

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT



# Guidance for Administrative Furloughs

March 8, 2013

*a New Day for Federal Service*

## Overview

The U.S. Office of Personnel Management (OPM) has prepared human resources guidance for agencies and employees on administrative furloughs. An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or other budget situation other than a lapse in appropriations.

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## **A. General**

### **1. 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.

### **2. What is an administrative furlough and why are administrative furloughs necessary?**

**A.** An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. This type of furlough is typically a non-emergency furlough in that the agency has sufficient time to reduce spending and give adequate notice to employees of its specific furlough plan and how many furlough days will be required. An example of when such a furlough may be necessary is when, as a result of Congressional budget decisions, an agency is required to absorb additional reductions over the course of a fiscal year.

### **3. What human resources guidance applies for furloughs that are caused by a lapse of appropriations (i.e., shutdown furloughs)?**

**A.** Guidance on shutdown furloughs may be found at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

## **B. Covered Employees**

### **1. Which employees may be affected by an administrative furlough?**

**A.** Agencies are responsible for identifying the employees affected by administrative furloughs based on budget conditions, funding sources, mission priorities (including the need to perform emergency work involving the safety of human life or protection of property), and other mission-related factors. See also Procedures and Labor Management Relations Implications.

### **2. How will employees be notified whether they are affected by an administrative furlough?**

**A.** Each agency will determine the method and timing of notifying employees of whether they are affected by an administrative furlough. See also Procedures and Labor Management Relations Implications.

### **3. Are political appointees (such as Executive Schedule officials, noncareer members of the Senior Executive Service (SES), and Schedule C appointees) subject to administrative furlough?**

A. All political appointees who are covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are subject to administrative furlough. For example, Schedule C appointees in the General Schedule or Senior Level (SL) pay systems and noncareer SES members are all covered by the leave system and subject to administrative furlough. However, regular procedural requirements may not apply. (See Q&As M.5., M.6., N.12., and N.13.) Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. (See Q&A B.4. for more information on why certain Presidential appointees are not subject to furlough.)

#### **4. Why are leave-exempt Presidential appointees not subject to furlough?**

A. Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. An exemption from the chapter 63 leave system may be based on 5 U.S.C. 6301(2)(x) or (xi). (See also OPM regulations at 5 CFR 630.211.) These leave-exempt Presidential appointees are not subject to furloughs because they are considered to be entitled to the pay of their offices solely by virtue of their status as an officer, rather than by virtue of the hours they work.

A leave-exempt Presidential appointee cannot be placed on nonduty status. Thus, the appointee's pay cannot be reduced based on placement in nonduty status, including via the mechanism of a furlough. As explained above, a leave-exempt Presidential appointee is entitled to the established pay of the position based on the holding of the office, not on the hours of duty.

Presidential appointees who are covered by the chapter 63 leave system are not considered to be entitled to pay based solely on their status as officers; thus, these individuals are subject to furlough in the same manner as other Federal employees. (See 5 U.S.C. 5508.) Any Presidential appointee who is a member of the Senior Executive Service (SES) or in a senior level (SL/ST) position paid under 5 U.S.C. 5376 may not be exempted from the chapter 63 leave system. All SES and SL/ST employees are subject to furlough on the same basis as other employees. (The furlough of career SES members is subject to the procedures in 5 CFR 359, subpart H, and the furlough of SL/ST employees is subject to the procedures in 5 CFR 752, subpart D, or 5 CFR part 351, as applicable.)

While employees may be subject to furlough, the applicable due process procedures depend on the type of employee in question. For example, all Presidential appointees are excluded from the adverse action procedures in 5 U.S.C. chapter 75, based on 5 U.S.C. 7511(b)(1) and (3). In addition, Presidential appointees subject to Senate confirmation are excluded from reduction in force procedures, based on 5 CFR 351.202(b). If a Presidential appointee is subject to furlough but not subject to adverse action or reduction in force procedures, the agency should follow any administrative procedures required by any applicable internal personnel policies.

Note: A former career Senior Executive Service (SES) appointee who receives a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. 3392(c). If SES leave benefits are so elected, such a Presidential appointee would be subject to furlough under 5 CFR part 359, subpart H.

**5. 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.

**6. Do all detailees follow the furlough policies and procedures of their home agencies if the detail continues?**

**A.** Yes, because all detailees remain officially employed by the agencies from which they are detailed. If furlough is required, the home agency will determine if and how the detailed employee is affected. The home agency and the receiving agency should discuss how a detailee will be affected if a furlough is not required in the home agency but is required in the receiving agency.

**7. I have a detailee from another agency working in my unit. Who can I contact to discuss any flexibility the home agency may be willing to exercise regarding scheduling of any required furlough days?**

**A.** Generally, the point of contact would be the human resources office of the employee's home agency. If the point of contact within that office is unknown, OPM suggests contacting the employee's supervisor at the home agency to determine who to contact about potential flexibility in scheduling required furlough days.

