

STATE OF DELAWARE



EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER TWENTY-EIGHT**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

**RE: STATE EMPLOYEE OBLIGATIONS DURING SEVERE WEATHER
CONDITIONS AND EMERGENCIES**

WHEREAS, the Governor may declare a State of Emergency (“SOE”) upon a finding that an emergency or disaster has occurred or that such occurrence or threat of that occurrence is imminent; and

WHEREAS, the Governor, as the chief executive of the employer State of Delaware (“State”), may declare a separate Severe Weather Conditions and Emergencies (“SWCE”) event, when severe weather conditions and other emergencies may require modification of the operation and staffing of State executive branch agencies based on anticipated or actual conditions to ensure the health, safety and welfare of both citizens and employees; and

WHEREAS, it is imperative that within the executive branch there be consistent practices, with appropriate flexibility, consistent with existing State Merit Rules, regarding essential State employees’ obligations and equal time provisions during extreme weather situations and other emergencies; and

WHEREAS, the State’s human resource professionals have recommended the clarification of employee obligations and application of equal time provisions during severe weather conditions and other emergencies.

NOW, THEREFORE, I, JOHN C. CARNEY, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby **DECLARE** and **ORDER** that:

1. The terms of this Executive Order (“Order”) shall govern the operation of State executive branch departments and agencies during severe weather conditions and other emergencies that may require modified hours of operation and/or reporting times for affected State employees.
2. The terms of this Order are applicable to all State executive branch employees, except for the personnel of the Delaware State Police and the Delaware National Guard.

3. The following definitions shall apply throughout this Order:
- a. “Agency”: Any executive branch department or agency of the State other than those excluded in paragraph 2 of this Order.
 - b. “DHR”: The Delaware Department of Human Resources.
 - c. “Essential Employee”: An employee who is indispensable to the emergency service function of his or her employing Agency or department and who is required to assist the Agency in meeting its operational needs during an SWCE.
 - d. “Equal Time”: Paid time or time off provided to Essential Employees pursuant to this Order.
 - e. “Governor”: The Governor of the State of Delaware or an authorized designee.
 - f. “Non-Essential Employee”: An employee who is not necessary to the emergency service function of his or her employing Agency and who is generally not expected to report to work during an SWCE.
 - g. “Regular Business Hours”: Monday through Friday from 8:00 a.m. to 4:30 p.m., except for statutory holidays.
 - h. “Report When Contacted Employee”: An employee who may be required to report to work during an SWCE, but only when, with Agency approval, the employee is specifically contacted by an Agency-authorized management representative. A Report When Contacted Employee is not on stand-by status and is not required to remain by the telephone.
 - i. “Severe Weather Conditions and Emergencies (“SWCE”)”: The Governor’s declaration that any existing or expected event, set of circumstances or condition warrants the modification of the Regular Business Hours or staffing of one or more Agencies. The Governor may declare an SWCE without declaring a State of Emergency.
 - j. “SHOC Employee”: An employee of the State Health Operations Center (“SHOC”), who must follow the specific instructions of SHOC during an SWCE.
 - k. “State of Emergency (“SOE”)”: The Governor’s declaration that an emergency or disaster has occurred or that the occurrence or threat of occurrence of an emergency or disaster is imminent. The Governor may declare an SOE without declaring an SWCE.

4. Designation of executive branch employees:

- a. Each Agency must designate Essential Employees. The employee classifications must be reviewed at least annually.
 - i. Agency heads shall designate Essential Employees depending upon their necessity in carrying out the emergency service responsibilities of the Agency.
 - ii. Employees shall be notified, in writing, of their designation as Essential Employees.
- b. Each Agency must designate all Essential Employees in the PHRST system by job classification, budget position number and payroll unit. Agencies need not designate Report When Contacted Employees or Non-Essential Employees in PHRST.
 - i. On or before October 31 of each year, Agencies must make appropriate changes in PHRST regarding the classifications set forth in paragraph 4.a. and report those changes to the Secretary of DHR.
- c. A list of employees designated as Essential Employees shall be posted in a conspicuous location within the Agency and shall be distributed to the appropriate Exclusive Bargaining Representatives.
- d. The status of employees who are designated as Essential Employees for a particular event at the time an SWCE is declared, and who report to work during the SWCE pursuant to such designation, shall not have their status changed for the duration of the SWCE, except when they are relieved of the need to work.
- e. Casual/seasonal employees:
 - i. A casual/seasonal employee may be designated as an Essential Employee.
 - ii. Agencies are encouraged to allow casual/seasonal employees who are not designated as Essential Employees during an SWCE to flex their schedules to make up work hours lost during an SWCE.
 - iii. Casual/seasonal employees are not eligible for the Equal Time provision set forth in paragraph 8.a.

