

STATE OF DELAWARE



EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER
NUMBER Thirty-Six

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES
RE: STATE EMPLOYEE OBLIGATIONS AND COMPENSATION
DURING EMERGENCIES

WHEREAS, during and following the declared State of Emergency on September 26, 1985, many questions were raised concerning Governor du Pont's Executive Order Number 68, issued on December 18, 1978, and about whether the policy of the Executive Branch of the State of Delaware on State employee obligations and compensation during an emergency should be clarified; and

WHEREAS, many agency heads and their personnel officers expressed concern about the identification of so-called "essential" employees, the method of compensating employees who were required to report to work during the emergency period, and the appropriate way to handle employees who were on annual leave or sick leave during the emergency; and

WHEREAS, there seems to be ambiguity and a lacuna in Executive Order Number 68 concerning the use of employees who are not designated as essential prior to the emergency but who nevertheless are needed to work during the emergency; concerning the use of overtime pay and compensatory time to compensate State employees who are required to work during an emergency; concerning the adjustment of leave records following an emergency for those employees who did not report to work, were unable to, or were prevented from reporting, or who were on leave status during an emergency; and concerning the application of the executive order to public safety personnel; and

WHEREAS, it is imperative that within the Executive Branch there be a uniform policy, with appropriate flexibility, yet consistent with existing State Merit Rules, on State employee obligations and compensation during extreme weather situations and other emergencies.

NOW, THEREFORE, I, MICHAEL N. CASTLE, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. Executive Orders Numbers 68 and 124, approved by Governor du Pont on December 18, 1978, and February 14, 1983, respectively, are hereby rescinded.

2. The Governor 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. In appropriate circumstances, the Governor shall issue a Proclamation of a State of Emergency stating that, because of the extreme weather conditions or actual or impending disaster, non-essential employees are excused from reporting to work. Unless such a declaration of a state of emergency has been issued, all employees of the Executive Branch are expected to report to and remain at work for their regular work day or shift.

3. The Proclamation of a State of Emergency 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 Proclamation of a State of Emergency 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 Proclamation may require essential employees to work during a State of Emergency. An essential employee is defined as one who is indispensable to the emergency service function of his employing agency or department and is required to assist the department or agency in meeting its emergency operational needs.

5. Department and agency heads shall designate employees as essential 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 designated as essential shall be posted in a conspicuous location. No change of the essential employee roster is authorized after the Governor's proclamation of a state of emergency except in those extraordinary situations, which could not be foreseen nor guarded against, where a department or agency head determines that such a change is in the best interest of the State and is necessary to carry out the emergency service responsibilities of the department or agency. An employee whose essential/non-essential status is changed subsequent to the declaration of a state of emergency must be notified of such fact in person or by telephone by his or her supervisor; provided, however, that the status of employees who are designated as essential 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.

6. Essential employees who live or work in a region or regions covered by the Governor's Proclamation, and who are

required to work, are entitled to compensation at their regular hourly rate plus equal time off for all hours worked during the normal work day or shift (7-1/2 or 8 hours, as applicable). All essential employees who work additional consecutive shifts shall be compensated for hours worked in excess of the normal shift in accordance with existing rules and personnel policies governing overtime payment.

7. Unless the Governor's Proclamation covers a day which is a statutory holiday of the State, the emergency day shall not be considered a holiday for pay purposes.

8. If a natural or man-made emergency develops during working hours, department heads and other chief administrative officers within the Executive Branch may allow their non-essential employees to leave work early with approval from the Governor. 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.

9. 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 in arriving at work due to poor travel conditions will not be a basis for charging annual leave.

10. If an essential employee is required to work but is specifically prevented by the police or other emergency personnel from traveling to his or her work site due to a natural or man-made emergency, and after notifying such emergency personnel of his/her essential status, the essential employee shall immediately notify his or her supervisor of the obstruction and shall be excused and not charged for the absence. An employee who is required to work but who does not report to work for any other reason shall immediately notify his or her supervisor and shall not be paid for the absence. An employee in this category may request to use annual leave, accumulated compensatory time, if any, or have his or her pay docked. Before approving pay for after-the-fact sick leave during a declared 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.

11. Any employee, essential or non-essential, who already is on annual leave or sick leave during a declared emergency, will not be charged leave for the duration of the emergency. Upon the employee's return to work from sick leave, or upon his or her return to work from approved annual leave, the employee's leave records will be credited accordingly.

12. This Executive Order is applicable to all employees of the Executive Branch of the government of the State of

Delaware, and is to be followed by all State departments and agencies other than the legislature, the judiciary and offices under their respective jurisdictions.

13. The foregoing to the contrary notwithstanding, nothing in this Executive Order shall apply to the uniformed personnel of the Division of State Police or to the personnel of the Delaware National Guard.



APPROVED this 6th
day of February, 1987.

Michael N. Castle
Governor

ATTEST:

[Signature]
Secretary of State