**8. Can an employee request to be furloughed as a way of reducing the hours of furlough required of other employees?**

**A.** An employee cannot request to be furloughed. A furlough is an agency adverse action that places an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

An employee may voluntarily request leave without pay which also places an employee in a nonpay, nonduty status. However, approval of leave without pay does not provide any due process rights (unlike a furlough action), and approval is subject to your organization's policies, procedures, and any collective bargaining agreement provisions. An employee should discuss with their human resources office any personnel implications of additional time in a nonpay, nonduty status. An agency should not pressure employees to request leave without pay. Such requests should be made on a purely voluntary basis.

While the granting of leave without pay to a significant number of employees may produce

savings that could potentially affect the extent to which an agency needs to use furloughs to achieve the savings required by sequestration, employees should be aware that there is no guarantee that volunteering for unpaid leave will have a significant enough effect on an agency's operations to affect the agency's need to furlough employees. Moreover, there are many other factors that may potentially affect an agency's budget, and therefore affect the extent to which an agency needs to use furloughs to achieve cost savings.

Note 1: Leave-exempt Presidential appointees may not take leave without pay, as explained in Question B.4.

Note 2: This matter, like others involving the impact and implementation of furloughs, may be subject to collective bargaining for union-represented employees.

### **C. Working During Furlough**

#### **1. 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.)

#### **2. What happens to employees scheduled for training 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. In the event that scheduled training occurs during a furlough period, affected employees must be placed in a furlough status and ordered not to attend the scheduled training.

#### **3. 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 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.

#### **4. 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.

**5. 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.

**D. Pay**

**1. 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.

**2. 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. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) 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).)

**3. What issues arise with the furloughing of employees who would otherwise reach the biweekly cap on premium pay?**

A. Under 5 U.S.C. 5547, premium pay may not normally be paid to the extent the payment would cause the sum of the employee's basic pay plus premium pay received in a biweekly pay period to exceed the higher of (1) the biweekly rate for level V of the Executive Schedule (EX-V) or (2) the biweekly rate of basic pay for GS-15, step 10 (including any applicable locality payment or special rate supplement). (Note: In all locality pay areas within the United States, the applicable GS-15, step 10, rate is higher than the EX-V rate.) Certain employees regularly receive a recurring type of premium pay that causes them to reach the premium pay cap each biweekly pay period. For example, certain employees regularly receive law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty premium pay, or regularly scheduled firefighter overtime pay.

The biweekly premium pay cap limits premium pay based on the aggregate sum of basic pay

plus premium pay in a biweekly pay period. Thus, if a furlough causes basic pay to be reduced, it may result in an increased payment of premium pay that had been limited by the premium pay cap.

If an employee is furloughed, he/she will not receive basic pay or premium pay during the furlough period. If the furlough is for a full pay period, then the employee will not receive any pay for the pay period and the biweekly premium pay cap is not an issue.

However, there are issues if an employee who normally reaches the premium pay cap is furloughed for part of a pay period. The employee's total basic pay will be reduced and, as a result, the *uncapped* amount of premium pay for the pay period will be reduced. ("Uncapped" refers to the amount of premium pay that would be payable if the biweekly premium pay cap did not apply.) If the employee was reaching the premium pay cap in a normal pay period and receiving less than the full amount of premium pay available under the given premium pay provision, the reduction of basic pay could allow otherwise blocked premium pay to become payable—even if the uncapped amount of premium pay is reduced. In fact, the employee could receive the same capped total pay while working less hours. In this case, a furlough would not save money and would actually reduce productivity.

For example, consider a GS-15, step 10, criminal investigator in Washington, DC. Criminal investigators are entitled to LEAP equal to 25% of the investigator's basic pay, subject to the biweekly premium pay cap, which can reduce or eliminate the LEAP payment. Normally, a GS-15, step 10, investigator would receive 0% LEAP since his/her adjusted rate of basic pay is already at the cap.

- Assume the investigator is entitled to a GS-15, step 10, locality rate of \$155,500 (EX-IV locality rate cap). The hourly rate is \$74.51 and the biweekly rate is \$5,960.80. Let's say this investigator is furloughed for 2 workdays. The investigator's basic pay would be reduced to \$4,768.64 (80-16=64 hours, 64 hours x \$74.51 = \$4,768.64).
- Uncapped LEAP for 80 hours of basic pay = 25% x \$5,960.80 = \$1,490.20
- Uncapped LEAP for 64 hours of basic pay = 25% x \$4,768.64 = \$1,192.16.
- Basic pay + uncapped LEAP = \$4,768.64 + \$1,192.16 = \$5,960.80, which equals the premium pay cap. So, the investigator receives the full 25% LEAP.
- In this example, the investigator's hours were reduced by 16 hours out of 80 (20%), leaving basic pay at 80% of the normal amount. 25% LEAP x 80% of normal basic pay = 20% of normal basic pay for an 80-hour biweekly pay period (which would have applied but for the furlough). Thus, the LEAP replaced the lost basic pay exactly.
  - Uncapped LEAP decreased from \$1,490.20 to \$1,192.16.
  - Capped LEAP increased from \$0 to \$1,192.16.
  - Basic pay decreased from \$5,960.80 to \$4,768.64, a reduction of \$1,192.16.



- Capped LEAP increase = Basic pay decrease.
- In this scenario, no budget savings would be realized by furloughing the investigator. The investigator would receive the same amount of pay while working fewer hours, resulting in a loss in productivity.

