

Administrative Furlough (General)

1. Q. What is sequestration?

A. Sequestration is an across-the-board reduction in Federal budgetary resources in all budget accounts that have not been exempted by statute. Under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011 and the American Taxpayer Relief Act of 2012, across-the-board reductions are scheduled to take effect on March 1, 2013, unless legislation is enacted that avoids such reductions. DOD expects to receive \$46 billion less in non-exempt accounts than it expected through the remainder of fiscal year 2013 which runs through Sep. 30, 2013. DOD has determined that planned furloughs of civilian employees will be required should sequestration occur. By law, sequestration will last 10 years and cut a total \$1.2 trillion (half from defense, half from non-defense).

2. Q. What is a furlough?

A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

3. Q. What is the difference between a shutdown furlough and an administrative furlough?

A. An administrative furlough is a planned event by an agency that is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. Furloughs that would potentially result from sequestration would generally be considered administrative furloughs.

In contrast, where there is a lapse in appropriations, a "shutdown" furlough may occur. A shutdown furlough is necessary when an agency no longer has the funds necessary to operate and must shut down those activities that are not excepted under the Antideficiency Act. Many Federal employees may be familiar with these types of furloughs from instances in previous years in which the Government has faced a potential shutdown.

4. Q. During past government shutdowns in 1995 and 1996, furloughed civilians were paid retroactively. Is that expected to happen this time?

A. Sequestration and resulting furloughs will affect the civilian workforce differently than a lapse of appropriations (government shutdown). There is no provision for employees to receive retroactive compensation at this time. Employees should not plan to receive retroactive compensation.

5. Q. Will furloughs definitely happen? Can they be averted?

A. We are still hopeful that Congress will pass a balanced deficit-reduction plan that President Obama can sign, and sequestration is truly averted... not just delayed. Given current budgetary uncertainty, it is prudent to take certain steps now to prepare for a significantly reduced budget. To the extent possible, actions taken now are reversible should sequestration be averted.

6. Q. Will furloughs continue past September 30, 2013? Will DOD utilize a RIF? Aren't furloughs the first step toward dismissal?

A. DOD cannot predict at this time the impact of sequestration on the civilian workforce beyond Sept 30, 2013. We are utilizing and will continue to utilize all available workforce shaping tools to minimize impact on our civilian workforce to the extent possible.

Employee Coverage

7. Q. Which employees may be affected by an administrative furlough?

A. Most civilians will be furloughed with few exceptions. These exceptions may include: (1) those deployed in a combat zone, (2) those who protect the safety of life or property to the extent needed, (3) non-appropriated fund employees (NAF), (4) those exempt by law who hold a presidential appointment with Senate confirmation (PAS), (5) foreign nationals, and (6) those excepted as approved by a 2-star flag officer or tier 2 SES, or higher.

8. Q. How will employees be notified whether they are affected by an administrative furlough?

A. Employees will receive written notice of the proposed furlough a minimum of 30 days before the proposed effective date. A subsequent notice of decision to furlough will also be issued in accordance with 5 CFR part 752.

9. Q. What does it mean to be in furlough status?

A. Furlough status means that, because of a furlough (as described in Question 2.), the employee is placed in a nonpay, nonduty status for designated hours *within* the employee's tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Furlough hours are a type of leave of absence without pay. Employees are in furlough status only during designated furlough hours, not for entire calendar days. Furlough status may be designated as the employee's full daily tour of duty or part of that tour of duty. For example, an employee may be furloughed for half of an 8-hour daily tour of duty, or 4 hours. An employee who is in furlough status during a daily tour of duty may be ordered to perform work outside that tour, and such work would be subject to normal compensation requirements.

10. Q. Are furloughed detailees returned to their home agencies following any furlough?

A. Detailed employees remain officially assigned to their permanent positions during the detail. During a furlough, each agency will determine the status of their employees on detail within the agency or to another agency.

11. Q. If I am furloughed, am I separated from service?

A. Employees who are furloughed are not separated from Federal service. They are placed in a temporary nonduty, nonpay status.

12. Q. Are personal financial difficulties grounds for a supervisor to waive an employee's furlough?

A. No, all appropriated fund employees will be considered for furloughs. We understand furloughs may result in unexpected financial difficulty for civilian personnel and their families. Employees should start planning immediately for reduced paychecks beginning in April.

13. Q. Can individuals on Intergovernmental Personnel Act (IPA) agreements be released like temporary and term employees? Can they be furloughed? Should they be released or furloughed?

A. The specific authority for furloughing personnel who are working under mobility agreements pursuant to the IPA, either inside the Federal government or with other organizations, depends on the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-Federal organizations on appointments to the Federal government are subject to furlough in the same manner as other employees.
- Personnel on detail to Federal agencies from non-Federal organizations may continue working, provided that the non-Federal organizations pay the total costs of the detail.
- Personnel on detail to Federal agencies from non-Federal organizations that share part of the costs of detail may continue to work if the Federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place during a time for which no funds are appropriated, the assignment should be terminated.
- Personnel on detail to Federal agencies from non-Federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Working during Furlough

14. Q. Can a supervisor require an employee working on something deadline driven or sensitive to continue to work while furloughed?

