



# Montana Operations Manual

## *Policy*

**Policy Number**

03-0320

**Effective Date**

July 15, 2010

**Last Revised**

March 31, 2011

**Issuing Authority**

Department of Administration, State Human Resources Division

### **Disaster and Emergency Leave Policy**

#### **I. Purpose**

This policy establishes uniform procedures for managing employee leave during a disaster or emergency.

#### **II. Scope**

This policy covers Montana's executive branch employees, except those employed by the Montana State Fund and the Montana university system, as well as elected officials, the personal appointed staff of elected officials, and other employees exempt from policy under 2-18-103, and -104, MCA.

Any collective bargaining agreement or executive order providing greater disaster and emergency leave rights will supersede this policy.

#### **III. Procedures**

Employees may be granted leave in the event of a disaster or emergency in compliance this policy, and with policies or laws relating to military leave, annual vacation leave, sick leave, leave of absence without pay, and compensatory time.

The Governor, through executive order, may authorize temporary paid time off to employees when a worksite is closed because of a local disaster or emergency as provided in Title 10, Chapter 3, Parts 1 – 4, MCA. Additionally, agencies may authorize, with approval by the governor, paid time off to employees when faced with a temporary localized worksite closures due to a situation not rising to the level of a disaster or emergency declared by the governor. Finally, agencies are authorized to grant employees up to 15 days per calendar year of paid leave to participate in specialized disaster relief services for the American Red Cross (2-18-627, MCA).

Employees will receive approved paid time off only for regularly-scheduled hours.

## **A. Affected Employees and Paid Time Off**

1. When the governor declares a disaster or emergency pursuant to 10-3-302 and -303, MCA, and authorizes temporary paid time off to employees, those affected shall receive paid time off. The time off shall not be deducted from employees' accrued leave bank(s) or compensatory time.
2. Typically, employees are affected by a disaster or emergency when their life, the lives of immediate household members or their personal property is endangered during a declared disaster or emergency. A state employee who is a member of the Montana National Guard and who is ordered to active federal or state service by competent authority is not an affected employee under this policy.
3. Following a declaration of a disaster or emergency by the governor, each department director or agency head shall decide on a case-by-case basis whether employees are affected and the period of time for which employees should receive paid time off, consistent with the terms of the executive order. Employees requesting emergency leave under this policy must state the reasons why they are "affected by" the emergency.
4. Employees who are not affected and report for work and perform regular duties and responsibilities during a declared disaster or emergency will be paid their normal salary.

## **B. Worksite Closure and Paid Time Off**

1. **Closure of state-controlled facilities.** A department director may declare an affected worksite closed when the site is under his or her authority and with the approval of the governor or his or her designee.
2. **Closure of non-state-controlled facilities.** In some cases, employees may be temporarily or permanently assigned to a worksite that is not a state-controlled facility. These facilities may be ordered closed by the appropriate authorities without seeking the governor's approval.
3. **Paid time off.**
  - a. When facilities are ordered closed by those with the authority to do so, and under circumstances similar to those described in this policy, affected employees may receive paid disaster and emergency leave with the approval of the governor or his or her designee.

- b. In the event of an approved worksite closure, agency management may choose to temporarily reassign employees to alternate worksites or approve paid disaster and emergency leave. The department director or agency head shall determine which employees are affected by the worksite closure and which will be reassigned to alternate worksites.
- c. Employees will receive paid time off only for regularly-scheduled work hours occurring during a worksite closure.
- d. Employees who voluntarily report for work and perform their regular duties during the closure of an affected worksite will be paid their normal salary.
- e. Employees will earn compensatory time in addition to their normal salary if management requires they remain at work or requires they report to work to perform essential services during the closure of an affected worksite. This provision applies to exempt and non-exempt positions. All overtime provisions also apply.

### **C. Personal Disaster or Emergency**

There may be times when employees are affected by a personal disaster or emergency that does not rise to the level of a declaration by the governor. In these cases, employees may take approved annual leave, compensatory time, or a leave of absence without pay. Employees may only use sick leave for reasons qualifying under the Sick Leave Policy (MOM #03-0310).

