

# ARTICLE 25

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## AWS/HOURS OF WORK

### SECTION 1

- A. The HHS Alternate Work Schedules Program is designed to enable staff to adopt individualized work schedules that both meet employee needs and enable the Employer to carry out its mission effectively.
- B. The Employer is committed to fair and equitable employee participation in AWS where the establishment of the schedule will not interfere with the ability of the organization to meet its work- load and programmatic objectives effectively.
- C. Specific job requirements may not allow for the same degree of personal choice for all employees.

### SECTION 2 - DEFINITIONS

- A. Alternative Work Schedules (AWS) - Schedules other than the standard fixed eight and one-half hour tour of duty, Monday through Friday AWS include Flexible Work Schedules (FWS) and Compressed Work Schedules (CWS).
- B. Arrival Band - The time band during which an employee must start his or her workday, unless otherwise approved by the supervisor.
- C. Departure Band – The time band during which an employee must complete his or her workday unless the employee is scheduled to work less than (8) hours and has been excused from core hours pursuant to Section 2(H) below.
- D. Basic Work Requirement - The number of hours, excluding overtime hours, an employee is required to work or otherwise account for by leave, credit hours, holiday hours, excused absence, compensatory time off, LWOP, or time off earned as an award The basic work requirement for full time employees is eighty (80) hours per biweekly pay period The work requirement for part- time employees is the number of hours the employee must be present in a biweekly pay period.
- E. Basic Workweek. The basic workweek normally consists of five (5) eight (8)-hour days, Monday through Friday, or a permanent part-time schedule established by the Employer within its established administrative week.
- F. Flexible Work Schedule (FWS). Variations of the traditional fixed work schedule that permit employees to vary their arrival and departure times within the parameters set forth

in this Article FWS consist of workdays with core and flexible hours. Flexible Work Schedules include Flexitime, Flexitour and Maxiflex.

- G. Flexible Hours or Flexible Time Bands. The specific hours of the workday within the tour of duty during which employees covered by a FWS may choose to vary their arrival and departure times within the parameters established in this Article.
- H. Core Time or Core Hours. The time periods during the workday, work week or pay period that are within the tour of duty during which an employee covered by a FWS is required by the Agency to be present for work. Core hours do not apply on an employee's regular day(s) off under an approved FWS or CWS, or for workdays fewer than eight (8) hours in duration as part of a flexible or compressed schedule.
- I. Credit Hours. Those hours within the flexible time bands of a FWS that, with advance supervisory approval, an employee elects to work in excess of his/her basic work requirement so as to vary the length of a workweek or workday.
- J. Compressed Work Schedule (CWS). Fixed schedules that allow employees to complete the basic work requirement in fewer than ten (10) days in a pay period. Employees on approved CWS are not permitted to earn credit hours.
- K. Tour of Duty. The limits within which an employee must complete his/her basic work requirement.
- L. Lunch Schedule. The time during which employees must take a lunch period.

Employees must take a lunch period and may not "save" any part of the lunch period to leave early or to extend subsequent lunch periods. Employees may extend this period within the lunch time band, provided that they receive prior supervisory approval. The additional time taken for lunch must be worked at the beginning or the end of the same workday. If the additional time would extend the employee's workday beyond the time in which s/he may earn credit hours, the extra time will be charged to annual leave, sick leave (if appropriate), leave without pay, credit hours, or accrued compensatory time.

### **SECTION 3**

#### **A. Participation**

Employee participation in AWS is subject to management approval. Specific individual participation in AWS must be considered on a case-by-case basis. The Employer will administer AWS in a fair and equitable manner.

- B. All bargaining unit employees that meet the following requirements are eligible for participation in the AWS program:

1. The employee is not on leave restriction.
  2. The employee is not on a Performance Improvement Plan.
  3. The employee has not received a disciplinary action that has a nexus to the integrity of the AWS program within the last six months.
  4. The employee has not received any adverse action within the last six months.
- C. Each employee is expected to fulfill the commitment to account for a full 80-hour biweekly period (full-time employees), or a pre-arranged schedule (part-time employees).
- D. The starting time for a workday may be fixed on the quarter hour.
- E. AWS allows employees to select their individual arrival and departure times from within the established flexible bands, as outlined in section 4 below.
- F. No employee whose work schedule has been approved will be required to change his/her established tour of duty to accommodate the establishment of a new tour of duty for another employee.