An agency is not required to furlough an employee when the workings of the premium pay cap prevent budget savings or provide limited savings relative to the loss in productivity. As a general rule, an agency may selectively furlough employees, but an explanation must be provided to employees in the advanced written proposal notice regarding the agency's justification as to why the administrative furlough is being implemented. The notice should contain an explanation of other employees who may not have been furloughed in that particular employee's same competitive level. (See 5 CFR 752.404(b)(2).)

For example, see the language below from Sample Notice 1—Furlough Proposal Due to Planned Reduction in Agency Expenditures (5 CFR Part 752):

If other employees in your competitive level (i.e. generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency or, (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, you must include them in this listing.]*

Based on the above, in deciding which employees should be subject to an administrative furlough, an agency should take into account the effects of the premium pay cap and should address in the furlough notice the exclusion of any employees who are affected by the premium pay cap.

**4. May Federal agencies require employees who are placed on administrative furlough for all or part of their basic workweek to work hours outside the basic workweek?**

**A.** Yes. An agency may assign work during hours outside the employee's basic workweek, subject to any applicable agency policies or collective bargaining agreements.

Employees are only in furlough status for designated furlough hours. Furlough status means the employee is placed in nonpay, nonduty status for certain 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). Thus, for full-time employees with a 40-hour basic workweek, furlough hours must be within the 40-hour basic workweek. For part-time employees, furlough hours must be within the employee's part-time basic workweek based on the part-time tour of duty established for leave usage purposes. For employees on an uncommon tour

of duty established under 5 CFR 630.210, furlough hours must be within the uncommon tour of duty. (See Question L.3.)

Note: During a [shutdown furlough](#) in response to a lapse in appropriations, an agency may not allow an employee (unless the employee is excepted or exempt from furlough) to perform work outside his or her basic workweek because it would create a budgetary obligation before an appropriation is made, which is barred by the Antideficiency Act (31 U.S.C. 1341 et seq.).

**5. How are employees compensated when they are required to work hours outside a basic workweek in which they have been furloughed?**

**A.** Employees who are required to work hours outside of a basic workweek during which they have been furloughed are compensated with their rate of basic pay if overtime thresholds have not been met, and/or with overtime pay or compensatory time off in lieu of overtime pay, as appropriate, once the thresholds have been met. Normally applicable overtime rules apply. Most employees are subject to a 40-hour weekly overtime threshold and an 8-hour daily overtime threshold. Leave without pay hours (such as furlough hours) do not count as hours of work in applying overtime thresholds.

As provided by 5 CFR 550.112(d)(1), an employee's hours of work outside of his or her basic workweek, but occurring in the same administrative workweek as furlough hours, must be substituted for furlough hours in pay computations, as long as the hours of work outside the basic workweek do not qualify for an overtime rate on the basis of exceeding 40 hours in a workweek. (Note: For hours that qualify for an overtime rate on the basis of exceeding 8 hours of work in a day, this substitution rule does not apply.) Those substituted hours are paid for at the rate applicable to hours in the employee's basic workweek. After all furlough hours during the employee's basic workweek are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 40 hours in a workweek.

Similarly, as provided by 5 CFR 550.112(d)(2), an employee's hours of work outside of his or daily tour of duty, but in the same workday as furlough hours, must be substituted for such furlough hours in pay computations. Those hours are paid for at the rate applicable to the employee's daily tour of duty. After all furlough hours during the employee's daily tour of duty are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 8 hours in a workday (for employees subject to the 8-hour daily overtime threshold).

The substitution rule in 5 CFR 550.112(d) does not change an employee's basic workweek or daily tour of duty. The hours worked outside the employee's basic workweek or daily tour of duty are substituted for the purpose of pay computations. Under the rule, substituted hours are paid at the rate "applicable to" hours in the basic workweek or daily tour of duty, even though the hours were worked outside those periods. This rule simply recognizes that leave without pay hours (such as furlough hours) do not count toward weekly and daily overtime thresholds.

## *Examples*

For purposes of these examples, an employee with a Monday–Friday, 8-hour per day work schedule is required to work overtime in a workweek during which he or she also has 1 day (8 hours) of designated furlough time off. (As described in Question L.1., agencies have discretion to implement an administrative furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures.)

- **Example A.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 hours on Saturday.

The 4 hours of work on Saturday are substituted for 4 of the furlough hours on Monday and paid at the rate applicable to the employee’s basic workweek (i.e., basic rate), consistent with 5 CFR 550.112(d)(1). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours of work on Saturday.

- **Example B.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 additional hours on Friday evening after completing his 8-hour daily tour of duty.

The additional 4 hours of work on Friday evening are beyond the 8-hour daily overtime pay threshold and the employee is entitled to an overtime rate for those hours based on 5 U.S.C. 5542(a). The substitution rule in 5 CFR 550.112(d)(1) bars paying an overtime rate for substitutable hours outside the basic workweek “on the basis of exceeding 40 hours in a workweek.” However, the 40-hour overtime pay threshold is not the basis for paying an overtime rate for the 4 additional hours of work on Friday evening. Since the 8-hour overtime pay threshold is being used, those 4 hours are not substituted for the Monday furlough hours in pay computations; thus, an overtime rate applies. If appropriate, the employee may receive compensatory time off in lieu of overtime pay for the 4 additional Friday hours under the normal rules governing compensatory time off.