5. General Rule Absent Declaration of an SWCE:

- a. In the absence of the Governor's declaration of an SWCE, all Agency employees are expected to report to and remain at work for their regularly scheduled hours or

shift, except that employees may use their own leave time in accordance with State law and applicable Agency procedures.

6. Governor's Declaration of an SWCE:

- a. The Governor may declare an SWCE modifying the State's Regular Business Hours.
- b. No person other than the Governor may declare an SWCE or modify the State's Regular Business Hours.
- c. An SWCE may apply to all Agency employees throughout the State, or may apply only to employees in one or more selected geographical regions, locations or Agencies of the State. The Governor shall state the scope of the SWCE at the time of declaration. The Governor may thereafter modify the scope.
- d. The Governor shall state when the SWCE becomes effective and its duration at the time of declaration. The effective time, duration and other details may vary by region, location or Agency and may be modified by the Governor thereafter.

7. Effect of Declared SWCE on Employee Attendance:

- a. During an SWCE, certain employees (as described in this section) may be excused from reporting to work or allowed to leave work without using the employee's own leave time.
- b. Reporting
 - i. Essential Employees are required to report to work for their regularly scheduled shift during an SWCE, unless instructed otherwise by the employing Agency. As appropriate to the type or location of an emergency, the Governor or authorized management of the employing Agency may exempt one or more Essential Employees from reporting to work during an SWCE. Agencies shall document in writing any excused attendance granted to an Essential Employee.
 - ii. Report When Contacted Employees and Non-Essential Employees are not required to report to work during any SWCE unless, with Agency approval, an employee is contacted personally by an Agency-authorized management representative and asked to report to work. These employees are not on stand-by status and are not required to remain by the telephone.
 - iii. Report When Contacted and Non-Essential Employees shall be considered Essential Employees when required to report to work during an SWCE.

c. Early Dismissal

- i. Essential Employees who are working at the time the Governor declares an SWCE and who are not required to work during the SWCE will be considered as Non-Essential Employees for that SWCE. Under no circumstances, however, will early dismissal of the Essential Employee pursuant to this provision operate to excuse an unauthorized absence from work. Agencies shall memorialize in writing any excused attendance granted to an Essential Employee pursuant to this provision.
- ii. Report When Contacted Employees and Non-Essential Employees who are working at the time the Governor declares an SWCE may be dismissed from work by an Agency-authorized representative. No loss of pay or accumulated time off will occur in the event of early dismissal for this reason. Under no circumstances, however, will early dismissal operate to excuse an unauthorized absence from work.

8. Compensation and Equal Time:

- a. Essential Employees who live or work in a region or regions covered by the SWCE, and who are required to work, are entitled to receive compensation at their regular hourly rate, plus one hour of Equal Time for each hour worked during their regularly scheduled work hours or shift within the declared SWCE time period. Equal Time is granted to Essential Employees for the purpose of equalizing the time off provided to Non-Essential Employees who were excused from work during their regularly scheduled hours or shifts. Agencies have the authority to determine whether the Equal Time will be paid time (at the employee's regular hourly rate) or time off (on an hour-for-hour basis). Equal Time shall not count as hours worked for purposes of determining eligibility for overtime, regardless as to whether it is paid or compensatory time.
- b. Except as otherwise stated in this Order, Essential Employees who, during the period covered by an SWCE, work additional hours beyond their regularly scheduled work hours, shall be compensated for these additional hours in accordance with existing statutes, rules and policies, including those governing overtime payment. Essential Employees shall not be granted Equal Time for these additional hours worked beyond their regularly scheduled work hours.
- c. Casual/seasonal employees are not eligible to receive Equal Time during an SWCE.
- d. Alternate or Compressed Schedules: Essential Employees regularly scheduled to work more than 7.5- or 8.0-hour days shall, when required to work during an SWCE, receive Equal Time equal to that received by Essential Employees not working an alternate or compressed schedule (*i.e.*, up to 7.5 or 8.0 hours).