A. No, supervisors will manage the workload of their organization to ensure that furloughed employees are not providing their services in compliance with federal law.

15. Q. May an employee volunteer to do his or her job on a nonpay basis during any hours or days designated as furlough time off?

A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an employee. (See 31 U.S.C. 1342.). Furloughed employees will not be authorized to work remotely or off-site, to respond to DOD-provided digital devices, or conduct official business during each furlough period. Furloughed employees will not visit their worksite beyond a quick visit to retrieve personal items as necessary.

16. Q. What happens to employees scheduled for training or temporary duty (TDY) during an administrative furlough?

A. Since agencies typically have sufficient time to give employees adequate notice and to plan for administrative furloughs, furlough time off may be scheduled so as not to conflict with scheduled training/TDY. In the event that scheduled training/TDY occurs during a furlough period, affected employees must be placed in a furlough status and ordered not to attend the scheduled training/TDY.

17. Q. May employees take other jobs during a period designated as furlough time off?

A. While on furlough time off, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical

conduct (the standards), at 5 CFR part 2635). In addition, there are specific statutes that prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, an employee should review these regulations and then consult his or her agency ethics official to learn if there are any agency-specific supplemental rules governing the employee. Additionally, host nation requirements may also prohibit an overseas Federal employee from taking other jobs in the local economy.

18. Q. May an employee work during a period designated as furlough time off to earn credit hours under a flexible work schedule?

A. No. An employee may not work to earn credit hours during hours and/or days designated as furlough time off.

19. Q. May an employee work during a period designated as furlough time off to accumulate religious compensatory time off hours for religious observances?

A. No. An employee may not work during a period designated as furlough time off; even to accrue religious compensatory time.

20. Q. Will furloughs affect completion of a probationary period?

A. Any non-pay time (which includes furlough, leave without pay, absence without leave, and suspension) in excess of 22 workdays extends the probationary period by that number of days.

Pay and Allowances

21. Q. Will Defense Finance and Accounting (DFAS) be able to operate and continue disbursing pay and benefits?

A. DFAS will continue to operate and all pay activity will continue uninterrupted. DFAS operations will be managed to ensure all vital activities and products continue to be produced in their normal time frames. To the extent possible, DFAS will look to non-critical activities to absorb any reductions in resources.

22. Q. When an employee's pay is insufficient to permit all deductions to be made because furlough time off occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?

A. Agencies will follow the guidance at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477> to determine the order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions.

23. Q. May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage System employees during a furlough?

A. It depends on the length of the furlough. Within-grade and step increases for General Schedule (GS) and Federal Wage System employees are awarded on the basis of length of service and individual performance. However, extended periods of nonpay may affect the timing of such increases. For

example, a GS employee in steps 1, 2, or 3 of the grade who is furloughed an aggregate of more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406(b).)

24. Q. Will employees continue to receive post allowance, temporary quarters subsistence allowance (TQSA), and living quarters allowance (LQA) while furloughed?

A. During an administrative furlough, eligibility for continued post allowance, TQSA, and LQA shall continue for employees who are in a non-pay status (furloughed) no longer than 14 continuous calendar days (30 continuous calendar days – if approved) at any one time. The Department of State Standardized Regulations (DSSR) addresses payment of allowances when an employee is in a non-pay status. For an administrative furlough (e.g., based on sequestration), DSSR section 051.2 and 132.2b(2) would be applicable:

- DSSR section 051.2 states, "All allowances granted under these regulations may continue during periods while the employee is in non-pay status not in excess of 14 calendar days at any one time. For periods in non-pay status longer than 14 calendar days, payments under allowance grants are to be suspended as of the day the employee enters the non-pay status, and payment is not to be made for any part of such period, unless otherwise specifically provided in these regulations. (See Section 132.2b(2).)"
- DSSR section 132.2b(2) specifically addresses continuation of LQA during a non-pay status, noting that the LQA grant may continue if the employee maintains the quarters at the post: "(2) while the employee is in non-pay status not in excess of 30 calendar days at any one time. For periods in non-pay status longer than 30 calendar days, payment shall be suspended as of the day the employee enters such status, and payment is not to be made for any part of such period;"
- Both DSSR sections provide for continued payment of allowances for short periods (14 or 30 calendar days) of non-pay status at one time. If the furloughs are implemented as planned (up to 22 nonconsecutive work days - 1-day per week for 22 weeks) - the employee would never hit the 14 or 30 days "at one time" required to affect the continued payment of the allowances.

25. Q. Permanent Changes of Station (PCS) – how affected?

A. PCS in the interest of the Government must be funded. However, PCS authorized relocations may be restricted and used only in rare and unusual circumstances. Additionally, when PCS is determined necessary, optional expenses (house hunting trip, temporary quarters, etc.) may be restricted or prohibited.