- **Example C.** An employee is furloughed for 8 hours on Monday and works 8 hours per day on Tuesday–Friday. The employee is required to work 4 hours on Monday evening during hours outside of his daily tour of duty.

For purposes of pay computations, the 4 hours of work on Monday evening are substituted for 4 hours of furlough time off taken during the employee’s daily tour of duty on Monday and paid for at the rate applicable to the employee’s daily tour of duty (i.e., basic rate), consistent with 5 CFR 550.112(d)(2). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours worked on Monday evening because the hours are not overtime hours.

Note 1: The above scenarios assume the employee’s administrative workweek and workdays are based on calendar days. The administrative workweek can be based on any 24-hour period. (See 5 CFR 610.102.) That would affect application of 5 CFR 550.112(d), which is

based on the applicable “administrative workweek” and “workday.”

Note 2: For employees on flexible or compressed work schedules, the “basic work requirement” is generally equivalent to the “basic workweek.” However, no hour within the basic work requirement can be an overtime hour, even if those basic work requirement hours exceed 8 hours of work in a day or 40 hours of work in a week. For example, if an employee on a flexible or compressed work schedule has a 9-hour basic work requirement on a given day, only hours of work outside the 9-hour basic work requirement could be overtime hours. In other words, while hours of work (including any paid time off but excluding hours in nonpay status) within the basic work requirement count as hours of work in applying the 8-hour daily and 40-hour weekly overtime thresholds, only hours of work outside the basic work requirement may receive an overtime rate. Hours outside the daily or weekly basic work requirement are substituted, as appropriate, for furlough hours under the rules in 5 CFR 550.112(d). For example, if an employee is placed in furlough status during a 9-hour daily basic work requirement and works 4 hours outside the basic work requirement on that same day, those 4 hours would be substituted and paid at the rate for basic work requirement hours. An employee on a flexible work schedule may have the option to earn credit hours by working hours outside the basic work requirement. The rules governing credit hours remain applicable in the context of an administrative furlough. See Questions C.4., D.6., and E.1. for additional information on earning and using credit hours.

**6. May an employee on a flexible work schedule earn credit hours by working during a week or on a day when the employee is furloughed?**

**A.** During a week or on a day when an employee is furloughed during certain basic work requirement hours, the employee may earn credit hours by electing to work in excess of his or her basic work requirement, subject to all legal requirements and applicable agency policies or collective bargaining agreements. An employee may not earn credit hours by working during designated furlough hours within the employee’s basic work requirement. (See Question C.4.) Also, an employee may not use previously earned credit hours during furlough hours. (See Question E.1.)

The substitution rule in 5 CFR 550.112 may not be applied to credit hours—that is, the rule cannot be used to convert earned credit hours into paid hours that substitute for furlough hours in pay computations.

**E. Leave and Other Time Off**

**1. 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.

**2. Can agencies furlough employees who are on approved leave without pay (LWOP) during a time when administrative furloughs are being conducted for other employees?**

**A.** Agencies have discretion in determining whether to furlough employees who are in LWOP status, since both furloughs and LWOP are periods of nonpay status. Employees may already be scheduled for LWOP for a variety of reasons and for various lengths of time on either a continuous or discontinuous basis. An employee's LWOP may or may not fully encompass the period during which administrative furloughs are being conducted for other employees in the same organization. For example, for one employee, a continuous 1-year period of leave without pay to accompany a military spouse overseas may encompass the entire period during which administrative furloughs are being conducted in an employee's organization, while another employee's continuous LWOP may end during that period. Other employees may be scheduled to take LWOP on a regular but discontinuous basis under the Family and Medical Leave Act. (See Question E.3.)

Agencies are responsible for determining (1) whether employees already scheduled for LWOP during a period when administrative furloughs are being conducted will be subject to furlough and (2) the hours of furlough required of such employees. If an agency decides to place an employee in furlough status during hours that were originally scheduled to be LWOP, all applicable procedural requirements must be met, including a furlough notice.

**3. May an employee take LWOP under the Family and Medical Leave Act (FMLA) during a time when administrative furloughs are being conducted for other employees?**

**A.** Yes. An employee may take LWOP under FMLA during a time when administrative furloughs are being conducted for other employees in the same organization, subject to the conditions in 5 U.S.C. 6382. (See Question E.2.) However, if an employee is placed in furlough status during hours that were previously scheduled to be LWOP under FMLA, those furlough hours will no longer be considered to be LWOP under FMLA. Furlough hours will not count toward the employee's 12-week FMLA leave entitlement. An employee may not later substitute paid leave for furlough hours.

As explained in Question E.2., agencies are responsible for determining the extent to which employees with scheduled LWOP (including LWOP under FMLA) are placed in furlough status. If employees are placed in furlough status instead of LWOP under FMLA, all applicable procedural requirements must be met, including a furlough notice.

**4. Does a furlough affect the accrual of annual leave and sick leave?**

**A.** If an employee is furloughed (i.e., placed in nonpay status) for part of a biweekly pay period, the employee's leave accrual will generally not be affected for that pay period.