## **SECTION 4**

### Program Criteria

#### **HHS OpDivs**

Work days:	Monday-Friday
Flexible bands:	6AM - 930AM (arrival band) Monday - Friday 3PM – 7 PM (departure band) Monday-Thursday 230PM – 7PM (departure band) Friday
Flexible band for Credit hours only:	5 AM – 9 PM Monday - Sunday
Lunch band:	11AM – 2PM
Core hours:	930AM – 3PM (Monday – Thursday) 930AM – 230PM (Friday)
Credit hours:	3 per day; 8 on Saturdays and Sundays

#### **FDA**

Work days:	Monday-Saturday
Flexible bands:	5AM - 10AM (arrival band) Tuesday - Thursday

3PM – 9 PM (departure band) Tuesday-  
Thursday  
5AM – 1030AM (arrival band) Monday, Friday, Saturday  
230PM – 9PM (departure band) Monday, Friday, Saturday

Flexible Band for  
Credit hours only: 5AM – 9PM Monday – Sunday

Lunch band: 11AM – 2PM

Core hours: 10AM – 3PM (Tuesday – Thursday)  
1030AM – 230PM (Monday, Friday, Saturday)

Credit hours: 8 per day

## **SECTION 5**

### **A. Authorized Flexible Schedules**

Flexitour Schedule. FWS containing core hours on each workday in the biweekly pay period and in which a full-time employee has a basic work requirement of 8 hours a day (plus one-half hour official lunch), 40 hours a week, and 80 hours a biweekly pay period. The employee selects arrival and departure times within the flexible time bands. Once approved, this becomes the employee's fixed tour of duty. Prior supervisory approval is required to change this tour of duty. Employees must be at work or on approved leave during core hours. With prior supervisory approval, credit hours may be earned and used.

B. Flexitime. This schedule allows employees to vary their daily arrival and departure times within the established flexible band. The basic work week requirement is eight hours per day, forty hours per week, and eighty hours in a biweekly pay period.

C. Maxiflex Schedule. This schedule allows employees to earn credit hours and vary their daily arrival times within the established flexible bands. A maxiflex schedule may contain core hours on fewer than 10 workdays in the biweekly period. The basic work requirement is eighty hours per biweekly pay period. Employees may vary the number of hours worked on a given workday or the number of hours each week within the designated flexible bands. Employees specify, with supervisory approval, which day(s) they will work and the number of hours per workday. Supervisors may approve schedules that include fewer than ten (10) workdays in a pay period.

1. Core hours do not apply on a day on which the employee is not scheduled to work, or is scheduled to work fewer than eight hours.
2. Employees on Maxiflex will count all federal holidays as eight (8) hours towards

the 80- hour pay period. An employee may use leave or compensatory time to meet any additional work hour requirements for the holiday. An employee will also be allowed to earn and use credit hours for this purpose, provided the work is available. Alternatively, employees will be allowed to schedule the holiday as an eight (8) hour day.

3. Once an employee's Maxiflex schedule is approved by the Employer, it shall become the employee's approved schedule unless altered by the supervisor or an employee's request to alter it is approved pursuant to Section 9.
  4. "Any 80" schedules do not exist under this agreement. Maxiflex schedules differ from "Any 80" schedules in many ways. For example, an employee with an approved Maxiflex agreement must work the days and hours that they specified in their AWS request and must repeat the same schedule from pay period to pay period unless approved to make a change pursuant to Article 25, Section 9.
- D. In order to address a specific workload or staffing need (including, but not limited to scheduling a meeting, a supervisor may require an employee working a FWS (Flexitime or Maxiflex) to indicate their intended arrival and/or departure time.