### **D. Volunteer Services**

1. During a disaster or emergency, employees may wish to volunteer their time towards the recovery effort. Employees must receive management approval prior to taking disaster and emergency leave for volunteer purposes.
2. Employees who wish to provide volunteer service during a disaster or emergency and who are not certified American Red Cross disaster volunteers (see below) may request to take annual vacation leave, accrued compensatory time, or leave of absence without pay. Employees may only use sick leave for reasons qualifying under the Sick Leave Policy (MOM #03-0310). If requested by agency management, an employee must provide written verification of participation in the emergency recovery.
3. Under the provisions of 2-18-627, MCA, employees who are certified American Red Cross disaster volunteers may request up to 15 days (or a total of 120 hours for full-time employees) of paid time off annually. The paid time off shall not be deducted from the employees' accrued leave if they are called upon by the American Red Cross to provide specialized disaster relief services. This leave may not be "saved" or carried over from year to year.

4. Employees must include verification of the request for services from the American Red Cross when requesting leave.
5. Employees on approved leave as certified American Red Cross disaster volunteers shall be paid their regular rate for regularly-scheduled hours without loss of longevity, pay, accrued leave, or compensatory time (2-18-627, MCA). Employees on approved leave are not eligible for overtime regardless of the number of hours volunteered. Agency management is not liable for employee expenses associated with the volunteer effort.
6. Training time required to become a certified disaster worker through the American Red Cross is not covered leave under this policy.

#### **E. USERRA Qualifying Leave**

1. Employees activated as members of the uniformed services under the Uniformed Services Employment and Reemployment Rights Act (USERRA) shall be allowed to take a leave of absence to respond to a disaster or emergency.
2. Employees on USERRA qualifying leave may request to use accrued annual vacation and compensatory time during the disaster and emergency leave. Employees may only use sick leave for reasons qualifying under the Sick Leave Policy (MOM #03-0310).

### **IV. Resources**

#### **A. Montana Code Annotated:**

1. Disaster and Emergency Services - Title 10, Chapter 3, parts 1-4, MCA
2. Paid Leave for Disaster Relief Volunteer Service - 2- 18- 627, MCA
3. Annual Leave - 2-18-611, MCA
4. Sick Leave - 2-18-618, MCA

#### **B. Federal Statute:**

Uniformed Services Employment and Reemployment Rights Act (USERRA) - Title 38 USC, Chapter 43

### **C. State Policies:**

1. Annual Leave Policy (MOM #03-0305)
2. Sick Leave Policy (MOM #03-0311)
3. Non-Exempt Compensatory Time (MOM # 03-0210)
4. Exempt Compensatory Time (MOM #03-0211)

### **V. Definitions**

All definitions under 2-18-101, MCA apply to this policy. The following definitions also apply:

**Affected worksite:** Portions of an agency's premises, which are directly threatened or affected by disaster or emergency conditions.

**Certified American Red Cross disaster volunteer:** A member of the Red Cross Disaster Services Human Resources System (DSHRS) who has completed the American Red Cross specialized training program for disaster volunteers and is certified by the American Red Cross as a disaster service technician, specialist, coordinator or officer.

**Disaster:** The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation by-products or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction. as defined in 10-3-103, MCA.

**Emergency:** The imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize as defined in 10-3-103, MCA.

**Regular(ly)-schedule(d):** A pre-determined schedule an employee is customarily scheduled to work under normal circumstances and working conditions.

**Specialized disaster relief:** One or more of the following American Red Cross service categories in which a certified disaster service volunteer is trained including:

- shelter management;
- mass feeding;
- family services;
- health services;
- public assistance inquiries;
- damage assessment;
- a support function for the above listed services, or;
- any other service performed for the American Red Cross for which training is required.

**Uniformed services:** The Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency (Title 38 USC, Chapter 43).