However, the accumulation of nonpay status hours during a leave year can affect the accrual of annual leave and sick leave over a period of time. (See 5 CFR 630.208 and Notes 1 and 2 below.) For example, when a full-time employee with an 80-hour biweekly tour of duty

accumulates a total of 80 hours of nonpay status from the beginning of the leave year (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period in which that 80-hour accumulation is reached. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached. At the end of the leave year, any accumulation of nonpay status hours of less than 80 hours is zeroed out so that the accumulation of nonpay status hours for the next leave year starts at zero.

For part-time employees, the rule blocking accrual of leave based on the accumulation of nonpay status hours (5 CFR 630.208) does not apply. Instead, leave accrual for part-time employees is prorated based on hours in a pay status in each pay period; thus, time in nonpay status reduces leave accrual in each pay period containing such time (5 CFR 630.303 and 5 U.S.C. 6307).

Also, please see OPM's fact sheet on the [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\) on Federal Benefits and Programs](#), which has a section entitled, "Accrual of annual and sick leave."

Note 1: The term "nonpay status" refers to period during which an employee is absent from his or her tour of duty established for leave usage purposes and receives no pay for such absence. Furlough is one type of nonpay status.

Note 2: The term "leave year" is defined as the period beginning on the first day of the first full biweekly pay period in a calendar year and ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year. (For example, for employees on the standard biweekly payroll cycle, the 2013 leave year is January 13, 2013, through January 11, 2014.) (See fact sheet at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-year-beginning-and-ending-dates/>.)

Note 3: For full-time employees with an uncommon tour of duty under 5 CFR 630.210, the accumulation limit used in applying 5 CFR 630.208 is the number of hours in the uncommon tour of duty for a biweekly pay period.

## **F. Holidays**

### **1. 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.)

2. **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.)

3. **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.

## **G. Benefits**

1. **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/healthcare-insurance/healthcare/reference-materials/reference/leave-without-pay-status-and-insufficient-pay/>). 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.

2. **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.

**3. 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/healthcare-insurance/healthcare/reference-materials/reference/leave-without-pay-status-and-insufficient-pay/>).

**4. Will an employee continue 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.

**5. 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, FLTCIP 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.



## 6. How does a furlough affect retirement annuity benefits?

A. Generally, furloughs will not affect an annuity benefit under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).

The amount of a CSRS or FERS annuity paid by OPM is based primarily on the amount of creditable service an employee performs and the employee's high-3 average salary. Both CSRS and FERS allow service credit for up to 6 months of nonpay status in any calendar year. If a furlough period does not cause an employee to be in a nonpay status for more than 6 months in a calendar year, the furlough period will be included as creditable service in determining the employee's total creditable service used in the annuity computation. If the total amount of time an employee spends in a nonpay status in a calendar year exceeds 6 months, the amount of nonpay status in excess of 6 months in the calendar year will not be creditable for retirement purposes.

The high-3 average salary used to compute CSRS and FERS annuities is the largest annual rate resulting from averaging an employee's *rates of basic pay* in effect over any period of 3 consecutive years of creditable civilian service, with each *rate* weighted by the length of time it was in effect. If a period of nonpay status (such as a furlough) that is creditable for retirement occurs during the 3-year period used to compute the high-3 average salary, the loss of actual pay during that nonpay status period generally would have no effect on the high-3 computation. The basic pay rate in effect during that nonpay status period would be used in the high-3 average salary calculation. For example, if an employee whose annual rate of basic pay is \$85,000 is placed in a furlough status for two weeks and that 2-week period falls in the employee's average salary period, that 2-week furlough period will be credited in the high-3 average salary calculation using the \$85,000 annual rate of basic pay that was in effect during the furlough period. In this example, the loss of actual pay (or earnings) during that period is not material in the high-3 average salary calculation.

Basic pay for retirement includes locality pay and certain types of additional pay, such as law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty pay, firefighter pay (annualized salary), and market pay for physicians. These types of additional pay are included in the basic pay used to calculate the high-3 average salary during periods of creditable nonpay status as long as the authorization for the payments remains in effect.

Other additional types of basic pay, however, including night shift differential and environmental differential for wage grade employees, and certain overtime pay for customs officers are included in the average salary computation only when an employee has received that type of pay.

## **H. Employee Assistance**

### **1. Are employees entitled to unemployment compensation while on furlough?**

**A.** It is possible that furloughed employees may become eligible for unemployment compensation. The various 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. Agencies or employees should submit questions to the appropriate State (or the District of Columbia, Puerto Rico, or the Virgin Islands) office. The Department of Labor (DOL) website provides links to individual State offices at <http://www.servicelocator.org/OWSLinks.asp>.

For additional information on Unemployment Compensation for Federal Employees (UCFE), see DOL's UCFE webpage at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>, fact sheet at <http://www.dol.gov/sequestration/ucfe.pdf>, and frequently asked questions at <http://www.dol.gov/sequestration/ucfe-faqs.pdf>.