## SECTION 6

- A. Employees working a compressed schedule are not eligible to earn credit hours.
- B. All employees will have the option of applying for a fixed 5/4/9 or 4/10.
- C. Compressed Work Schedules  
Compressed Work Schedule (CWS). Fixed schedules that allow employees to complete the basic work requirement in fewer than ten (10) days in a pay period. The following CWS are available to employees.
  1. 5-4/9 Plan. A compressed schedule in which an employee fulfills the basic work requirement of eighty (80) hours in a bi-weekly period over a span of nine (9) workdays: five (5) days one (1) week, four (4) days the other week, with a designated starting time within the time bands at that location. Under this Plan, employees work eight 9-hour days (plus one-half hour official lunch) and one 8-hour day (plus one-half hour official lunch) in a biweekly pay period. The employee must have a fixed tour of duty within the time bands established in this Article and shall not work under a schedule that results in the payment of night pay.
  2. 4-10 Plan. A compressed schedule in which an employee fulfills their basic work requirement of eighty (80) hours during the biweekly pay period in four (4) ten (10) hour days (plus one-half hour official lunch) each week with one (1) scheduled day off per week. The employee must have a fixed tour of duty within

the time bands established in this Article and shall not work under a schedule which results in the payment of night pay.

- D. With supervisory approval, an employee on CWS may switch his/her day off to another day within the same pay period.
- E. Employees on a CWS are entitled to basic pay for the number of hours of the CWS that fall on a holiday.
- F. In accordance with OPM guidelines regarding holidays for employees working CWS, if the employee's regularly scheduled day off is Friday or Monday and a holiday falls on one of those days, the employee's day off remains unchanged. Instead, the holiday for the employee changes as follows:
  - 1. If the "actual" holiday falls on, Sunday, the "in lieu of" holiday is the following workday (Monday for most employees). However, if Monday is an employee's day off under CWS, then Tuesday becomes his/her "in lieu of" holiday.
  - 2. If the actual holiday falls on Monday, the "in lieu of" holiday is the previous workday. Thus for an employee whose day off under CWS is Monday, the "in lieu of" holiday would be the previous Friday, or Thursday for those employees on 4/ 10 who take the first Friday and second Monday off.
  - 3. If the actual holiday falls on Friday or Saturday, employees whose day off under CWS is Friday would have an "in lieu of" holiday on Thursday.

## **SECTION 7**

### **A. Credit Hours**

An employee must obtain advance supervisory approval to earn credit hours. The earning of credit hours will be approved retroactively where the circumstances warrant (e.g., where it is not possible for the employee to obtain advance approval). Blanket approval may be provided to earn up to a designated limit per day, week, or pay period so long as work is available.

B. The use of credit hours must be approved in advance.

C. Approval to earn/use credit hours may be granted orally (followed up in writing) and may be granted the same days as requested.

D. Credit hours may be earned when management determines that work is available that can be effectively performed at the time the employee is requesting to work credit hours. The earning of credit hours must be voluntary on the employee's part. An employee's request to earn credit hours will not be arbitrarily or unreasonably denied.

- E. Credit hours may only be used after they are earned and may be earned and used in increments of 1/4 hour.
- F. Credit hours may be used in conjunction with lunch.
- G. Credit hours may be used to account for authorized absences during core hours.
- H. Credit hours can only be earned within the flexible time bands specified in Section 4 of this Article.
- I. Eligible full-time employees may accumulate more than 24 credit hours during a pay period, but may not carry over more than twenty-four (24) credit hours from one pay period to the next. The maximum allowed carry-over hours may be carried over indefinitely.
- J. Eligible part-time employees may accumulate more than one-fourth of their biweekly work hours, but the maximum carryover for part-time employees may not exceed one-fourth of their scheduled biweekly tour of duty. Part-time employees may only earn credit hours immediately before or after their tour of duty.
- K. An employee in travel status may earn credit hours for work performed at the temporary duty location if the time requested meets the definition of hours of work, and it is requested and approved in advance.
- L. The same procedures for requesting and approving credit hours in the office will apply when the employee is at the temporary duty location.
- M. Approval to use earned credit hours will follow the same procedures as approval for annual leave in Article 15 of this Agreement. Credit hours can be used in lieu of or together with approved leave and/or compensatory time to take partial or full days off.
- N. Credit hours may be earned non-contiguously.
- O. Employees may earn and use credit hours within the same pay period.