Leave and Other Time Off

26. Q. May an employee take paid leave or other forms of paid time off (e.g., annual, sick, court, or military leave, leave for bone marrow or organ donor leave, credit hours earned, any compensatory time off earned, or time off awards) instead of taking administrative furlough time off?

A. No. During an administrative furlough, an employee may not substitute paid leave or other forms of paid time off for any hours or days designated as furlough time off.

27. Q. How should an agency treat an employee who is on approved leave without pay (LWOP) during an administrative furlough period?

A. If an employee is scheduled to be on LWOP during his or her agency's furlough period, the employee may designate any hours and/or days of LWOP as furlough time off in order to meet the agency's furlough requirement. Agencies are not required to provide an employee with a furlough notice if the employee is not expected to work during the furlough period (e.g., a 1-year period of leave without pay to accompany a military spouse overseas). If the employee returns to work before the end of the agency's furlough period, the agency could require the employee to take furlough time off, based upon the agency's furlough policy. If upon return to service, the employee has taken enough LWOP to cover the agency's requirement for furlough time off, the agency may choose not to place the employee in a furlough status.

28. Q. May an employee take LWOP under the Family and Medical Leave Act (FMLA) during an administrative furlough period?

A. Yes. An employee may take LWOP under FMLA during his or her agency's designated furlough period. The employee may designate any hours and/or days of LWOP under FMLA as furlough time off in order to meet the agency's furlough requirement. During a furlough, any LWOP under FMLA that is scheduled to be taken instead of a furlough day off will not count toward the employee's 12-week FMLA leave entitlement. An employee who takes LWOP under FMLA instead of a furlough day off may not later substitute paid leave for the days of LWOP. Agencies are not required to provide an employee with a furlough notice if the employee is not expected to work during the furlough period (e.g., an employee who has just given birth and has requested 12 weeks of unpaid leave (LWOP) under the FMLA). If the employee is scheduled to return to work from LWOP during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return).

29. Q. May an employee who takes furlough hours off be permitted to substitute annual leave retroactively for furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?

A. Generally no. However, if an employee is allowed to proactively take more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation (or reduction) of the furlough, the employee may retroactively cancel excess furlough hours and substitute annual leave for those hours, as determined by the agency. For example, an agency's furlough plan requires each employee to take 176 furlough hours (22 days) between April and September. The agency requires the employee to take 8 furlough hours off each week in the month of April (for a total of 32 furlough hours (4 days)) and provides the employee with an option of when to take his/her remaining furlough hours off at a time of the employee's choosing, but no later than the end of September. If the employee takes all 176 furlough hours off (22 days) in April and the agency cancels the furlough on May 1 due to improved financial conditions, the employee would have taken 144 furlough hours more than what was needed (176 hours (22 days) – 32 hours (4 days)). Upon the determination to cancel the furlough, the agency must decide how to handle the 144 furlough hours (18 furlough days) off the employee has taken ahead of schedule in accordance with internal agency procedures and any applicable collective bargaining agreement. Any annual leave substituted for furlough hours would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

NOTE: Department of the Army may provide additional direction on use of this discretionary authority.

30. Q. May an employee who takes furlough hours off be granted excused absence to substitute retroactively for the furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?

A. Agencies have the discretionary authority to determine the situations in which an employee may be excused from duty without loss of pay or charge to leave in accordance with internal agency policy and any collective bargaining agreement. However, agencies are not required to provide excused absence unless specifically required by statute or Presidential directive. For example, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the agency is not required to provide excused absence for the excess furlough hours, as determined by the agency. If the agency decides to cancel certain furlough hours and substitute excused absence, the excused absence should be provided to all similarly situated employees. Any retroactive substitution of excused absence would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

NOTE: Department of the Army may provide additional direction on use of this discretionary authority.

Holidays

31. Q. May employees be administratively furloughed on a holiday?

A. Employees may be furloughed for periods of time that include holidays. However, an agency should select the furlough days off on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. For example, an agency may not properly furlough employees for a 3-day period, the middle of which is a holiday, for the sole purpose of saving 3 days' pay while losing only 2 days of work. (See Comptroller General opinion B-224619, August 17, 1987.) Neither would it be proper to furlough an employee solely on a holiday. (See Comptroller General opinion B-222836, May 8, 1986.)

32. Q. If employees have a designated administrative furlough day off on the last workday before a holiday *or* the first workday after a holiday (but not on both days), will they be paid for the holiday?

A. Yes. The general rule is that an employee is entitled to pay for a holiday so long as he or she is in a pay status on either the workday preceding a holiday or the workday following a holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. (Note: A holiday should not be the first or last day of the period covered by a furlough.)

33. Q. If employees have a designated administrative furlough day off on the last workday before a holiday *and* the first workday after a holiday, will they be paid for the holiday?

