

Weather Emergency Frequently Asked Questions

- 1) **Question:** The phrase “premium rate” has dropped out of the current contracts and was replaced by an \$8 per hour stipend if an employee works the weather emergency. Is that what we should interpret “premium rate” to mean?

Answer: The premium rate for all collective bargaining agreements except the FOP and OSTA units is the \$8/hour stipend. The FOP unit gets no premium, and OSTA employees will receive time and a half for every hour worked during the hours of the emergency.

- 2) **Question:** Is someone checking that OAKS is programmed to add that \$8 per hour?

Answer: Yes, please see the DAS/HRD February 15 memo on OAKS Payroll Reporting Codes for Weather Emergencies.

- 3) **Question:** Are we obligated to pay exempt essential employees for all the hours worked on Wednesday AND the \$8/hour stipend?

Answer: Essential exempt employees do not receive the \$8/hour stipend. Only non-essential exempt employees receive the \$8/hour stipend. Also, agencies are not obligated to give essential exempt employees comp time for ALL hours worked on Wednesday, just those hours that were worked during the hours of emergency. If this was an employee who works and lives in Franklin County, for example, they would only receive comp time for the hours worked up until 10:00 am. If the employee works or lives in one of the 49 counties with extended weather emergency situations, then they would receive comp time for the hours they worked up until 5:00 pm.

- 4) **Question:** Can you direct to the section of the code where exempt employees received parity of the \$8.00 stipend?

Answer: The stipend was granted to exempt employees pursuant to ORC 124.15(D), which allows the director of DAS to independently review collective bargaining agreements and determine whether certain benefits or payments provided to state employees covered by those agreements should also be provided to exempt employees. The extension of the \$8.00/hour stipend was granted to exempts under the authority vested in the director under ORC 124.15(D).

- 5) **Question:** What does the sentence “no compensatory time off will be granted to essential employees who volunteered to work before 10:00 am after being advised not to report to work” mean? This is the last sentence of the memo from Director Quill.

Answer: The word “off” in the last sentence appears to have confused some agencies. The last sentence was not meant to prevent employees from using their comp time, but instead just prevents an essential employee who was advised or instructed not to report to work from receiving the compensatory time or overtime that is normally authorized for essential exempt employees who are required to report to work. However, these employees would still be paid for those hours of work that they were scheduled to work and should be paid at their regular rate of pay.

- 6) **Question:** Section 123:1-46-01 states that an employee who had requested vacation or sick prior to the emergency being declared will have the leave taken regardless of emergency. Many employees asked for today off because they feared bad weather. Others called off due to their children’s schools being closed? How is this handled? Should we continue to take that leave or can we be generous on the issue?

Answer: In accordance with their internal policies, each agency should determine whether the employee’s leave request was “pre-scheduled.” Employees who were not scheduled to work because of a pre-scheduled leave request will have the leave charged regardless of the declared emergency and are not entitled to any emergency leave. However, if the employee’s leave request was not pre-scheduled, the employee should receive emergency leave at their regular rate for the hours they were

scheduled to work during the emergency, and will have their leave bank charged for any remaining scheduled hours of work.

An employee that called off sick or stated their need for FMLA leave at any time prior to or during the declared emergency must be charged with their hours of sick leave and/or FMLA leave.

- 7) **Question:** We have seasonal employees that we deem essential for plowing snow, as well as several intermittent employees. We consider these employees as exempt since they are not in a bargaining unit. Are we to treat them as exempt essentials under this policy and offer time and one-half for every hour worked during this emergency?

Answer: Yes, because these employees are exempt from collective bargaining and are deemed "essential" employees, they should receive either overtime compensation and/or compensatory time (depending on FLSA status) for every hour worked during the emergency.

- 8) **Question:** We had several bargaining unit non-essential staff arrive at work and begin work prior to 10:00 a.m. because they did not find out about the delayed opening of state offices until they were in transit or actually at work. We let them go ahead and work. The memo seems to state that we must pay these employees the \$8/hour stipend for any hours worked from the time they began work until 10:00 a.m. Is that correct?

Answer: Yes, all employees should be paid the \$8/hour stipend for any hours worked from the time they began work until 10:00 am. After 10:00 am, if the employee lives or works in one of the 49 counties that had a weather declaration until 5:00 pm, the employee should be paid the \$8/hour stipend for any hours worked until 5:00 pm.

- 9) **Question:** We had a handful of bargaining unit non-essential employees who live in one of the counties affected by the 5:00 p.m. declaration. We sent these folks home within a reasonable period of time of becoming aware of the declaration. Do I understand correctly that we should pay the \$8/hour stipend for any time worked by these staff today?

Answer: Yes, if the employee lives or works in one of the 49 counties affected by the 5:00 pm declaration, the employees should receive the \$8/hour stipend for any scheduled hours worked before 5:00 pm.

- 10) **Question:** The memo seems to state that we are required to pay exempt non-essential staff the \$8/hour stipend for hours worked during the weather emergency. Do we automatically pay the stipend for any hours worked between their start time and 10:00 a.m.?

Answer: Yes, exempt non-essential employees who worked before 10:00 am should receive an \$8/hour stipend in addition to their hourly rate.

- 11) **Question:** I had a handful of exempt non-essential staff that live in the affected counties. Are employees who volunteered to stay, even after we instructed them to go home, entitled to the stipend for all hours worked before 5:00 pm today?