## **SECTION 8**

- A. Employees must receive advance supervisory approval to start working an alternative work schedule or to change from one alternative work schedule to another. The alternative work schedule application, Appendix 3, will be used for these purposes and must be submitted to the employee's supervisor at least one pay period prior to the proposed effective date. Approved requests will be implemented as soon as possible, but not later than the beginning of the first full pay period following approval.
- B. In approving or denying AWS requests, the Employer will consider interference with the

ability of the organization to meet effectively its workload, programmatic objectives and physical office coverage.

- C. Normally, such requests will be approved or denied within five (5) workdays of receipt. A request is deemed denied if the Employer has not responded within fifteen (15) workdays of the request and an employee may then grieve the denial.
- D. If an employee's requested work schedule is denied, the supervisor will explain the specific reason(s) for the denial to the employee, in writing on the AWS application. Employee participation in AWS will not be limited, denied or withdrawn as a form of discipline or retaliation. However, participation may be limited or withdrawn for failure to comply with AWS rules and regulations.

## SECTION 9

### A. Request for Permanent Changes to AWS

Individual employees desiring to change their existing AWS will submit an application (Appendix 3) prior to the requested change to their immediate supervisor. Changes will be approved and implemented or disapproved, in accordance with the standard set forth in Section 8B of this Article as soon as practical, but not later than fifteen (15) days from the date of the request.

### B. Request for Temporary Changes to AWS

An employee may request to make a temporary change to their existing AWS by submitting a written request to their immediate supervisor. For example, an employee on a compressed or Maxiflex schedule may request to vary his/her off-day. The request will be approved or disapproved as soon as practical, normally within two (2) workdays. Employees must adhere to their existing AWS unless and until their request is approved.

- C. Either the Employer or the employee may initiate a discussion to vary an off day or duty hours.
- D. In the event of an emergency or workload problem, which interferes with an organization's ability to meet its workload or programmatic objectives or physical office coverage, the Employer may temporarily or permanently change an employee's AWS (e.g., require an employee to come off a compressed schedule, change starting and ending times of workdays for an employee, etc.). If a modification is necessary, the Employer will explain the specific reasons necessitating the modifications, and identify the modifications that would be acceptable. If a permanent change in schedule is required, the employee will be provided these reasons in writing.



## **SECTION 10**

Should two (2) or more similarly situated and qualified employees request the same AWS, and the Employer cannot accommodate all the requests, the employees will be asked to resolve the scheduling problem between themselves. This may include establishing a fair and equitable rotation schedule for disputed hours or days off to which the Employer and affected employees mutually agree. If no other resolution can be found, approval shall be based on employee seniority determined by the service computation date.

## **SECTION 11 - TERMINATION/SUSPENSION OF AWS**

### **A. Termination**

Employees may be terminated from the AWS program for the following reasons:

1. Failure to meet eligibility requirements outlined in Section 3B above.
2. Falsification of time and attendance records (which may also be grounds for other disciplinary or adverse action).
3. For performance-related reasons as follows:
  - a. For those employees that entered the program with an overall rating of fully successful or higher, failure to receive an overall rating of fully successful may result in termination of participation in AWS. Termination is not automatic. Before the employee's AWS is terminated, the employee and his/her manager will meet to discuss the appropriateness of continuing on the program.
  - b. For those employees that entered the program with an overall rating of minimally successful, failure to achieve an overall rating of fully successful may result in termination of participation in AWS, provided the employee had a minimum of ninety (90) days on AWS prior to receipt of the next rating of record. Termination is not automatic. Before the employee's AWS is terminated, the employee and his/her manager will meet to discuss the appropriateness of continuing on the program.
4. Employees who are terminated from AWS may reapply for consideration to resume participation in AWS no earlier than three (3) months from the date of termination.

