

EXECUTIVE DIRECTOR'S MANAGEMENT MEMORANDUM

EDMM NO.: EDMM 450

SUBJECT: FLEXIBLE WORK ARRANGEMENTS, 9/80, AND OVERTIME

INTRODUCTION/

PURPOSE: This EDMM establishes the governance, roles and responsibilities, and considerations for MTC's Flexible Work Arrangements, 9/80 compressed work week schedule and Overtime. MTC is committed to providing a work environment in which employees can achieve a healthy balance between their work roles and their lives outside of work. Flexible Work Arrangements and a 9/80 compressed work week schedule can increase employee morale and job satisfaction, help recruit and retain top talent, help employees optimize their flexibility and productivity, and reduce employee absenteeism.

APPLICABILITY: This memorandum applies to all MTC Employees.

POLICY:

Applicable Facts and Definitions

The term "Flexible Work Arrangements" is used to describe a cooperative arrangement between employees, supervisors, and MTC that allows MTC employees the freedom to work outside of MTC's Public Office Hours. A Flexible Work Arrangement establishes the expectations for when an employee is to be working and available to work.

MTC considers hours that staff are "Available to Work" as working hours. Generally, "Available to Work" means that at a minimum you are monitoring your MTC e-mail, texts, phone calls, Slack messages, and other forms of electronic communication and are responding to/participating in communication in a timely and productive manner in alignment with your supervisor's expectations.

The term "9/80" is used in this EDMM to describe a compressed workweek schedule arrangement that allows MTC employees to schedule eight 9-hour days and one 8-hour day over that two-week period, receiving one Flex Day off every other week (80 hours over 9 days or 9/80). The 9/80 is an alternative work schedule with a built-in Flex Day that automatically gives employees a four-day workweek every other week.

Flexible Work Arrangements and 9/80 are applied across MTC, and supervisors and Section Directors are to make these arrangements available to all employees in their Sections to the greatest extent possible. There is no probationary period for eligibility for a new employee.

For Overtime compensation, MTC does not consider California wage and hour law as it is not required of public agency employers. All positions shall be regulated according to FLSA provisions.

There is no probationary period for Overtime eligibility for a new employee. Under the guidance of agency protocols and FLSA standards, it is up to the discretion of Section Management, with delegation authority to supervisors, to grant their staff permission to work Overtime.

MTC Workdays:	Monday through Friday
MTC Public Office Hours:	8:00am to 5:00pm
MTC Core Work Hours:	10:00am to 3:00pm
MTC Flexible Work Hours:	7:00am to 7:00pm
Pay Period:	Every two weeks
MTC Pay Weeks (Regular):	Saturday at 12:01am to Friday at 11:59pm
FLSA	Federal Fair Labor Standards Act establishing, administering, and enforcing workplace requirements pertaining to minimum wage, wage discrimination, and overtime compensation.
Exempt Employee	Exempt from FLSA regulation, not eligible for overtime.
Non-Exempt Employee	Subject to FLSA regulation, eligible for overtime.

Per the CSR/Confidential and Management MOUs effective August 1, 2011 through June 30, 2014, the 9/72 Flextime Schedule is no longer available to new participants. Any existing participants as of August 1, 2011, may remain on the 9/72 schedule so long as they like. However, once current participants change to either a 10/80 or a 9/80 schedule, they will not be able to return to the 9/72 schedule.

The arrangements discussed in this EDMM do not change the duties, obligations, responsibilities, or terms and conditions of MTC employment. This EDMM is not subject to the Grievance procedures outlined in EDMM 265 Grievance Procedure, nor to any other review or appeal procedures, except as noted in this EDMM.

Flexible Work Arrangements

Flexible Work Arrangements are an informal yet coordinated agreement between an employee and their supervisor to adjust their work schedule to be flexible to fit their personal needs and meet their individual, section, and agency goals.

Under a Flexible Work Arrangement, MTC's acceptable working business hours are 7am to 7pm. This does not mean employees are expected to work 12 hours. Staff are only required to work their regular daily hours and the extension of acceptable working business hours is to allow staff the flexibility to perform their normal daily work hours within that larger window of time.

Staff are still expected to be available to work between MTC's core hours of 10am to 3pm, Monday through Friday, excluding lunch time, which may be scheduled at the employee's convenience.