### **2. What resources are available if a Federal employee needs financial assistance during a furlough period?**

**A.** Some agency employee assistance programs (EAPs) 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>). The Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at [www.tsp.gov/PDF/formspubs/oc95-4.pdf](http://www.tsp.gov/PDF/formspubs/oc95-4.pdf), and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

### **3. Can I take a TSP loan while I'm furloughed? What is the effect of an administrative furlough on Thrift Savings Plan (TSP) contributions, investments, and loans?**

**A.** Agencies and employees should refer to the TSP website (<http://www.tsp.gov>) or contact their agency representative for information. Specifically, the Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at [www.tsp.gov/PDF/formspubs/oc95-4.pdf](http://www.tsp.gov/PDF/formspubs/oc95-4.pdf), and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

## **I. Service Credit for Various Purposes**

### **1. 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.

### **2. 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/policy-data-oversight/pay-leave/leave-administration/fact-sheets/effect-of-extended-leave-without-pay-lwop-or-other-nonpay-status-on-federal-benefits-and-programs/>.

## **J. Federal Employees on Military Duty**

### **1. 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.

### **2. 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).)

## **K. Injury While on Furlough**

### **1. 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.

## **L. Scheduling Furlough Time Off**

### **1. How should agencies schedule administrative furlough time off? Must all agencies follow the same procedures for furloughing employees?**

**A.** An administrative furlough will impact each agency differently depending on the extent of the agency's budget reduction. 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.

### **2. How should agencies 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, agencies 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.

### **3. How should agencies 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.** Agencies must enact furloughs in a manner that reduces operation risks and minimizes impacts on agency core mission in service of the American people, but should strive to impact employees in an equitable manner regardless of work schedule. Furloughs of part-time or uncommon tour of duty employees must comply with the procedures of 5 CFR part 752 or part 351, as applicable, if the employees are otherwise covered.

In determining furloughs for part-time employees, agencies should consider whether or not to prorate furlough hours requirements based on the number of scheduled part-time work hours relative to a full-time work schedule of 80 hours in a biweekly pay period to achieve the same percentage pay reduction for both full-time and part-time employees. For example, a part-time work schedule of 64 hours per biweekly 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 to derive the appropriate number of furlough hours for the part-time employee. Thus, if a full-time employee were required to be furloughed for 40 hours, a part-time employee with a 64-hour biweekly tour could be furloughed for 32 hours ( $40 \times .80 = 32$ ).

In the case of employees with an uncommon tour of duty, such as firefighters and paramedics, agencies should consider the impact that a furlough has on regular pay (in percentage terms), rather than the impact on hours (in percentage terms). An uncommon tour of duty is a tour of duty in excess of 80 hours in a biweekly pay period that is established for the purpose of charging leave. Thus, it includes overtime hours for which an employee receives regular overtime pay or standby duty premium pay. (See definition of “uncommon tour of duty” in 5 CFR 630.201 and 630.210.) Generally, for employees on an uncommon tour of duty, furlough hours will reduce regular pay by a greater percentage than the percentage reduction in hours. In connection with the furlough of employees with an uncommon tour of duty, agencies should consider whether or not the number of furlough hours should be set in a manner that achieves the same percentage pay reduction experienced by full-time employees with an 80-hour biweekly tour of duty who are covered by the same furlough policy.

**4. How should agencies 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 with agencies. 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.

**M. Procedures—22 Workdays or Less**

**1. May an agency 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, agencies 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.

## **2. How is an administrative furlough documented?**

**A.** Agencies 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 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.

## **3. 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.)

**4. What procedural rights would apply for an administrative furlough of 30 calendar days 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. (See Sample Notice 1 for proposal to furlough and Sample Notice 2 for decision to furlough.)
- 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.

**5. What procedures are applicable to members of the Senior Executive Service affected by an administrative furlough of 30 calendar days 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.

**6. 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; however, agencies should ensure that all administrative procedures required by negotiated agreements or internal personnel policies are followed, subject to any exceptions to those procedures that would apply in the event of an administrative furlough.

**7. How do agencies implement an administrative furlough for administrative law judges?**

A. 5 U.S.C. 7521 provides that adverse action furloughs of 30 calendar days or less may be taken against an administrative law judge "only for good cause established and determined by



the Merit Systems Protection Board on the record after opportunity for hearing before the Board.” The Merit Systems Protection Board has adopted procedures for implementing such an action, which are described in 5 CFR 1201.137-141.

**8. 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.

**9. 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.

**10. May an agency provide an employee electronic notice of a furlough action?**

A. Agencies that issue furlough notices should consult with their respective General Counsels to ensure each step of the process is consistent with regulatory and legal requirements. If an agency determines to electronically notify affected employees of a furlough action, OPM recommends that the agency include each employee’s name, address, and/or e-mail address on both the proposal and decision notifications so that it is clear that an employee is receiving personal notification. Agencies should also consider including in the body of the electronic correspondence, the requirement that the employee provide an email acknowledgement of receipt. If an agency doesn’t receive a requested acknowledgement of receipt of an e-mail notification, it should consider delivering a paper copy of the proposal and/or decision notifications to the employee at his or her home address by registered mail with a return receipt requested. Similarly, agencies must deliver hard copy furlough notices to those employees without agency email access.

Additionally, OPM recommends that agencies consider informing employees in advance of when and how the furlough notices will be issued and providing a contact person who can confirm whether or not an employee is subject to the furlough and answer questions.

Finally, agencies with bargaining unit employees are reminded that they must provide notice and opportunity to bargain over negotiable procedures and appropriate arrangements to any unions representing their employees.

