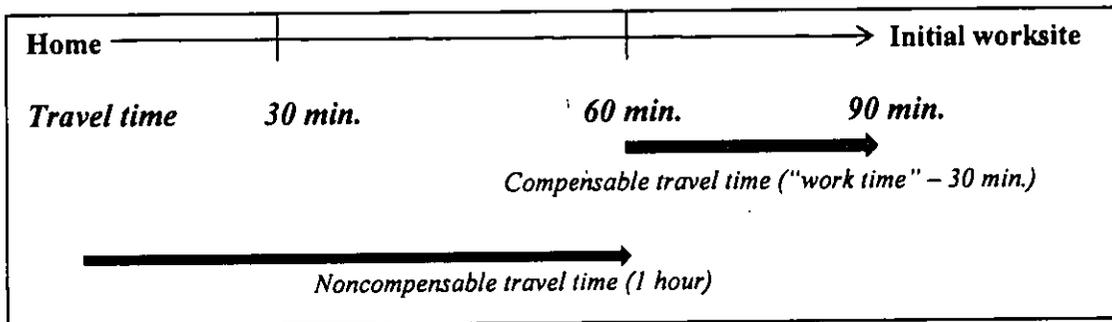
1. The Employer may require that an Employee report to work at a work site at the regular hour the Employee would begin work at the official headquarters. If an employee’s duties require travel from their Home directly to a work site (other than the Official Headquarters) at the beginning of the work day, the employee’s “work time” shall begin at one of the following times, whichever is earlier:

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- a) Arrival at his or her initial work site; or
- b) After the first one hour of travel to the initial work site has passed.

See illustration MOP 1300, III, C. 1 below: Compensability of time to first jobsite if an employee's duties require travel from their Home to different work sites (other than the Official Headquarters) during the course of a day.

Illustration MOP 1300, III, C. 1

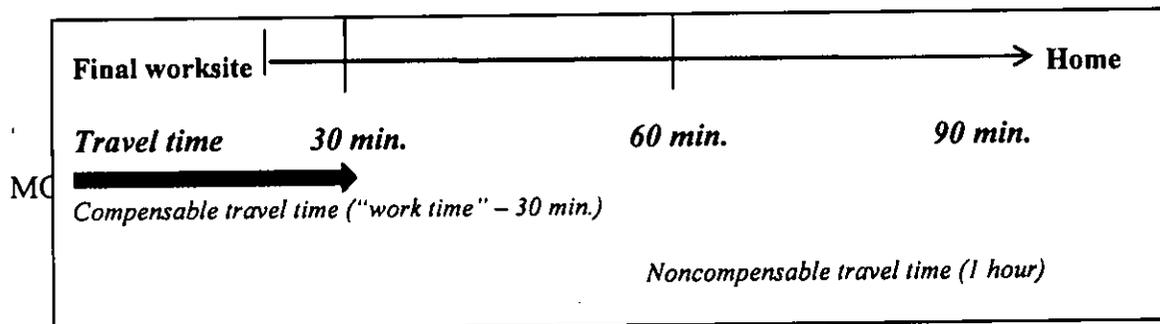


2. If an employee's duties require travel from a worksite (other than the Official Headquarters) directly to their Home at the end of the work day, the employee's "work time" shall end at one of the following times:

- a) Leaving the last worksite of the day; or
- b) If the employee's travel time to Home is greater than one hour, one hour prior to the time that the employee arrives Home from the last worksite of the day.

See illustration MOP 1300, III, C., 2. below: Compensability of time Home from final jobsite if an employee's duties require travel from their Home to different work sites (other than the Official Headquarters) during the course of a day.

Illustration MOP 1300, III, C. 2.



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n of Commuting or Work Time

D. For the purposes of MOP 1300, III, A. through C. above:

1. If requested by the agency, the employee must satisfactorily demonstrate that time spent in travel constitutes "work time."

E. Travel in the Course of A Day

In the case of employees who travel between worksites during the course of a day after arriving at the first worksite or Official Headquarters, travel between worksites and/or the Official Headquarters shall be considered work time.

F. Travel to and From Special Assignments

When an employee who normally works at a fixed location and whose duties do not include travel during the course of a workday travels from Home to work on a Special Assignment in a city other than that in which his or her Official Headquarters is located, if the employee returns Home the same day, the time spent traveling to and returning from the other city is work time, but the State will deduct from that travel time the time that the employee would normally spend in ordinary Home to work travel. In other words, the employee would be compensated from the time they leave Home until the time they return, less the time of the ordinary travel from Home to work or from work to Home.

G. Overnight Stays

1. Travel To and From Overnight Stays

Time spent traveling to or returning from an Overnight Stay is compensable, regardless of whether or not this travel takes place during hours that are within the employee's standard workday.

2. Travel During Overnight Stays

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a) Travel while away from Home on an Overnight Stay is “work time” when is done during hours that are within the employee's standard workday.

b) Travel while away from Home on an Overnight Stay is also work time if it is undertaken on non-standard work days (weekends, holidays), during hours that correspond to the employee's normal workday hours, or hours that are mutually agreed upon with the employer to constitute a work day.

c) Travel outside of work hours while on an Overnight Stay is not compensable as “work time,” except for time spent traveling to or from the Overnight Stay itself. See G. 1. above.

IV. Inquiries Regarding Compensation of Travel Time

Supervisors and other agency personnel whose duties include managing and/or approving travel time are encouraged to contact the payroll manager in the Department of Administrative Services Division of Accounting Services with any questions as to the application of this chapter. Such inquiries should, if possible, be made prior to the time that a dispute arises with an Employee regarding the application of this chapter. Employees should initially address any inquiries that they have regarding compensation for travel time with their agency human resources administrators/representatives. If that person is unable to answer the employee's question, the administrator/representative should initially contact the payroll manager in the Department of Administrative Services Division of Accounting Services. The agency shall follow the guidance provided by the DAS payroll manager when addressing the employee's inquiry.

V. Effective Date

The 2022 amendments to this chapter shall take effect 60 days after approval by the Governor and Executive Council.

III. VI. Other Sources and Information

A. Statutes and Regulations

The Fair Labor Standards Act – 29 USC 201, et seq.

RSA 21-I: 14, I (b) (7) (DAS Manual of Procedures may include provisions relating to reimbursement of travel, meals and lodging) .

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29 CFR, Part 785 (Hours Worked)

~~B. Other~~

~~Agencies may direct inquiries regarding travel to their business supervisor in the DAS Budget Office, (603) 271-3204.~~