

# INTRODUCTION

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The federal supervisor's first responsibility is making sure employees come to work and then maximize the amount of time they spend during duty hours serving the American people.

Time is the input side of the productivity equation. Not only is there a statistical correlation between absenteeism and low production, the apparent cause and effect is indisputable. Good employee time patterns are not an accident. These patterns materialize because supervisors have taken the time to learn the government's rules, then establish practices and controls to enforce them.

Even good employees develop poor attendance patterns in the absence of even moderate controls. Poor attendance is not a measure of employee moral imperfection. Tardiness, taking sick leave when not sick, working overtime when not really necessary, and using company time for personal business are morally neutral habits.

Nobody's internal value system identifies them as inherently either good or bad. They are only good or bad if somebody says they are. If the supervisor has tacitly communicated to employees that they may come to work when they wish, leave when they wish, and call in sick for any reason, the agency cannot turn around and blame employees for bad attendance and time habits.

Managing employee time in the federal government is simple but not easy. It is simple because the rules are already set and require little supplement by the supervisor. For all the derision of American federal civil servants, they happen to work under strict rules on time and attendance. These rules are nowhere near as liberal as those in private industry or in other Western governments, where systems allow virtually unlimited sick leave with pay and encourage employees to go on strike over the most trivial matter. In the federal government, most of your work has been done for you in that the rules and systems for controlling time are already in place.

However, it is not easy because it requires confrontation. You are the one who must convey the rules to the employees, and you are the one who must enforce them—with harsh measures if need be.

This is hard for most of us because it goes against our natural inclination towards generosity and compassion. Many mistakenly believe there is an inverse relationship between employee morale and strict standards. That employees are happier and more productive when there are fewer rules, and that morale starts

sinking the moment management sets high standards of quality and conduct. Surprisingly, it is the other way around.

Placing high expectations on people makes them feel consequential and motivates them to achieve. When you tell employees that you will allow nothing but the best quality work, you are sending them a message that what they do has meaning in an otherwise meaningless world. You are giving them, as Studs Terkel puts it, “daily meaning as well as daily bread and a sort of life rather than a Monday through Friday sort of dying.”

When you tell them that they have to come to work, you are affirming their worth as human beings by telling them that you need them and the American people need them. They are an important link in a significant institution. They hold the workplace together and when they do not come in, it starts falling apart. To impose strict but fair requirements on employee attendance is to value their service.

What follows is a description of those requirements and how to use them. The purpose of this book is twofold. It gives the government supervisor a distillation of the rules that have been established by legislation, regulations, and case law on time, leave, and attendance. It also gives you practical strategies for establishing practices and controls to encourage your employees to give you their best.

[Chapter One](#) covers the basics about hours of work and duty time. [Chapter Two](#) shows you work scheduling. [Chapter Three](#) shows you what you need to know about overtime. Then [Chapter Four](#) details annual leave, administrative excusals, leave without pay, AWOL, and the biggest problem—sick leave. [Chapter Five](#) covers managing time on the job, and [Chapter Six](#) addresses miscellaneous common problems that do not fall neatly into the other chapters.

As with most of my books for federal supervisors, I have chosen to break the rules of scholarship. I do not clutter the pages with footnotes of citations to laws, regulations, and cases. Most of the basic rules that I will discuss are in Chapters 61 and 63 of Title 5 of the US Code and Chapters 610 and 630 of Title 5 of the Code of Federal Regulations. Both of which are surprisingly short, and you can find both in any human resources office. The appellate decisions I mention are standard references that most HR people should be aware of.

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# CHAPTER ONE

## HOURS OF WORK

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We will start with hours of work—what is duty time, what happens on the job, what you can and cannot control, and where you can manage employees' time. Looking at the basic rules that govern hours of work in the federal service, we will examine common problems and address how to handle them.

In federal service, everything about managing time revolves around the magic number 2,087—the number of work hours per full time employee in a year. Unlike the military, federal employees are paid by the hour, and all of these hours must be accounted for as either hours of work, approved leave, or AWOL.

Employees are generally only accountable to their agencies for both achievements and calamities during those hours of duty. That rule is only a general one and has more exceptions than you could imagine. The rules on overtime and travel are cleverly crafted to give management broad authority to oblige employees to work past normal hours and travel on their own time without compensation. Further, the higher up one goes in grade and responsibility, the more the extras become part of the job, with professional and supervisory employees becoming *de facto* salaried staff.

The federal civil service bases its entire structure on the concept of paid hours of duty within certain schedules. Let us now take a brief look at the structure and then go into detail.

