

Executive Order Number Seventy-Seven Regarding State Employee Obligations And Compensation During Severe Weather Conditions And Emergencies

WHEREAS, while State offices strive to remain open and operational with regularly scheduled hours, severe weather conditions and other emergencies may require modification of the operation and staffing of State 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 a uniform policy, with appropriate flexibility, consistent with existing State Merit Rules, on State employee obligations and compensation during extreme weather situations and other emergencies; and

WHEREAS, the State's human resource professionals and Labor Management Committee have recommended a policy that clarifies practices for employee obligations and compensation during severe weather and other emergencies,

NOW, THEREFORE, I, Ruth Ann Minner, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The policy entitled "Employee Obligations During Severe Weather Conditions and Emergencies" dated December 19, 2005, and attached hereto as Exhibit A, is adopted as the policy to govern operation of Executive Branch agencies during severe weather conditions and other emergencies that may require changed hours of operation and/or reporting times for affected State employees.
2. The attached policy is applicable to all employees of the Executive Branch of the government of the State of Delaware, except personnel of the Delaware State Police and the Delaware National Guard. The policy is to be followed by all State departments and agencies other than the General Assembly, the judiciary and offices under their respective jurisdictions.
3. Executive Order Number 36, approved by Governor Castle on February 6, 1987 and Executive Order Number 76, approved by Governor Carper on February 4, 2000, are hereby rescinded.
4. The provisions of this policy shall be effective as of December 6, 2005.

Approved: January 3, 2006

EXHIBIT A

EMPLOYEE OBLIGATIONS DURING SEVERE WEATHER CONDITIONS AND EMERGENCIES

1. Definitions: The following definitions will apply throughout this policy.

“Essential Employee”: An employee who is indispensable to the emergency service function of his or her employing agency or department and is required to assist the department or agency in meeting its operational needs.

“Non-Essential Employee”: An employee who is not necessary to the emergency service function of his or her employing agency or department and is not required to report to work.

“Report When Contacted Employee”: An employee who is not required to report to work during severe weather or emergency situations unless there is the approval of the agency and the employee has been specifically contacted by a management representative or management representative’s designee (or informed by notification system such as a telephone tree or telephone hotline established by management or informed by HRM website or by official information provided by the designated news media). These employees are not on stand-by status and are not required to remain by the telephone.

“SHOC/DFS Employees”: Employees of the State Health Operations Center, and Division of Family Services Investigation, Treatment and After Hours Response Employees. SHOC/DFS Employees may have different requirements to follow than the Report When Contacted Employees and are required to follow the specific instructions of the agency and shall be deemed essential at such time an emergency is declared (depending on the type of emergency).

“HRM”: The Human Resources Management unit of the Office of Management and Budget.

2. The Governor, or Governor’s designee, has the sole authority to excuse employees of the Executive Branch from reporting to work during extreme weather conditions or other natural or man-made disasters or emergencies. In appropriate circumstances, the Governor shall issue an Order stating that, because of expected or existing conditions, certain employees (as designated in this policy) are excused from reporting to work. Unless such an Order has been issued, all employees of the Executive Branch shall report to and remain at work for their regularly scheduled hours or shift.

3. The Order may be applicable to all Executive Branch employees in the entire State, or only to those employees in one geographical region of the State, or a combination of the geographical regions. The Order may be limited regarding the purpose for which it is issued, such as permitting the use of Delaware National Guard personnel and equipment, and so may not affect Executive Branch employees in any respect.

4. The Order may require certain employees to work during the emergency. Those required to work during times when the Governor has excused some employees from reporting to work are referred to as “*Essential*” employees. An *Essential* employee is defined as one who is indispensable to the emergency service function of the employing agency or department and is

required to assist the department or agency in meeting its emergency operational needs, e.g., food, medical, housing maintenance, personal care, hospital care, emergency road service. These examples are not exhaustive. All other employees (other than the SHOC/DFS employees defined earlier) shall be designated as “Report When Contacted” or “Non-Essential” employees. Such *Report When Contacted* or *Non-Essential* employees are not required to report to work unless there is the approval of the agency and the employees have been specifically contacted by a management representative or management representative’s designee (or informed by a notification system such as a telephone tree or telephone hotline established by management or informed by HRM’s website or by official information provided by the designated news media). These employees are not on stand-by status and are not required to remain by the telephone. Such employees shall not be called into work without a compelling and justifiable operational reason. As long as all other applicable laws, rules and regulations are not violated, non-merit agencies may make more restrictive reporting policies in order to meet operational needs, but cannot make less restrictive policies.

5. All State agencies must designate all *Essential* and SHOC/DFS employees by job classification, budget position number and payroll unit in the PHRST system. Each State agency shall review these classifications annually, at a minimum, and report any revisions to the Director of HRM, and make appropriate changes in PHRST, by October 31st each year.