A. No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the employee is not entitled to pay for the holiday because there is no longer a presumption that, but for the holiday, the employee would have worked on that day. (See Comptroller General opinion B-224619, August 17, 1987.) Agencies that allow employees to choose their furlough days off should explain that the employee will not be paid for the holiday if the employee chooses to take a furlough day off both before and after the holiday.

Benefits

34. Q. Will an employee continue to be covered under the Federal Employees Health Benefits (FEHB) Program during an administrative furlough?

A. The employee's FEHB coverage will continue if the employee's salary is sufficient to pay the premiums. If the employee's salary becomes insufficient to pay FEHB premiums due to the furlough, the leave without pay/insufficient pay rules apply (<http://www.opm.gov/insure/health/reference/handbook/fehb13.asp>). If the employee chooses to remain covered, the enrollee share of the FEHB premium will accumulate and be withheld from pay upon the employee's pay becoming sufficient to cover the premiums.

35. Q Will civilian insurance healthcare premiums and claims be paid in full and on time? Will benefits continue for furloughed personnel?

A. Yes, civilian healthcare insurance premiums and claims will be paid in full and on time, and benefits will continue for furloughed employees. The employee's share of the premium payment will accumulate and be withheld from pay upon return to pay status.

36. Q. Will an employee's Federal Flexible Spending Account Program (FSAFEDS) be impacted during an administrative furlough?

A. The employee's FSAFEDS coverage continues, and allotments made by the employee continue if the employee's salary in each pay period is sufficient to cover the deduction(s). If the employee's salary is insufficient to cover his or her allotment(s), then incurred eligible health care expenses will not be reimbursed until the allotments are successfully restarted (in which case the remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount). Incurred eligible dependent care expenses may be reimbursed up to whatever balance is in the employee's dependent care account, as long as the expenses incurred allow the employee (or employee's spouse if married) to work, look for work or attend school full-time. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount.

37. Q. Will an employee continue to be covered under the Federal Employees' Group Life Insurance (FEGLI) during an administrative furlough?

A. The employee's FEGLI coverage continues while in a nonpay status due to furlough for up to 12 months, without cost to the employee or to the agency. Neither the employee nor the agency incurs a debt during this period of furlough. However, if the furlough is for only part of a pay period FEGLI premiums are required. If there is any pay in a pay period, FEGLI premiums for the whole pay period will be deducted from pay. The premiums are not prorated. If the employee's salary becomes insufficient to pay FEGLI premiums due to the furlough, the leave without pay/insufficient pay rules apply (<http://www.opm.gov/insure/health/reference/handbook/fehb13.asp>).

38. Q. Will an employee continues to be covered under the Federal Dental and Vision Insurance Program (FEDVIP) during an administrative furlough?

A. Yes. Just as with scheduled LWOP, if BENEFEDS is unable to take the necessary premium deduction from an employee's pay, BENEFEDS collects premium up to twice the biweekly amount from the next full pay period to make up for the missed premium deduction. If the furlough continues for more than two consecutive pay periods, BENEFEDS will mail a direct bill to the employee. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

39. Q. Will an employee continue to be covered under the Federal Long Term Care Insurance Program (FLTCIP) during an administrative furlough?

A. Yes, eligible claims will continue to be paid. Coverage will terminate if premiums are not paid. If the contractor does not receive premium for two or fewer pay periods, they will adjust future premium deductions, increasing by no more than \$50 per pay period to recover the missed premiums. Three consecutive pay periods of no premium will result in the contractor billing the participant directly. The employee also has the option to change to direct billing or to payment via electronic funds transfer (EFT). If premiums are not collected or a final bill is not paid within a 30 day grace period, FLTCP will send a termination letter. The employee has 35 days from the date of the letter to pay the premium; otherwise the employee will be disenrolled retroactively to the last pay period in which premium was paid.

Employee Assistance

40. Q. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Employees" at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>.) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor's website provides links to individual State offices at <http://www.servicelocator.org/OWSLinks.asp>.

41. Q. What resources are available if a Federal employee needs financial assistance during a furlough period?

A. Some installation employee assistance programs (EAP) include financial consultation services. In addition, employees may want to contact their financial institution or credit union or learn about their options through the Thrift Savings Plan (<http://www.tsp.gov>).

Service Credit for Various Purposes

42. Q. Is being furloughed or on leave without pay (LWOP) considered a break in service?

A. No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, an extended furlough or extended LWOP may affect the calculation of creditable service for certain purposes.

43. Q. To what extent does nonpay status affect Federal employee benefits and programs?

A. The effects of a nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on Federal employee benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs" at http://www.opm.gov/oca/leave/HTML/LWOP_eff.asp.

44. Q. Will retirement calculations be affected?

A. When employees are in a non-pay status (which includes furlough, leave without pay, absence without leave, and suspension) for only a portion of a pay period, their retirement deductions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411).

45. Q. Will high-three salary calculation for retirement be affected?

A. No, there is no effect on the high-three average pay unless the furlough causes the employee to be in a non-pay status (which includes furlough, leave without pay, absence without leave, and suspension) for more than six months during the calendar year.