Supervisors are expected to establish protocols and guidelines for how their staff are to communicate the hours they are working and available to work in a manner that enhances clarity and improves the workability of dynamic scheduling across the agency. Supervisors and staff are expected to communicate their daily availabilities to each other.

Supervisors and staff are expected to communicate exceptions to their Flexible Work Arrangements to accommodate individual needs and section needs, yet these must be mutually agreed upon within each work group and section.

To overcome barriers to social interaction, coordinate expectations, and to get work done efficiently, staff are expected to utilize multiple methods of communication, including phone, e-mail, text, messaging, and virtual web meetings. Supervisors and Section Directors are responsible for ensuring that work groups and sections have common expectations of when staff are reachable, and for desired response times.

Staff are encouraged and expected to communicate their questions and concerns regarding business continuity (productivity, work functions, resources, and job assignments, etc.) related to flexible work arrangements to their supervisors, and their supervisors to Section Management. This applies to all staff, to ensure we are all on the same page with expectations of how and when we accomplish our diverse objectives. Supervisors are expected to communicate and track how flexible arrangements are implemented in their groups and sections.

Appeal: An employee who believes their Flexible Work Arrangement has been denied or restricted for arbitrary or capricious reasons may appeal the decision to MTC Human Resources. HR will consult with the employee, the Executive Office, and the employee's Section Director to reach a decision on the appeal. The appeal decision is final. The employee may re-apply for a new Flexible Work Arrangement one year after a previous request's denial, or upon assignment to a new position.

9/80 Compressed Work Week Schedule

The 9/80 schedule is a formal alternative work schedule that can help give employees a better work-life balance.

An approved 9/80 Agreement form (available at the web portal link below) is required prior to an employee commencing a 9/80 schedule. MTC reserves the right to change or alter the terms of the Alternative Work Option Agreement and any rules or guidelines for 9/80 contained therein. Further, 9/80 employees must continually uphold MTC obligations, and performance and conduct expectations, to remain eligible for 9/80.

Supervisors are responsible for approving, modifying, or denying a 9/80 Agreement with final approval from the Section Director. A supervisor or Section Director may deny, end, or modify an Agreement for any business reason that is not arbitrary or capricious, following the agency's established protocols. Similarly, an employee may be removed from the 9/80 schedule if they do not comply with the terms of their Agreement. A 9/80 employee may request to end or change an Agreement at any time.

Prior to submitting an Agreement for approval, an employee must read this EDMM in full, talk to their supervisor to discuss their options, complete the 9/80 training module, and follow any procedures outlined therein required to gain approval.

9/80 Eligibility

The 9/80 program applies across MTC, and supervisors and Section Directors are to make 9/80 available to all employees in their Sections to the greatest extent possible. There is no probationary period for 9/80 Eligibility for a new employee. Eligibility for 9/80 is based on the position the employee holds and the work assignments, or duties and tasks, allocated to the position. A position is a specific job within a job classification with defined work assignments, filled by one employee at a time. Not every position is well-suited for 9/80. There may be positions with work assignments that would prohibit working a 9/80 schedule.

Position eligibility will be determined at the sole discretion of MTC Human Resources with the approval of the Executive Office at the implementation of this policy, on an annual basis, and at the creation of any new MTC regular or MTC non-regular position.

Any position with work assignments essential to the management of workflow that would require the employee to be working a full regular workweek schedule would not be eligible for 9/80.

To participate in the 9/80 Program, employees shall complete a 9/80 Agreement wherein the employee will make a request to work a 9/80 schedule and agree to adhere to this policy and all agency 9/80 protocols.

9/80 Agreement Options

9/80 Schedule Agreement Options are a component of the Agreement that allow the employee both flexibility and structure for how to coordinate their 9/80 schedule and require supervisor and Section Director approval.

Prior to submitting a 9/80 Schedule Agreement form an employee shall communicate with their supervisor regarding the Agreement Option they feel will best fit their work needs. Once submitted, the Supervisor shall approve, deny, or modify the Agreement with final approval authority granted to the Section Director.

The Agreement Options for eligible Exempt and Non-Exempt regular full-time employees are as follows:

A. Exempt Employees:

Exempt employees may request to work nine days for 80 hours over a two week pay period by working four 9-hour work days and one 8-hour work day for the first week of the pay period and four 9-hour work days and one Flex Day off for the second week of the pay period.