### DUTY STATUS

During whatever duty hours you end up setting in the work schedule, a federal employee is in one of three duty conditions: on duty, on approved absence, or absent without leave. When on duty, the employee is in an official status, performing functions for the United States. On duty has a broad meaning and does not necessarily mean that the employee is performing purely official tasks or is within the confines of the shop or office. The government still considers employees on duty who are, for example, traveling during duty hours on official business, attending a training course, or performing collateral duties.

On duty also does not necessarily mean that the employee is receiving pay for the time worked. As we will see in [Chapter Three](#) on overtime, federal rules on paid overtime are complex, as compensation depends upon, among other

factors, the status of the employee and whether the agency specifically directed or merely allowed the overtime.

Accordingly, an employee working unpaid overtime not at the direction of the agency would still be considered on duty. The significance of this is that the government, even though not paying for the hours, is still liable for any acts or misadventures committed by the employee during that time, e.g. workers' compensation if the employee is injured.

The U.S. Forest Service, for example, requires its employees to record work-related hours, e.g. unpaid overtime and work-required physical fitness activities, and limits the number of total paid and unpaid work hours within a day. Many other federal agencies similarly restrict the number of hours a day that employees can perform specific duties, e.g. Bureau of Indian Affairs (BIA) law enforcement personnel cannot drive more than sixteen hours, federal wildland firefighters cannot drive more than 10 hours without a rest period.

An employee on approved absence during duty hours, though, is neither on duty nor performing official functions. It is personal time acts during which the government accept no responsibility. Approved absences fall into one of four categories: annual leave, sick leave, leave without pay (LWOP), or administrative excusal—often called administrative leave.

The employee must request approved absences, and agencies generally may not place an employee involuntarily into an approved leave category. Further, the employee cannot leave the work site until the agency grants a leave request. When the agency places the employee in an approved absence, it condones the absence.

This principle creates an important rule that we shall repeat and refer to several times: except for the Postal Service, a federal agency cannot discipline or punish somebody for absenteeism if the employee was in an approved leave status. If an employee misses a half day of work, and the supervisor charges the employee four hours of annual leave, the supervisor cannot turn around and discipline the employee for not coming to work. By granting the annual leave, the supervisor sanctioned the absence.

Absent without leave (AWOL) is the time charge category when employees are not at work and have not been given permission to be gone. As we shall discuss in detail in [Chapter Four](#), supervisors in non-Postal agencies may only discipline employees for attendance problems or absenteeism if the supervisor first placed the employee in an AWOL status.

Now let us turn to the details.

# DUTY TIME AND HOURS OF DUTY

As we mentioned, on duty has a broad meaning and includes a variety of activities. A supervisor has latitude when determining what an employee does and where he or she goes during duty hours.

When you have virtually complete control over what an employee can and cannot do, you can make an employee do almost anything. You might have to reimburse the employee for travel, and you might have to compensate the employee with overtime pay for work directed in excess of duty hours (we will get into this more in [Chapter Three](#)). However, management controls the job site and what an employee does.

Even the situations we will discuss (using [official time for grievances, complaints, union activities](#), and the like) are always done with the sufferance of management. Though employees might have the right to engage in those activities, management always has the right to determine when they are allowed to and within what controls.

One of the most common questions supervisors ask is whether a supervisor has to let an employee do this or that during company time or whether the supervisor can stop it. The answer is always the same: you can prohibit or allow whatever you or your agency chooses. Official functions are whatever you say they are. Many (but not all) agencies prohibit employees from using official time to fill out job applications for other agency or federal positions. The policy, though, is whatever you or your agency allows. You must, of course, always first check with your own agency's policies and applicable negotiated agreement to see if the matter is already covered. If those sources do not already address the issue, you can set whatever rule or policy you choose.

Many people mistakenly believe that employees have a right to walk off the job to go to the HR or EEO office to consult, file an application, gripe, or visit any time they choose. Unless your agency already has some written agency policy to the contrary, and none that I have seen do, employees have no more right to walk off to their HR department during duty hours than they do to visit a brothel.

Most federal work places enjoy a casual collegial environment and allows employees expansive allowances for visiting, running short errands, chatting to friends on the telephone, and a variety of other non-work activities. What you must remember is that all these activities are with the forbearance of management. Management could stop them at will, even requiring employees to don green visors and put their noses into their paperwork eight hours a day.

This principle also applies to where an employee is required to go during duty hours. An agency could designate a different work location than the normal office or work site. In some emergency or other situations, agencies have directed employees to report to duty at other federal or agency locations, making this new location their official duty site. You could also designate an employee's home as his or her place of duty.