46. Q. How will employee contributions to the Thrift Savings Plan (TSP) be affected?

A. Employee contributions to TSP accounts are made as deductions from civilian or uniformed services pay. Employees who have selected their TSP contribution to be a percentage of their pay will see smaller contributions during the furlough period due to their reduced pay. Employees who have selected a fixed amount to be their TSP contribution will see the same amount deducted during the furlough period.

If an employee is in non-pay status (which includes furlough, leave without pay, absence without leave, and suspension) for one or more full pay periods, he or she cannot contribute to his or her TSP account during that time.

Federal Employees on Military Duty

47. Q. Will employees continue to receive a reservist differential payment (5 U.S.C. 5538) if they are affected by an administrative furlough from their Federal civilian position while on active duty?

A. It depends. In computing a reservist differential, the employing agency must compare the employee's projected civilian basic pay to the allocated military pay and allowances for each civilian pay period. If an employee is affected by a furlough from his or her Federal position while on active duty, the employing agency must reduce the employee's projected civilian basic pay during any pay period in which furlough time off occurs. If the allocated military pay and allowances are greater than or equal to the projected civilian basic pay adjusted for furlough time off, no reservist differential is payable for that pay period. If the projected civilian basic pay (as reduced to account for furlough time off) is greater than the allocated military pay and allowances, the difference represents the unadjusted reservist differential.

48. Q. Will there be an impact on an employee's General Schedule or Federal Wage System within-grade increases (WGI) waiting period if the employee is affected by an administrative furlough while in an Absent – Uniformed Service status?

A. No. A furlough has no impact on an employee's General Schedule or Federal Wage System WGI waiting period if the employee is affected by a furlough while in an Absent – Uniformed Service status (i.e., Nature of Action Code 473, which is used when the employee has restoration rights). An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when an employee returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. (See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).)

Injury While on Furlough

49. Q. Are employees who are injured while on furlough or LWOP eligible to receive workers compensation?

A. No. Workers compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Scheduling Furlough Time Off

50. Q. How should organizations schedule administrative furlough time off?

A. Current DOD planning indicates that furloughs will be no more than 22 discontinuous work days (176 hours), and will be spread over maximum months at no more than 16 hours per pay period.

However, all Federal agencies have discretion to implement such a furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures. For example, an agency may furlough employees for 1 day a pay period for a finite period of time, designate a number of furlough hours, shut down the entire agency for a defined number of days, designate specific dates as furlough days off, or allow employees to select their own furlough time off, etc.

51. Q. How should organizations schedule administrative furlough time off for employees on flexible or compressed work schedules under an alternative work schedule (AWS) program?

A. Because the definition of a day will vary based on the type of work schedule and/or appointment, it is best for an agency to develop a policy that provides equity and consistency. For ease of administration and equity, organizations may schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, in the event that all full-time employees are furloughed for 40 hours, for some employees the actual number of furlough days could be more or less than 5 days, depending on their work schedules.

52. Q. How should organizations schedule administrative furlough time off for employees who do not work a standard work schedule (e.g., part time or uncommon tour of duty)?

A. Furloughs of part-time or uncommon tour of duty employees must comply with the procedures of 5 CFR part 752 or part 351 if the employees are otherwise covered. In scheduling such furloughs, it would be equitable to prorate their furlough requirement by computing the furlough days as furlough hours in the same proportion to those hours scheduled for full-time employees working 80 hours biweekly, based on work schedules. (The hours of furlough might be computed as a percentage of the work schedule for full-time 10 employees working 80 hours biweekly. For example, a part time work schedule of 64 hours a pay period would equate to 64/80 of a full-time work schedule, or 80 percent. This percent could then be multiplied by the number of hours that a full-time employee is furloughed. The same method of proration would be used for uncommon tours of duty. For example, to derive the hours of furlough for an employee working 144 hours a pay period, a factor of 144/80, or 180 percent, would be multiplied by the number of hours of furlough designated for full-time employees working 80 hours biweekly.) Again, if some

employees in a competitive level are furloughed but not others, 5 CFR 752.404(b)(2) requires that the notice of proposed action must tell the employees the basis for selecting those furloughed.

53. Q. How should organizations schedule administrative furlough time off for employees who work on a seasonal or intermittent basis?

A. Whether either group is called for work during an administrative furlough is discretionary. Seasonal employees are recalled to duty at identified periods of the year in accordance with pre-established conditions. Intermittent employees are non-full-time employees without a regularly scheduled tour of duty.

Procedures—Equal to or less than 30 continuous calendar days or 22 discontinuous workdays

54. Q. May an organizations schedule administrative furlough days consecutively and discontinuously (e.g., one workday per week for 15 weeks)?

