



POLICY – NAVAJO NATION OFFICE OF THE CONTROLLER

Issued: September 3, 2020

Navajo Nation Payroll Support Program for reimbursement by the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act Fund, Coronavirus Relief Fund (“CRF”)

The purpose of this document is to establish a Payroll Support Program (the “Program”) for the Navajo Nation Government (the “Nation”). The Nation intends to use payments from the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act Fund, Coronavirus Relief Fund (“CRF”) to cover certain eligible payroll and benefits expense of qualifying employees as further defined by the Program.

The CARES act provides payments from the CRF that may only be used to cover costs that meet the following criteria set forth by the Department of Treasury:

1. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. Were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

The Navajo Nation Office of the Controller has the responsibility of establishing and implementing policies and procedures for Special Duty Pay for Navajo Nation employees consistent with the Navajo Nation Personnel Policies Manual, the requirements established by the Department of Treasury, and this Payroll Support Program.

Definitions:

The following are definitions that apply for the purposes of this program:

Covered Period:	The period of measurement for cost eligibility starting March 1, 2020 through December 30, 2020.
Essential Employees:	Employees deemed to be necessary to the continued operation of the Navajo Nation government as outlined in March 13, 2020 Executive Order 001-20 and determined by the Branch Chief or Division Director as essential, as such they are “on call” pursuant to the authority set out in Section VII(L) of the Personnel Policies Manual
Exempt Employee:	An employee in a managerial, professional, or administrative position. Employees assigned to exempt positions are not eligible for overtime compensation.
Hours Worked:	The time an employee spends on the work premises or at a designated workplace performing services of benefit to the Navajo Nation, including documented work performed while telecommuting.
Special Duty Pay:	Additional pay for being on call and performing essential government services during the COVID-19 pandemic.

- Special Duty Pay Rate:** Special Duty Pay shall be calculated as one and one-half times the non-exempt essential employee's usual hourly pay rate, as stated on the essential employee's current Personnel Action Form, subject to available funds. For exempt employees, the special duty pay rate is calculated at the one and one-half times the employee's usual hourly rate or a lump sum amount.
- Non-exempt Employee:** An employee in a non-supervisory or office staff position who are classified as non-exempt. Employees assigned to non-exempt positions are eligible for overtime compensation.
- Substantially Dedicated:** Essential employees who spend more than 50% of their time preparing or responding to COVID-19.

Program Overview:

The Navajo Nation Department of Personnel Management established Special Duty Pay Procedures (No. 20-VII-005). These procedures document that certain employees must continue to work during the COVID-19 pandemic because of the essential nature of the position. These essential employees include those working on the front lines of the Navajo Nation government's pandemic response and those employees who are designated by Office of the President and Vice President's Executive Order No. 002-20 as "Essential Employees" or later designated as "Essential" by Division Directors. Essential employees are "on call" pursuant to the authority set out in Navajo Nation Personnel Policy Manual Section VII(L). Full and part time employees who are on call during the COVID-19 pandemic are eligible for Special Duty Pay for actual hours worked, as subject to funds availability.

Eligible reimbursement of qualifying expenditures is determined based upon the "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments Updated June 30, 2020" and "Coronavirus Relief Fund Frequently Asked Questions Updated as of July 8, 2020" (collectively, the "Guidance").

Eligibility Requirements:

The U.S. Department of Treasury ("Treasury") requires that expenditures be incurred during the period that begins on March 1, 2020 and ends on December 30, 2020 (the "covered period"). A cost is considered to have been incurred if performance of the underlying obligation has occurred during the covered period but payment of funds need not be made during that time. Additionally, the Treasury requires that the expenditures cannot have been accounted for in the budget most recently approved as of March 27, 2020.

For purposes of this policy, eligible expenditures include payroll and benefits expense, including special duty pay, for public safety, public health, health care, human services, and similar employees who are substantially dedicated to mitigating or responding to the COVID-19 public health emergency that have been incurred during the covered period.