Exempt employees have the option to request which the day of the week in week one is their 8-hour day and which day of the week in week two is their Flex Day off.

Exempt employees are expected to be as consistent as possible from one pay period to the next, however, they may change their schedule to meet work requirements.

B. Non-Exempt Employees:

Non-exempt employees are required to select one of two options:

Option 1: The first Friday is an 8-hour day and the second Friday is the Flex Day off
Pay Week for Option 1: Friday at 12:00pm to Friday at 11:59am

Option 2: The first Monday is the day off and the second Monday is an 8-hour day
Pay Week for Option 2: Monday at 12:00pm to Monday at 11:59am

C. Flexibility:

The 9/80 selected schedule is an agreement governed by FLSA guidelines that should be strictly adhered to. In the event of a unique situation where a single Flex Day needs to be moved:

Exempt Employees: Need to request approval from their manager. Flex day can only be moved to another day in the SAME week.

Non-Exempt Employees: Flex Day cannot be moved.

Appeal: An employee who believes their 9/80 Schedule Agreement has been denied or restricted for arbitrary or capricious reasons may appeal the decision to MTC Human Resources. HR will consult with the employee, the Executive Office, and the employee's Section Director to reach a decision on the appeal. The appeal decision is final. The employee may re-apply for a 9/80

Schedule Agreement one year after a previous annual Remote Flexible Agreement denial, or upon assignment to an eligible new position.

9/80 and Holidays, Leaves, Accruals and Usage

For guidelines on accruals and usage considerations for 9/80 regarding Vacation, Sick, Personal Business, Holidays, and other Leaves, please see Attached AMENDMENT A.

Overtime

MTC is committed to creating a work environment that follows all appropriate local, state, and federal guidelines, and promotes employee productivity and wellbeing. This section is designed to promote clear understanding regarding MTC's policies for Overtime.

Whether you are working a standard 8-hour/day & 40-hour/week, a 9/80 compressed workweek schedule, or a different flexible arrangement within those parameters, this section will guide you through understanding your role and responsibilities, as well as the agency's philosophy, responsibilities, and protocols.

FLSA dictates which group of employees are "Exempt" from receiving Overtime (OT), and which groups of employees are "Non-Exempt" from OT and must receive OT compensation where appropriate. The law has many particulars and guidelines, yet a simple breakdown per the Department of Labor Regulations 29 C.F.R. part 541 establishes the exemption for a "highly compensated employee" who:

- Receives at least \$684 per week paid on a salary or fee basis, and
- Receives at least \$107,432 in total annual compensation

Employees below that salary threshold are considered Non-Exempt, and employees above that threshold are considered Exempt.

Another key distinction to understand is between what we call a "workweek" and a "pay week". At MTC, there are two weeks in a pay period cycle. Under a regular 8-hour/day & 40-hour/week schedule, the workweek and the pay week are the same: Mon-Fri.

For a 9/80 schedule the workweek is still Mon-Fri, yet depending on the 9/80 option you choose, the pay week will shift. This is because a 9/80 schedule arrangement is an explicit agreement between the employee and employer to intentionally work more than 40 hours in one week and to work less than 40 hours in the other week - which means that the FLSA rules for Overtime for non-exempt employees also shift.

Exempt 9/80 (Day-off is optional, must be in second week)						
	M	T	W	R	F	Total Hours
Work Week 1	9	9	9	9		8 44
Work Week 2	9	9	9	9		0 36
	M	T	W	R	F	Total Hours
Pay Week 1	9	9	9	9	4 (ends at 11:59am)	40
Pay Week 2					4 (begins at 12:00pm)	40
	9	9	9	9		0

Non-Exempt Option 1 9/80 (Second Friday off)						
	M	T	W	R	F	Total Hours
Work Week 1		9	9	9	9	8 44
Work Week 2		9	9	9	9	0 36
	M	T	W	R	F	Total Hours
Pay Week 1		9	9	9	9	4 (ends at 11:59am) 40
Pay Week 2					4 (begins at 12:00pm)	40
		9	9	9	9	0

Non-Exempt Option 2 9/80 (First Monday off)						
	M	T	W	R	F	Total Hours
Work Week 1		0	9	9	9	9 36
Work Week 2		8	9	9	9	9 44
	M	T	W	R	F	Total Hours
Pay Week 1		0	9	9	9	9 40
	4 (ends at 11:59am)					
Pay Week 2	4 (begins at 12:00pm)	9	9	9	9	40

Overtime applies when an employee works over 40 hours in a week

Regular schedule: OT is granted for any hours worked in excess of 40 hours for the workweek.