A. Yes. Nothing in law or regulation prohibits discontinuous furloughs, and they have been upheld by the Merit Systems Protection Board on appeal. Moreover, discontinuous furloughs can be advantageous to both employees and the agency by distributing the furlough days over time, thereby minimizing the financial impact on employees as well as lessening disruption of agency services to the public. In *AFGE, Local 32 and OPM*, 22 FLRA 307 (1986), the Federal Labor Relations Authority held that a proposal giving the furloughed employee the right to determine whether his/her furlough was to be continuous or discontinuous is a negotiable 5 U.S.C. 7106(b)(3) “appropriate arrangement.” For ease of administration and equity, organizations may also schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, all full-time employees would be furloughed for 40 hours, even though for some employees the actual number of furlough days could be more or less than 5 days.

55. Q. How is an administrative furlough documented?

A. Organizations must prepare an SF-50, “Notification of Personnel Action,” for each employee subject to furlough (or a List Form of Notice may be prepared for a group of employees who are to be furloughed on the same day or days each pay period). A return-to-duty SF-50 is required for return from a consecutive furlough but is not required for a return from a 11 discontinuous furlough. (See Chapters 15 and 16 of *The Guide to Processing Personnel Actions*.)

If the specific furlough dates are known when a 471/Furlough action is prepared, these dates must be shown in the remarks section of the 471/Furlough action document (i.e., SF-50 or List Form of Notice). If specific dates are not known, then agencies must prepare a 002/Correction action (SF-50) to the 471/Furlough action (or a List Form of Notice for a group of employees similarly situated) with remarks documenting the total number of days or hours of the furlough when those dates become known. When the total number of days for a 472/Furlough NTE is increased, a 772/Ext of Furlough NTE (date) must be prepared. For new calendar periods of furlough, a new furlough action must be prepared. For all other changes in the dates on which a furlough will occur, a 002/Correction action must be prepared.

56. Q. If a discontinuous administrative furlough extends for more than 30 calendar days, is it a furlough covered by adverse action procedures in 5 CFR part 752, or is it covered by the reduction in force (RIF) procedures of 5 CFR part 351?

A. Based on the definition of “day” as “calendar day” (5 CFR 210.102 and 752.402), OPM has determined that 22 workdays equate to 30 calendar days for adverse action purposes for employees. Thus, a discontinuous furlough of 22 workdays or less would be covered by adverse action procedures, and one of more than 22 workdays would be covered by the RIF procedures of 5 CFR part 351. (If a holiday is included in a furlough of 22 *consecutive* workdays, the furlough might equate to more than 30 calendar days. For example, the month of November has two holidays: Veterans Day and Thanksgiving Day. Therefore, the number of calendar days will be extended beyond 30 by two days.)

57. Q. What procedural rights would apply for an administrative furlough of 30 calendar days (22 workdays) or less for employees covered under 5 CFR part 752?

A. For a short furlough of a covered employee, the law (5 U.S.C. 7513) gives a covered employee the following rights:

- At least 30 calendar days advance written notice by the agency stating the specific reasons for the proposed action. (Typically, the reasons for the action would involve a lack of work or funds.) The 30 calendar day period begins upon an employee’s *receipt* of the written notice. Therefore, agencies should plan accordingly to allow time for mailing the notice when hand-delivery is not possible.
- At least seven calendar days for the employee to answer orally and in writing to the proposal notice and to furnish documentary evidence in support of his or her answer. (A summary of any oral answer must be made and maintained by the agency.)
- The right of the employee to be represented by an attorney or other representative.
- A written decision by the agency with the specific reasons for its action at the earliest time practicable.
- The right to appeal the agency’s action to the Merit Systems Protection Board.

In addition, OPM’s regulations (5 CFR 752.404) require that the agency inform the employee of the right to review the material it relied on to support the reasons for its action. The agency must designate an oral reply official who can either make or recommend a decision, and must issue its decision at or before the effective date of the action. The regulations (5 CFR 752.405) also provide that where applicable, the affected employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to the Merit Systems Protection Board, but not both.

NOTE: Under 5 CFR 752.404(b)(2), if the agency is furloughing some, but not all, employees in a competitive level, the notice of proposal must state the basis for selecting the particular employee as well as the reasons for the furlough. Agencies who anticipate furloughing some, but not all employees, should ensure the accuracy of established competitive levels in order to meet their obligations under this regulation. In general, the term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable (see 5 CFR 351.403(a)). Where bargaining unit employees are concerned, additional procedural rights may be provided by their negotiated agreement.

Adverse action procedures in 5 CFR part 752, subpart F, covering Senior Executive Service (SES) career appointees and certain SES limited term or emergency employees do not apply to short furloughs because those procedures provide only for removal from the civil service or suspension for more than 14 days based upon misconduct, neglect of duty, malfeasance or failure to accept a directed reassignment or to accompany a position in a transfer of function.

58. Q. What procedures are applicable to members of the Senior Executive Service affected by an administrative furlough of 30 calendar days (22 workdays) or less?