The Bureau of Prisons, for example, invented a "home duty" status that it uses in disciplinary investigative situations. This orders the employee under suspicion home and designates his or her home as the duty site. The employee cannot leave the home during duty hours without the permission of management—strange, but legal.

Now that we know the basic rule, let us turn to some common problems and situations with their own specific rules.

## **LUNCH TIMES AND BREAKS**

Breaks are paid time, lunches are not. There are no government-wide rules that govern breaks and lunch periods (except that a lunch period is required), so they are entirely at the discretion of management. Check with your own agency regulations or applicable negotiated agreements. If they do not say anything, then it is entirely up to you.

Although lunch times are not official paid time, management can control their length and even what employees do, including where they go. For example, it is perfectly legal for an agency to require employees to take their lunches on agency premises. You could even require that the employee stay on the job in a standby status during lunch and answer the phones or be ready for other on-call activities.

The General Accounting Office has ruled that as long as employees are not performing "substantial duties" during this time, it is still an unpaid lunch period. Until 1996, the GAO was the final arbiter and authority on all matters of pay, travel, and leave. In 1996, those functions were transferred to the General Counsel of the Office of Personnel Management, but all previous GAO rulings still stand as precedent until such time as they may be amended by OPM.

Even if you do not control where they go, you can control what employees are and are not allowed to do during their lunches. Many agencies and offices have policies that prohibit employees from consuming any alcohol during lunch periods, and third parties have consistently ruled that such prohibitions are within the discretionary authority of agencies and agency supervisors.

# TRAVEL

All government travel is considered an official function, but is not necessarily always on company time. The rule is that management is supposed to schedule travel during duty hours to the maximum extent feasible. Two exceptions give management considerable latitude and prevent employees from gaining much advantage.

The first is the two-day rule. A 1975 GAO decision says that if scheduling travel during duty hours would result in paying the employee an extra two or more days of per diem, the agency may require the employee to travel on his or her own time rather than on official time.

If an employee in D.C. has to go to a training class that starts in Philadelphia on 8:00 A.M. Monday, the agency could require the employee to travel on his or her own time—either going up there the previous day or traveling Monday morning through whatever conveyance the travel regulations allow or require in order to be there by 8:00 A.M. (the employee, of course, still collects whatever appropriate per diem applies). Traveling during duty hours, though, would require the employee to go up there Friday afternoon, which would result in the payment of two days per diem—a violation of the two-day rule.

Though management is supposed to schedule travel during duty hours, it is a soft requirement. There is no official mechanism for an employee to challenge the decision. If management simply directed an employee to travel on his or her own time, even if it were not otherwise a violation of the “two-day rule,” the employee would still have to do it and would have no recourse to GAO, OPM, or any other third-party, although an employee might try to complain to the Inspector General or file a grievance under collective bargaining agreement. As we will see when we get into [Chapter Three](#) on overtime the applicable laws, with few exceptions, prohibit overtime payment for travel.

## UNION REPRESENTATIONAL ACTIVITIES

Federal labor law allows official time for a variety of union representational activities. Union officers are allowed amounts of official time for conducting representational functions like negotiating contracts, meeting with management on behalf of employees, or representing employees in grievances. They are not allowed official time for internal union business. All such business must be done after duty hours or in a leave status. How much time is allowed and when officers can take it is negotiated by management and the union. Some of the larger agencies actually allow union officials to work on union business full-time while on the company payroll. Others allow only limited time for specific activities.

The answer to any question you may have about official time for union activities is contained within each specific negotiated agreement. Remember that those provisions only apply to bargaining unit employees—those employees who, regardless of whether they join the union or not, are covered by the protections of the negotiated agreement. Further, they only apply to union activities conducted in conjunction with the union that is the exclusive representative.

In one Department of Treasury activity where the American Federation of Government Employees (AFGE) was the exclusive representative, a bargaining unit employee involved in a dispute with management wanted official time to meet with his “representative,” an officer in a competing union. His supervisor correctly denied the request. Although a bargaining unit employee, he was not entitled to official time when meeting with another union.

In a case involving the Postal Service, a manager against whom the agency was taking an adverse action wanted official time to meet with his lawyer to prepare his defense to the charges. The Postal Service correctly denied the request. As a manager, he was not a bargaining-unit employee and thus not entitled to official time in connection with any sort of disciplinary action. No law or regulation requires agencies to give employees time off to meet with lawyers.

You must carefully read and apply your labor contract. Make sure that you understand the regulations included in the contract so that you do exactly what it says—no more and no less. Some contracts give union officials banks of official time to use for activities like training. Others require the official to go to management on a case-by-case basis and request specific amounts of official time. Follow the contract carefully so that you do not give anything away that you are not supposed to.