### **B. Suspension**

1. An employee who fails to comply with the requirements and provisions of his/her AWS agreement and this Article may be suspended from participation in an AWS in the following manner:

- a. If an employee fails to comply with the AWS requirements of this Article, a supervisor shall notify and counsel the employee on the need to comply with all of the provisions of the program. The supervisor will document this counseling and give the employee a copy of the documentation that includes a notice that future failure to comply by the employee will result in suspension of the employee's participation in the program.
- b. If the employee continues not to comply with the AWS program requirements after such written notification, the supervisor may suspend the employee from participating in the program for up to three (3) months. Following completion of the suspension period, the employee shall be allowed to resume participation in the program, unless the employee has continued to present time and attendance problems during the suspension period.

## **SECTION 12**

- A. Employees will not be required to sign in or sign out, or punch in or out, to record their arrival or departure times. However; employees will be required to do so if they abuse time and attendance rules and/or the time reporting method established at the local site.
- B. Employees vacating their current position either by reassignment or reorganization for which an SF-50 issues may be required to reapply for consideration of AWS. This provision is not intended to apply to reorganizations or reassignments that do not result in staffing changes or for reorganizations or reassignments that result only in a supervisory change.
- C. To the extent possible, the Employer will generally schedule meetings during core hours and on days other than Mondays and Fridays, and give employees as much advance notice of these meetings as feasible.
- D. An employee working a Flexitime or Maxiflex work schedule is not considered tardy at the earliest until the beginning of the core hours unless:
  1. The supervisor has asked the employee to arrive at a certain time to attend a regularly scheduled or special staff meeting or other special activity, e g , training courses or conferences, and the employee arrives after that time; or
  2. The employee has been designated to cover a particular time and arrives after that time.
- E. Employees in travel or training status or on detail will adjust their tour of duty, only as necessary to adhere to the work schedule of the detail organization or to a schedule that will fulfill the purposes of the official travel.
- F. This Article does not prohibit an employee from applying for an uncommon tour of duty for

specific personal reasons (for example, because of transportation arrangements, day care arrangements, education or training schedules, or health reasons).

- G. As soon as an employee is transferred into or otherwise becomes part of the bargaining unit he or she may apply and be considered for an AWS or other uncommon tour of duty.
- H. Upon an employee's request, the Employer may, subject to workload requirements, establish a special tour of duty (e.g., a split shift) for educational purposes in accordance with applicable laws, rules and regulations.
- I. Employees on a CWS shall not work a schedule which results in the payment of night differential pay (NDP).
- J. Employees on a FWS are entitled to NDP for night hours that are required as a part of their regularly scheduled tour of duty. However, they are not entitled to NDP solely because they elect to work at a time when NDP is authorized. Employees who work regularly scheduled overtime at night are entitled to NDP.
- K. Employees may not work on Sundays as part of their regularly scheduled tour of duty.
- L. Employees on a FWS are not entitled to NDP when they earn credit hours. Employees who elect and are approved to work credit hours on a Sunday are not entitled to Sunday premium pay (under 5 USC 5546) or other premium pay such as compensatory time or overtime pay. In earning credit hours on a Sunday, an employee does not make Sunday a part of their regularly scheduled tour of duty, even if the employee frequently elects and is approved to earn credit hours on Sunday.

### **SECTION 13**

When it is impracticable to prescribe either a regular tour of duty or a tour of duty for employees under the AWS/Maxiflex schedules listed in Section 4 above, the Employer may establish a first forty tour of duty and will do so fairly and equitably. Positions that are appropriate for a first forty include, but are not limited to, FDA Inspectors, Investigators, Laboratory Analysts, and employees reviewing an activity funded (in whole or in part) by a user fee. As with AWS/Maxiflex schedules, an employee must obtain supervisory approval to work a first forty tour of duty. Modifications and/or termination of a first forty tour are subject to the provisions of this Article.