A. Under SES furlough regulations at 5 CFR part 359, subpart H, an agency need not use competitive procedures in selecting SES appointees to be furloughed for 30 calendar days or less, or for 22 workdays or less if the furlough does not cover consecutive days; however, the agency must provide career SES appointees (other than reemployed annuitants) a 30-day advance written notice of a furlough of any length. The written notice must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. This regulation does not require that appointees be afforded an opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations. SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

59. Q. What procedures and appeal rights are applicable for probationers, employees under temporary appointments in the competitive service, employees who are nonpreference eligible employees in the excepted service with less than 2 years of continuous service, Schedule C employees, and others not covered by 5 U.S.C. chapter 75 but also affected by an administrative furlough?

A. There are no mandatory procedures.

60. Q. How should the decision letter for an administrative furlough be framed if the agency has not set a specific number of furlough days?

A. While it is desirable when possible to inform the affected employee of a specific number of furlough days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible.

61. Q. If an employee decides to challenge a discontinuous administrative furlough, from what point would the time for appeal to the Merit Systems Protection Board run?

A. Employees must file an appeal within 30 days after the effective date of their first furlough day, or 30 days after the date of their receipt of the decision notice, whichever is later.

Procedures—More than 30 calendar days or 22 discontinuous workdays (Extended Furlough)

62. Q. When is an agency required to use reduction in force (RIF) procedures to administratively furlough employees?

A. Agencies must follow RIF procedures for an extended furlough of more than 30 continuous calendar days, or of more than 22 discontinuous workdays (though, importantly, a furlough is a temporary placement in non-pay/non-duty status; it is not a permanent separation from service).

63. Q. Is there a maximum period an employee may be administratively furloughed for an extended period?

A. Yes. An employee may be placed on an extended furlough only when the agency plans to recall the employee to his or her position within 1 year. Therefore, the furlough may not exceed 1 year.

64. Q. If an agency needs to administratively furlough employees for more than 30 calendar days (or more than 22 workdays), must the complete 5 CFR part 351 procedures be followed?

A. Yes. The complete procedures in 5 CFR part 351 must be followed, including a minimum 60 days specific written notice of the furlough action. (Question 16 has additional information on notice requirements.) The only exception to the regular procedures involves assignment rights (i.e., “bump” and “retreat” rights; see question 46).

65. Q. When does an employee who is reached for an extended furlough action during an administrative furlough have a right of assignment to another position?

A. An employee reached for release from the competitive level because of an extended furlough has assignment rights to other positions on the same basis as an employee reached for release as a result of other RIF actions (e.g., separation or downgrading).

Because of the requirement in 5 CFR 351.701(a) that assignment rights apply only to positions lasting at least 3 months, an employee reached for an extended continuous furlough does not have assignment rights to a position held by another employee who is not affected by the furlough unless the furlough extends for 90 or more consecutive days. Also, an employee reached for a discontinuous extended furlough action does not have assignment rights to another position.

The undue interruption standard could apply to an extended furlough over 90 consecutive days. (As defined in 5 CFR 351.203, “undue interruption” essentially means that a higher-standing employee who is otherwise qualified for the assignment may exercise the assignment right only if the employee is able to perform the work of the position of the lower-standing employee within 90 days of the assignment.) The agency must consider whether undue interruption would result from both (1) the displacement of a lower-standing employee from the competitive level affected by the furlough, and (2) the recall of both employees to their official positions at the end of the furlough period.

66. Q. Are there any other situations in which agencies may restrict employees’ assignment rights in an administrative furlough situation?

A. An agency may make a temporary exception to order of release and assignment rights to keep the incumbent in his or her position for 90 days or less after the commencement of the furlough when needed to continue an activity without undue interruption. (For additional reasons that a temporary exception may be used, see 5 CFR 351.608(a).)

An agency may make a continuing exception to order of release and assignment rights to keep the incumbent in a position that no higher standing employee can take over within 90 days and without undue interruption to the activity. (See 5 CFR 351.607.)

67. Q. Some employees within a competitive area are paid from appropriated funds. Some are paid from a variety of other funding sources, such as trust funds, working capital, user fees, etc. Are

employees who are paid from these other sources exempt from an administrative furlough and the 5 CFR part 351 process?

A. Regardless of the source from which an employee is paid, each employee within a competitive area would be subject to displacement by higher standing employees within the same competitive area.

68. Q. If a program, project, or activity (PPA) takes other actions to obviate or lessen the need for an extended administrative furlough, how will the employees in the PPA be affected by the process?

A. Even though their positions are not subject to furlough, the employees in the PPA would be subject to displacement by higher standing employees in other PPAs within the competitive area.

69. Q. What action is taken if an employee refuses an offer of assignment during an administrative furlough?

A. The employee is furloughed from his or her position.

70. Q. If an employee bumps or retreats to a different job as a result of an administrative furlough, is the employee temporarily assigned to that job?

A. No. The employee becomes the incumbent of that job even though the furlough anticipates the employee's eventual recall to his or her former job.

71. Q. If circumstances change and the agency is unable to recall administratively furloughed employees at the point specified in their extended furlough notice, what additional action is required?