e. Rest/Sleep Time:

- i. Agencies must compensate certain employees for rest/sleep time during an SWCE, as required by the Fair Labor Standards Act (“FLSA”). Agencies may elect to compensate FLSA-exempt employees for rest/sleep time during an SWCE in accordance with the same standards applied to FLSA-covered employees.

f. Travel:

- i. Travel between an employee’s home and workplace is generally not compensable. During an SWCE, however, if an employee must report from their home to a location that is further from their home than their regular reporting location, the employing Agency shall compensate the employee for their additional travel time per the FLSA (that is, the time beyond their normal commute time), as well as for the additional mileage, if appropriate, at the rates set forth in the State’s travel policy.

9. Employee on Leave at Declaration of SWCE:

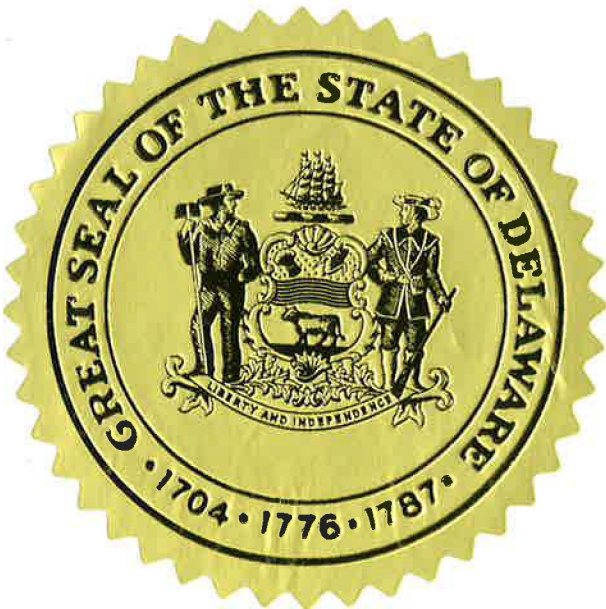
- a. The provisions in this Order shall not apply to any employee on approved leave without pay, on suspension, or on short-term disability, at the time the Governor declares an SWCE.
- b. An employee on authorized paid leave at the time the Governor declares an SWCE will be charged leave for the duration of the event but may be eligible to have his or her leave records credited upon his or her return to work. Not all forms of leave are eligible for such credit (e.g., Family Medical Leave Act (“FMLA”) leave; workers’ compensation supplemental leave; parental leave). Where eligible, the credit shall be the number of the employee’s regular work hours that coincided with the SWCE.
- c. Essential Employees are responsible for reporting to work unless exempt under the FMLA, other applicable law or other approved leave, and may be subject to disciplinary action for disregard of this provision.
- d. Before approving after-the-fact paid sick leave during an SWCE, an Agency head may require from any employee a physician’s certificate or the employee’s written statement setting forth the reason for the absence.
- e. Determinations as to whether after-the-fact paid sick leave during an SWCE will be approved, or whether there will be docking and/or disciplinary action, will be made on a case-by-case basis, taking into consideration the totality of circumstances preventing the employee from reporting to work.

10. Essential Employee's Failure to Report:

- a. Interference by Police or Other Emergency Personnel: If an Essential Employee required to work during an SWCE is stopped by the police or other emergency personnel while traveling to his or her worksite, the employee shall explain his or her Essential Employee status to the police or other emergency personnel. If after complying with the foregoing requirements the Essential Employee is nevertheless specifically prevented by the police or emergency personnel from traveling to the worksite, the employee shall immediately notify his or her supervisor of the obstruction and shall thereafter be excused and not charged for the absence.
- b. An Essential Employee who is required to work but does not report to work for any other reason than described in Section 10.a. shall immediately notify his or her supervisor. An Essential Employee in this category must provide justification for his or her absence along with his or her request to use sick or annual leave, or to use accumulated compensatory time; however, the employee may not assume that the request will be granted and may face disciplinary action.

11. Conflict with Agency Policies: Where the terms of this Order conflict with any Agency policy, the terms of this Order shall control.

12. Executive Order Number 77, approved by Governor Minner on January 3, 2006, is hereby rescinded.



APPROVED this 6th day of December, 2018



John C. Carney
Governor

ATTEST:


Secretary of State