**N. Procedures—More than 22 Workdays (Extended Furlough)**

**1. 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).

**2. 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.

**3. 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 4).

**4. 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.

**5. 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.)

**6. 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.

**7. 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.

**8. 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.

**9. 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.

**10. 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).

**11. 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.

**12. 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 of 5 CFR part 351 during an administrative furlough?**

A. Extended furlough procedures of 5 CFR part 351 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.

**13. 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/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-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 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.

**14. 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).

**15. How do agencies administratively furlough administrative law judges for more than 30 calendar days (or more than 22 workdays)?**

**A.** Administrative law judges are subject to the procedures in 5 CFR part 351. However, since judges are not given performance ratings, the provisions dealing with the effect of performance ratings on retention standing would not apply.

**16. 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.

**17. 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).)

**18. 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.

**19. 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.

**20. 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).

**21. 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.

## **O. Labor Management Relations Implications**

**1. When an agency is required to effect an administrative furlough, what is the agency’s obligation to bargain?**

A. The decisions whether to furlough employees and which activities to except from a furlough are management rights that are not subject to bargaining. See 5 U.S.C. 7106(a).

However, when an agency determines that an administrative furlough is necessary, agencies have a duty to notify their exclusive representatives, if any, prior to initiating and implementing any furlough actions. Upon request, agencies must bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already covered by a collective bargaining agreement.

Agencies should be aware that their collective bargaining agreements may also contain provisions with respect to the time frame within which to provide the labor organization notice of a change in conditions of employment. It is advisable to check the agency's individual labor agreements for applicable notice provisions, and for agencies to comply with those provisions.

Agency contracts may also contain provisions regarding adverse actions and reductions in force (RIF) with which agencies must comply in giving notice to bargaining unit employees of pending furloughs. It is advisable to check the agency's individual labor agreements for applicable adverse action and reduction in force notice provisions, and to comply with those provisions.

However, in the event that agencies are required to absorb unexpected substantial budget cuts during a short-term continuing resolution or because of the limited time remaining in the fiscal year to absorb these unexpected budget cuts, then agencies might be required to furlough without delay because the cuts must be absorbed during the term of the continuing resolution or remainder of the fiscal year and cannot be deferred until later in the year or into a new budget year. In this event, OPM regulation 5 CFR 752.404(d)(2) states that written notice of furlough to individual employees and opportunity to be heard are not required because of unforeseeable circumstances. Unforeseeable circumstances could include unexpected cuts by the Congress to an agency's budget late in the fiscal year. This regulation does not apply to the statutory requirement that agencies provide appropriate notice to labor organizations of changes in conditions of employment.

**1a. Must agencies complete collective bargaining prior to issuing any furlough notices to bargaining unit employees?**

**A.** To the extent required by law, agencies must satisfy applicable collective bargaining obligations prior to issuing any furlough notices to bargaining unit employees. Issuance of a furlough notice itself has been found to constitute a change in employees' conditions of employment, which means that unless the matter is already "covered by" a collective bargaining agreement, an agency must provide a union with advance notice of the proposed change (e.g. furlough notices being sent to employees) and an opportunity to bargain over any aspects of the change that are negotiable.

**2. May an agency effect an administrative furlough for employees in a bargaining unit before negotiations are completed?**

**A.** If the parties bargain to impasse and the union does not invoke the services of the Federal

Service Impasses Panel in a timely manner, the agency may furlough employees without further delay provided the agency gives the union adequate notice of its intent to implement its last bargaining offer on a specific date. If the union invokes the services of the Federal Service Impasses Panel by that date, the agency may not furlough employees unless it can show it is necessary to do so without further delay.

Agencies required to absorb substantial budget cuts during a short term continuing resolution or because of the limited time remaining in the fiscal year to absorb those cuts might be required to furlough without further delay because the budget cuts must be absorbed during the term of the continuing resolution or the current fiscal year and cannot be deferred until later in the year or into a new budget year. However, in the case of cuts that can be absorbed over the course of the fiscal year, it would be difficult to demonstrate that the furloughs could not be delayed pending resolution of the bargaining impasses. If bargaining is not completed and the agency must furlough employees, the agency should continue to bargain and, if possible, implement any agreement retroactively. We caution agencies that this should be a last resort approach. All attempts should be made to complete the collective bargaining process first, if possible.

- 3. While no decision has been made to administratively furlough employees, our union has submitted a midterm bargaining request on furlough procedures regarding any possible future administrative furlough. Our collective bargaining agreement is silent on furlough procedures and the union is invoking its right to initiate mid-term bargaining on matters not covered by the agreement. Do we have an obligation to bargain when no decision has been made to furlough employees?**

**A.** Even though no decision has been made to furlough employees, it is possible you have a duty to bargain regarding the union initiated mid-term bargaining request, assuming the matter is not already covered by your collective bargaining agreement. The law requires an agency to bargain during the term of a collective bargaining agreement on negotiable union-initiated proposals concerning matters that are not expressly contained in, or otherwise covered by, the collective bargaining agreement, unless the union has waived its right to bargain about the subject matter involved. With this in mind, you will have to evaluate the circumstances of your situation to determine whether you have a duty to bargain on furlough procedures.