A. In this situation, the agency must issue those employees new notices of either an extended furlough or proposed RIF separation, as the situation requires. This new action must meet all the requirements in the 5 CFR part 351 regulations (for example, 60 days advance notice).

72. Q. Do these requirements also apply if an agency finds that it can recall employees before they have reached the administrative furlough limits specified in their notice?

A. No.

73. Q. Are employees who are appointed by the President with Senate confirmation (PAS), Schedule C employees, and members of the Senior Executive Service (SES) covered by extended furlough procedures during an administrative furlough?

A. Extended furlough procedures do not apply to an employee who is a member of the Senior Executive Service or to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of the Senate, except a postmaster. All Schedule C employees are covered by part 351 except those under appointments of 1 year or less who have less than 1 year of service.

74. Q. What procedures are applicable to members of the Senior Executive Service (SES) affected by an administrative furlough of more than 30 calendar days, or more than 22 discontinuous workdays?

A. Career SES members (other than reemployed annuitants) are covered by separate furlough procedures in 5 CFR part 359, subpart H, which provide that an agency must use competitive procedures in selecting SES career appointees for furloughs of more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days. SES regulations at 5 CFR part 359, subpart F, do not apply, but agencies may use the same competitive procedures they have established for SES RIF. Any competitive procedures used must be made known to the SES members. These career appointees are entitled to a 30-day advance written notice of a furlough, which must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. (See, for example, <http://www.opm.gov/furlough/> for information on shutdown furloughs.) This regulation does not require that appointees be afforded an opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations. SES non-career, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

75. Q. What happens to temporary employees serving under appointments limited to 1 year or less in extended administrative furlough situations?

A. An agency may not retain a temporary employee in pay status to furlough a competing employee in the same competitive level. Temporary employees may be either separated or furloughed in such situations, but they are not entitled to the protections of adverse actions or 5 CFR part 351 procedures when this occurs. As a matter of good human resources management, however, the agency should try to give these employees as much advance written notice as possible. Time spent in furlough status by temporary employees counts the same as time in a pay status toward their appointment's not-to-exceed date and the 2-year limit on their overall service specified in 5 CFR 316.401(c).

76. Q. What notice must an agency provide an employee of an extended administrative furlough action?

A. An agency must give an employee covered by 5 CFR part 351 a minimum 60-day specific written notice before the effective date of any action, including furlough. The statutory basis for the notice requirements is found in 5 U.S.C. 3502(d). The notice requirements are further implemented through regulations published in 5 CFR part 351, subpart H. The same notice requirements are applicable to both a continuous and a discontinuous furlough.

77. Q. What option is available if an agency is unable to provide an employee with the minimum required notice of an extended administrative furlough?

A. When the action is caused by unforeseeable circumstance, an agency may request OPM to authorize a notice period of less than 60 days. However, the agency must still provide each employee with a

minimum of 30 calendar days specific written notice of the action. (See 5 U.S.C. 3502(e) and 5 CFR 351.801(b).)

78. Q. Section 351.806 of 5 CFR states that during the notice period when, “in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee . . . in a nonpay status without his or her consent.” If an agency is unable to give 60 calendar days notice in an emergency (or longer period if required by administrative or negotiated provisions), may an agency use 5 CFR 351.806 to place employees on administrative furlough before the notice period is satisfied?

A. Yes.

79. Q. Is the agency required (or permitted) to register employees administratively furloughed under 5 CFR part 351 in the agency’s Reemployment Priority List, or is the employee eligible for priority consideration under placement programs such as Career Transition Assistance Program or the Interagency Career Transition Assistance Program?

A. No. All of these programs are available only to employees who are separated, not to employees who are furloughed.

80. Q. Is the agency required (or permitted) to register employees administratively furloughed under 5 CFR part 351 in the DoD Priority Placement Program (PPP)?

A. Employees who are involuntarily furloughed for 6 months or more may be eligible to register in the PPP.

81. Q. During an administrative furlough, competitive service employees may appeal the action to the Merit Systems Protection Board (MSPB). What about excepted service employees?

A. Excepted service employees, as well as competitive service employees, who are covered by 5 CFR part 351 may appeal or grieve as follows: An employee covered by a negotiated grievance procedure that does not exclude 5 CFR part 351 actions must use the negotiated grievance procedure. See 5 U.S.C. § 7121, *et seq.* Otherwise, an employee may appeal to MSPB. See 5 CFR 351.202, 351.901, and 1201.3(c).

82. Q. What if an agency plans for and gives notice of an administrative furlough of 22 workdays or less, but then finds it needs to extend this furlough time beyond 22 workdays in order to meet budget requirements? Must the agency use 5 CFR part 351 furlough procedures when it extends the furlough beyond 22 workdays?

A. If an agency’s initial assessment resulted in a furlough of 22 workdays or less, OPM recommends that the agency complete that furlough effected under 5 CFR part 752 procedures and issue new furlough notices under either 5 CFR part 752 or 5 CFR part 351, as appropriate, in the event it determines that additional savings are necessary.