Answer: No. If an exempt non-essential employee was told to go home, the employee is not entitled to the stipend for the hours the employee voluntarily worked during the emergency. This is consistent with the DAS Directive and the treatment of exempt essential employees who receive no compensatory time for voluntarily working during the emergency after being advised not to report to work.

- 12) **Question:** In the memo, the exempt essential staff seems to be treated differently than non-essential staff. Essential staff do not get the stipend, but instead get compensatory time. It seems that some exempt essential staff would prefer the stipend (those capped out on comp time, for instance). Is there any possibility of offering the choice of the stipend v. compensatory time to this group?

Answer: No, essential employees are not eligible for the stipend and should only receive compensatory time and/or overtime compensation, depending on their FLSA status.

- 13) **Question:** The memo also states that no comp time will be granted to essentials who volunteer to work before 10:00 a.m. after being advised not to report to work. This seems inconsistent with the treatment of exempt non-essential staff that are eligible for the \$8/hour stipend just by virtue of the fact that they began work before 10:00 a.m. Can we make this consistent?

Answer: Yes, if the exempt non-essential employee was advised not to work and the employee voluntarily worked anyway, the employee is not entitled to the stipend for any hours worked during the emergency that the employee was advised not to work.

- 14) **Question:** Many bargaining unit employees who worked before we officially opened yesterday at 10 are asking if they can flex the hours in lieu of taking the stipend. Is this an option for these employees?

Answer: No, employees may not flex their hours in lieu of taking the stipend.

- 15) **Question:** What happens if an employee neither lived nor worked in one of the 49 counties, but had to drive through one of them to get to and from work?

Answer: The employee was required to report for their shift at 10:00 a.m. They would be entitled to emergency leave for any time they were scheduled to work prior to 10:00 am, and will have to use their own leave time to make up for the time they were not at work after 10:00 am. Agencies may grant leave without pay to those employees with no or inadequate accrued leave.

- 16) **Question:** Is any time or stipend paid to a non-essential employee who drove to work and then found out that they did not need to report to work because they lived in a county where an emergency situation was declared?

Answer: If the non-essential employee stayed and worked any hours during the declared weather emergency, they should receive the stipend for their hours worked during the emergency. If the employee returned home and did not work any hours during the declared emergency, they should receive compensation for the hours they were scheduled to work and should be paid at their regular rate of pay. Employees do not receive any stipend for any of their commute time.

- 17) **Question:** Does a field employee who travels to their first location get a stipend for any of the travel time?

Answer: The employee is entitled to the stipend for any portion of their travel time that is considered work time.

- 18) **Question:** Are college interns eligible for the stipend?

Answer: No, parity was only extended to *permanent* employees that are exempt from collective bargaining, so college interns are not eligible for the stipend.

- 19) **Question:** Is an essential employee who did NOT live or work in one of the 49 counties required to take leave for any less than an 8-hour work day?

Answer: Essential employees must report to work regardless of the weather conditions. As such, any essential employee who did not report to work, regardless of whether they lived or worked in a county with a declared weather emergency, must use their own leave time to make up for the time they were scheduled to work but did not report to work.

- 20) **Question:** Is the overtime choice available to an exempt essential employee only if the employee has worked more than 40 hours?

Answer: Essential employees who work during a weather emergency get either overtime or comp time (depending on FLSA status) for the time they worked during the emergency. They are paid in this manner regardless of whether they worked more than 40 hours in total for the week. If, for example, an essential employee worked for a total of 40 hours but 2 of those hours occurred during the emergency, the employee would get overtime or comp time for those 2 hours. **If the employee is eligible for and elects overtime compensation, 38 hours will be paid at the employee's regular rate, and 2 hours will be**

paid at the overtime rate. If the employee elects or is required to choose compensatory time instead of overtime, then the employee would be paid for 40 hours and accrue 2 hours of compensatory time.

21) **Question:** Do telecommuters get the \$8.00/hour stipend?

Answer: No, telecommuters are not eligible for either the \$8.00/hour stipend or any emergency leave for the hours they were scheduled to work during the emergency.

22) **Question:** Are Established Term Appointment employees entitled to anything if they were scheduled to work?

Answer: Article 27 of the 1199 collective bargaining agreement states that ETA do not have rights to any emergency pay or leave. ETA employees in OCSEA would be governed by their agency specific contract section or free-standing MOU. If the agreement specifically precludes them from such a benefit, the employees would not get the benefit. If the agreement does not speak to this issue one way or the other, then the employee would receive the benefit pursuant to the general contract provision.

23) **Question:** We had an employee who was in Chicago at training. Her work county is Fairfield and her residence county is Franklin. She worked 8 hours in Chicago on Wednesday. What is the employee entitled to?

Answer: The employee will be paid for the hours she worked in Chicago and is not eligible for any additional benefits due to the declared weather emergency that occurred in Ohio.

24) **Question:** Are non-permanent unclassified positions (i.e. intermittents, external interims, seasonal, or temporary employees) entitled to any emergency benefits?

Answer: If the non-permanent employee is an "essential employee," then they are entitled to the benefit for any hours they worked during the declared emergency. See question 7. However, if the non-permanent employee is a "non-essential employee," then they are ineligible for the stipend since the stipend for non-essential employees was only extended to PERMANENT employees that are exempt from collective bargaining. See question 20. A non-permanent employee who does not work during the declared emergency does not receive any emergency benefits.