6. Department and agency heads shall designate employees as *Essential* or SHOC/DFS employees depending upon their necessity in carrying out the emergency service responsibilities of the department or agency. These employees shall be notified accordingly in writing, and a list of employees and/or classifications designated as *Essential* or SHOC/DFS employees shall be posted in a conspicuous location and distributed to the appropriate Exclusive Bargaining Representatives. The status of employees who are designated as *Essential* or SHOC/DFS employees at the time an emergency is declared, and who report to work during the emergency pursuant to such designation, shall not be changed with respect to that emergency subsequent to their reporting to work without being compensated for their normally assigned hours or shift. Depending on the type of emergency, the Governor’s Order may exempt certain group of *Essential* employees or management may advise such employees.

7. *Essential* employees who live or work in a region or regions covered by the Governor’s Order, and who are required to work, are entitled to compensation at their regular hourly rate plus equal time off for all hours worked during their regularly scheduled work hours or shift. All *Essential* employees who work additional hours shall be compensated in accordance with existing rules and policies governing overtime payment. Employees covered by the Fair Labor Standards Act (FLSA) are compensated for overtime at time and a half and receive equal time off while employees exempt from the FLSA are compensated at straight time rates and receive equal time off. Exceptions to this may be found in the Budget epilogue or Merit Rules for specific groups of employees.

8. During any specified time periods when *Essential* employees are required to report to work and other State employees have been given approval by the Governor to not report to work (during normal state business hours of 8 a.m. to 4:30 p.m.), those who work will receive an additional hour of compensation for each hour worked. Agencies have the authority to determine whether the additional compensation will be paid time or compensatory time. Any employee (whether essential or not) who is already on paid leave during such time will not be charged leave for those specific hours.

9. Unless the Governor's Order covers a day which is a statutory holiday of the State, the emergency day shall not be considered a holiday for pay purposes. When employees work at times when it is both a holiday and an emergency, they will receive additional equal time off as compensation for the holiday in addition to equal time off (or pay based on other merit and FLSA rules) for the emergency. Employees in a paid status during the holiday would still receive payment for the holiday in their regular paycheck whether or not they are required to work that day.

10. Upon direction of the Governor (or a designee), if an emergency develops during working hours, department heads and other chief administrative officers within the Executive Branch may allow their *Report When Contacted* or *Non-Essential* employees to leave work early. 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.

11. If a natural or man-made emergency forces any employee to be late for work, the employee shall contact his or her supervisor, inform the supervisor of the impending lateness, and state the expected time of arrival for work. Reasonable delay (not to exceed two hours) in arriving at work due to poor travel conditions will not be a basis for charging annual leave.

12. If *Essential* employees are required to work but are specifically prevented by the police or other emergency personnel from traveling to their work site due to a natural or man-made emergency, and after notifying such emergency personnel of their *Essential* status, the employees shall immediately notify their supervisors of the obstruction and shall be excused and not charged for the absence. Employees who are required to work but who do not report to work for any other reason shall immediately notify their supervisors and shall not be paid for the absence. Employees in this category may request approval to use annual leave, accumulated compensatory time, if any, or have their pay docked; however, employees cannot assume that it will be granted and may be subject to disciplinary action if approval is not received for the absence.

13. Before approving pay for after-the-fact sick leave during an emergency, a department or agency head may require either a physician's certificate or a written statement by the employee setting forth the reason for the absence. *Essential* employees are responsible to report to work and may be subject to disciplinary action if there is a disregard of this policy. All determinations as to whether leave 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.

14. An employee, who already is on authorized paid leave during an emergency, will not be charged leave for the duration of the emergency. Upon the employee's return to work from such leave, the employee's leave records will be credited accordingly.

15. Casual/seasonal employees may be designated as "*Essential*". Agencies are encouraged to allow casual/seasonal employees designated as *Report When Contacted* or *Non-Essential* to flex their schedules to make up work hours lost as casual/seasonal employees are only paid for the actual hours they work. While casual/seasonal employees are paid for the time actually worked, they are not eligible for the equal time off provision.

16. All *Report When Contacted* or *Non-Essential* employees on an alternate or compressed schedule shall have their time adjusted in accordance with that schedule and other

applicable rules and regulations whenever there is an emergency Order. Employees not scheduled to work during the emergency will not be impacted unless the emergency day is also a state holiday. If it is a state holiday, employees must still submit leave slips or work additional time to cover the difference between a 7.5 or 8.0 State-paid holiday and their compressed hours or shift.

17. Employees on approved leave without pay will not be impacted by this policy.

18. Rest/sleep time, for all employees regardless of FLSA status, is compensable in accordance with the regulations of the Fair Labor Standards Act.

19. Normally home to work travel is not compensable. However, during an emergency situation, it is possible that an employee must report from home to a location other than the employee's regular reporting location. If the emergency reporting location is further from the employee's home than the employee's regular reporting location, agencies shall compensate such employees for their additional travel time as well as for mileage, if appropriate, minus the normal commute time.