9/80 schedule: OT is granted for any hours worked in excess of 40 hours for the pay week. Remember, the 9/80 schedule is an agreement to work more than 40 hours in a workweek, not a pay week.

Employees shall request approval for Overtime from their supervisor in advance (i.e. BEFORE they've used Overtime) either verbally or in writing. Granting the use of OT is at the supervisor's discretion. Employees should check with their supervisor or Section Director to inquire about the guidelines and protocols for their work unit to request approval for OT.

FLSA dictates that if an employee works OT that was not approved, those hours must still be reported in the employee's timecard and must be paid as OT. However, the employee may be subject to disciplinary action as a result of working OT that was not approved.

Holiday hours do not count as working hours and do not count towards Overtime (nor do other non-working hours such as Sick, Vacation, or Personal Business Time, etc.). In order to earn OT in a week where Holiday or other non-working hours are applied, the employee would need to work in excess of 40 working hours above and beyond those Holiday or non-working hours.

EFFECTIVE DATE: November 17, 2021

SUPERCEDES: EDMM 430 (January 31, 2020), EDMM 240 (September 1, 2000), EDMM 250 (August 1, 2007), and EDMP 036 (December 5, 2013).



Therese W. McMillan, Executive Director

Amendment A

1. Holidays – MTC provides paid holidays to employees to grant a full day off work while maintaining wage continuance to keep the employee paid at 100% of regular pay.
 - a. Accrual: Holidays do not accrue. The Commission-approved MOU shall establish the annual holiday schedule MTC observes. Upon Executive Director approval, MTC may observe, on a one-time basis, other special holidays.
 - b. Eligibility: No additional eligibility requirements.
 - c. Usage: Holiday hours usage will directly cover the employee’s regularly scheduled work hours for that day.
2. Vacation – MTC provides paid Vacation to promote work/life balance and to grant employees time off work for personal use while maintaining wage continuance to keep the employee paid at 100% of regular pay.
 - a. Accrual: Employees accrue 8 hours for every month of employment starting the first day of employment. Accrual is prorated for new employees based on the first working day of employment within the month. Employees shall accrue 8 additional hours per additional year of service, up to a maximum accrual rate of 200 hours per year.
 - b. Eligibility: No additional eligibility requirements.
 - c. Usage: Vacation usage is available for all MTC regular employees as they are accrued with no waiting period. MTC does not allow for the usage of vacation hours before their accruals are earned.
3. Sick – Sick is time off from work to care for an employee’s personal health and well-being or for the health and well-being of the employee’s family member and for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee’s family member. “Family Member” shall also extend to mean a registered domestic partner, sibling, grandparent, grandchild, a designated person, or parents and siblings of a child or spouse. In most cases, application of Sick is managed via the employee and supervisor. Wage continuance for Sick time off is established by MTC’s Sick Leave.
 - a. Accrual: MTC policy establishes an accrual of one hour of paid sick time off for every 20 hours of work (or every 20 hours in non-working paid status) starting the first day of employment.
 - b. Eligibility: All MTC regular employees are eligible to use Sick Time Off at hire. Employees must be on paid status to be eligible to accrue Sick Time.
 - c. Usage: Sick Time Off usage is available for all MTC regular employees as it is accrued with no waiting period.
4. Personal Business – MTC provides 24 hours of Personal Business (PB) time off and wage continuance on a calendar year basis, pursuant to Commission approved MOUs. Personal Business time does not have cash value and may not be accumulated or carried over beyond the calendar year.
 - a. Accrual: PB time does not accrue. Current MTC employees receive 24 hours of PB time on January 1 of each new year. New employees hired on or before April

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30 shall receive 24 hours of PB time, new employees hired between May 1 and August 31 shall receive 16 hours of PB time, and new employees hired between September 1 and November 30 shall receive 8 hours of PB time.

- b. Eligibility: No additional eligibility requirements.
- c. Usage: MTC requires no documentation to provide a reason for an employee's usage of PB time.