To qualify for reimbursement under Coronavirus Relief Fund (CFR) Guidance for State, Territorial, Local and Tribal Governments Updated June 30, 2020, an Essential Employee must fall into one of the following categories, which were developed based on the Guidance:

- **Category One:** Payroll and benefits paid to all employees identified in Executive Order No. 001-20 including Navajo Public Safety, Navajo Fire Department, Navajo Emergency Medical Services, Department of Emergency Management and Navajo Division of Social Services. Based on the Treasury's guidance dated June 30, 2020, these individuals are presumed to be fully dedicated to

preparing and responding to the public health emergency and therefore, all of their payroll and benefits expense (including special duty pay) will be fully eligible for reimbursement from the CRF.

- Category Two: Payroll and benefits paid to all employees who were not originally included in Executive Order No. 001-20 who were later determined to be essential based on the determination by the Branch Chief or Division Director. To qualify for reimbursement under the CRF funding, the employee must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Based on the Treasury's guidance dated June 30, 2020, these individuals are presumed to be fully dedicated to preparing and responding to the public health emergency and therefore, all of their payroll and benefits expense (including special pay) would be fully eligible for reimbursement from the CRF.
- Category Three: Administrative leave paid to those employees that are not determined to be essential employees who were not able to telework due to government stay at home order.

The allowable categories discussed above are not considered "across-the-board" hazard pay as defined by the Guidance and is paid based upon the individual's job duties. Individual eligibility and quantification of payroll costs to be reimbursed is based upon the information included on the employee's time-sheet, overtime form and back-pay form documenting the time spent preparing, responding and mitigating the effects of COVID-19 and the Guidance.

If an employee was determined to be essential but was not mitigating or responding to the COVID-19 public health emergency (e.g., was performing their normal job duties during the government shut down) but was determined to be an essential employee and was eligible to receive special duty pay, the employee would still be deemed eligible for such pay but will not be reimbursed by CRF funding.

Funding Sources:

There are **two** potential funding sources available to cover the additional costs of Special Duty Pay:

1. Funding received from the CARES Act Coronavirus Relief Fund (CRF), subject to the limitations outlined below, or
2. Funds within the current Department budget.

In order for Special Duty Pay to qualify for reimbursement under the CRF funding, the employee must be substantially dedicated to responding or mitigating (e.g., sanitizing buildings, enforcing curfews or stay-at-home orders) effects of COVID-19. As a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

There is a second option available for employees that have been designated by the Executive Directors within the Department(s) as an Essential Employees who may not be substantially dedicated to mitigating or responding to the COVID-19 public health emergency. These Departments shall identify funds within their current overtime budget to pay for the cost of the Special Duty Pay and will not be eligible for reimbursement by the CRF funding. All regular pay shall be charged to the home business unit.

Special Duty Pay Procedures:

Special Duty Pay will be paid for all hours worked from March 16, 2020, the date of the closure of the Navajo Nation government offices, as specified in Executive Order No. 001-02, until the Navajo Nation government is re-opened by Executive Order of the President.

Departments and eligible programs are responsible for the determination of both non-exempt and exempt employees that are eligible for Special Duty pay, the correct start date, and adequate documentation to support the “substantially dedicated” criteria.

Special Duty Pay will not be paid when the employee is on Leave without Pay, including because of a suspension arising out of disciplinary action, unless that disciplinary action is reversed by the Office of Hearings and Appeals or the Navajo Supreme Court.

For non-exempt employees, as defined by the Navajo Nation Personnel Policies Manual, Special Duty Pay shall be calculated as one-and one-half times the employee’s usual hourly pay rate, as stated on the employee’s current Personnel Action Form. Employees will be required to submit an OT Compensation Form detailing the total hours worked for special duty pay (in addition to tracking this on the official time sheet) and indicating the type of work performed. These forms must be submitted to the Office of Controller, Payroll Department in order for an employee to receive Special Duty Pay.

For exempt employees, as defined by the Navajo Nation Personnel Policies Manual, Special Duty Pay shall be calculated as one and one-half times the employee’s usual hourly rate. Employees will be required to submit a Backpay Request form, and notate “SPECIAL DUTY PAY” on the Backpay Request form. The form must include a detailed description of the work performed and include the total hours worked for special duty pay. These forms must be submitted to the Office of Controller, Payroll Department in order for an employee to receive Special Duty Pay.