## **FILING GRIEVANCES AND COMPLAINTS**

A topic related to union time is the use of official time for filing grievances and other complaints. Whether the employee gets official time depends on the type of complaint. Below is a discussion of the most common ones.

### **EEO COMPLAINTS**

The rules on official time for complaints of discrimination are in the EEOC regulations in 29 CFR Part 1614 that allow the complainant a “reasonable amount” of official time to both prepare and present the complaint. Up until the late 1980s complainants only got official time to present their complaint, limiting the official time to actually meet with counselors, investigators, agency officials, and others involved in the process. Now, the addition of the allowance for official time to prepare the complaint has caused all manner of headaches to supervisors.



Follow a few simple rules and you can avoid the aspirin. First, never give an employee blanket authorization to use whatever amount of time he or she feels is appropriate. Always give specific time allowances.

Second, make the employee request the amounts of time he or she wants and give you a justification for this time. You will get an argument here from the more contentious ones that you are trying to pry into matters that are none of your concern. Tell them that you are not interested in the details of the case, but that it is not unreasonable for them to tell you what they are planning on doing with the time they are asking for.

Third, give them whatever time you feel is appropriate, and do not worry about the consequences. If the employee tells you, as happened to me once, that he needs two weeks to prepare a two-page affidavit, give him two hours and do not fret. There is little potential for recourse. While an employee can complain to the Equal Employment Opportunity Commission (EEOC), EEOC virtually always backs management on issues of amount of official time as long as management gives a reason.

## **NEGOTIATED GRIEVANCES**

These are grievances filed under the negotiated agreement if you have a union where you work. The same rules apply as with other union activity: official time is allowed only for bargaining unit employees, and check your contract.

## **ADMINISTRATIVE GRIEVANCES**

OPM regulations no longer require agencies to have administrative grievance procedures, so find out first whether or not your agency even has one. If it does, an administrative grievance is only for non-bargaining unit employees and allows grievances over matters not usually covered by other appeal mechanisms.

You will need to check your internal agency policies and only allow official time for the presentation of a grievance—the time specifically spent presenting their argument to you. Therefore, most employees do not have a right to official time for preparing their case, consulting with the personnel department, and other activities surrounding the grievance.

## **TARDINESS**

Now we turn to the employee coming in late. What can you do? You have some options.

You do not actually have to do anything if it is under one hour; you may administratively excuse tardiness of up to 59 minutes. You must charge any time

beyond that to either a leave balance or to AWOL. For the occasional tardy under one hour that all government employees have, you can and should simply look the other way.

You may allow the employee to use approved leave, but you may not charge an employee leave unless he or she has requested it. Never gratuitously charge an absence to annual leave, sick leave, or leave without pay. The employee does not have an absolute right to use annual leave or LWOP to cover tardiness. You have the right to set the working hours and require employees to be at work on time. If they are not, they do not have a right to use leave to cover the absence.

When the tardiness becomes a problem, you cannot and must not keep excusing it. No matter how valid the excuse. Excessive absenteeism has a cancerous effect on employee morale. You must confront the situation and take action.

How do you determine whether the excuse is valid? Keep in mind how you deal with consistently tardy employees that they always have excuses. Few employees in the history of the civil service have ever confessed to not having an excuse for being tardy.

Having a valid excuse, though, does not necessarily excuse tardiness. The employee has an obligation to come to work on time regardless of his or her personal problems. The employee is responsible for buying alarm clocks that work, working out child care plans, making sure tires are inflated, and otherwise arranging for adequate transportation. Although all supervisors should tolerate occasional snags and breakdowns in employees' personal lives, the government is not required to accommodate one's inability to take care of personal problems.

Nor are you required to adjust work schedules to accommodate the employee. In [Chapter Two](#), we will go into extensive detail about alternative work schedules. If your agency uses alternative work schedules or flexitime, the employee may take advantage of them within the allowances of the rules. If you have a fixed reporting time, you are not compelled to allow an employee to work late or work the time off at some later period. Allowing employees to work time off later is a bad habit for a supervisor to get into.

If you put an employee firmly on notice that you will no longer excuse tardiness, almost no excuse should be valid. The supervisor has an obligation to be fair to all employees, and nothing destroys employees' trust in a supervisor more than preferential treatment. Do not be so overcome with sorrow for the person with the daily excuses that you forget about the employee who overcomes the same obstacles and still comes to work on time every day.

You may also refuse to excuse the absence. If the employee does not have a valid excuse for being tardy, you may charge the employee AWOL and then discipline him or her accordingly.