- 4. Along with a bargaining request on furloughs, our union has submitted an information request under 5 U.S.C. 7114 seeking information such as the agency administrative furlough plan and a list of employees expected to be furloughed, and whether or not the furloughs are planned to be continuous or discontinuous. Do we have to provide this information?**

**A.** It depends. An agency is required to provide data that is normally maintained, reasonably available, and necessary to perform the representational duties of a union. A union requesting information must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to



which the union will put the information and the connection between those uses and the union's representational responsibilities under the statute. The union must establish that the requested information is required in order for the union to adequately represent its members. An agency denying a request for information must assert and establish any countervailing anti-disclosure interests. An agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, you will have to evaluate the circumstances of your situation to determine whether you should provide the requested information.

**5. If a bargaining unit employee decides to challenge a discontinuous administrative furlough, what is the timeframe for the employee to file a grievance under the negotiated grievance procedure (NGP)?**

A. The time limits and other procedures applicable to bargaining unit employees are spelled out in applicable provisions of negotiated agreements.

**6. May a manager or supervisor have a meeting with employees in a bargaining unit to discuss an administrative furlough without a union representative present?**

A. The law grants a union the right to be represented at certain meetings between managers and one or more bargaining unit employees if the meeting concerns issues such as personnel policies or practices or other general conditions of employment. Under the law, this meeting is referred to as a "formal discussion." With this in mind, you will have to evaluate the circumstances of your situation to determine whether the meeting constitutes a formal discussion. If you have determined the meeting is a formal discussion, advance notice of the meeting must be provided to the union. See 5 U.S.C. 7114(a)(2)(A).

**P. Travel**

**1. Must agencies cover travel expenses during a furlough day, if an employee's travel status requires his/her stay to include that furlough day?**

A. Yes. Agencies must provide per diem or actual expenses to employees whose travel status requires a stay that includes a furlough day.

**Sample Notice 1**  
**Furlough Proposal Due to Planned Reduction In Agency Expenditures (5 CFR Part 752)**

*[Note: This is the advance written notice required by 5 U.S.C. 7513, when an agency effects an administrative furlough in order to absorb reductions in funding over a period of time. This sample has been written for the scenario where an agency chooses to furlough on discontinuous days. Agencies who choose to furlough on a continuous-day basis should amend the sample accordingly.]*

This memorandum notifies you that [agency name] proposes to furlough you no earlier than 30 days from receipt of this notice. The furlough is being proposed under the authority of 5 CFR part 752, subpart D [briefly explain reason for furlough, e.g., because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding and the present rate of spending when annualized will result in an expenditure in excess of our authorized budget]. This furlough is proposed to promote the efficiency of the service by avoiding a deficit of funds in FY [year].

If other employees in your competitive level (i.e., generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous (intermittent) days, beginning [date], through approximately [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time off will be prorated, based on your work schedule.

*[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]*

2. Due to the uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.
4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

At this time, we do not reasonably anticipate the need for furlough beyond 22 workdays. However, should additional furlough days be necessary, employees will be given another notice. We recognize the difficult personal financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

You will be allowed seven calendar days from receipt of this letter to respond orally and/or in writing, to review the supporting material, and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose. If you are in active duty status, you and/or your representative, if an agency employee, will be allowed up to four hours of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. The deciding official has designated representatives to hear oral replies in his/her behalf. To arrange for an oral reply or review the supporting materials, please contact the appropriate individuals listed below:

[contact names, phone numbers, and email addresses.]

Your written reply should be mailed to the deciding official, Mr./Ms.[ name and title],[address] or may be delivered to [address/room number].

A final written decision, including an explanation of the specific reasons for the action taken, will be given to you as soon as possible after the seven days allowed for your reply.

No decision to furlough you has been made or will be made until full consideration is given to your reply.

\_\_\_\_\_  
Proposing Official      Date

I acknowledge receipt of this notice.

\_\_\_\_\_  
Employee's signature      Date

**Sample Notice 2**  
**Notice of Decision to Furlough (5 CFR Part 752)**

By written notice of [date], you were notified of a proposal to furlough you pursuant to the authority in 5 CFR part 752, subpart D.

All written and oral replies received in response to that notice have been reviewed and carefully considered. I have determined that all of the reasons for the proposed furlough, as stated in the notice of the proposal, remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning [date] through [date].

In accordance with the procedures and conditions outlined in the notice of proposal, dated [insert date], if you are a full-time employee, you will be furloughed for no more than [number] hours in each of the pay periods or parts thereof, between [date] and [date]. The maximum furlough time for full-time employees will be no more than 22 workdays, or 176 hours. For full-time employees, this maximum is based on a regular work schedule of 80 hours per pay period. If you are a part-time employee, the number of hours required for furlough will be prorated according to your specific work schedule.

Your supervisor will inform you of the amount of furlough time off required prior to each pay period. To schedule your furlough time off, contact your supervisor.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, but must remain away from your workplace.

If you have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment you may appeal this action to the Merit Systems Protection Board (MSPB). If you are a preference eligible employee in an excepted service appointment you may appeal to the MSPB if you have completed one year of current continuous service in the same position or positions similar to the one you now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. You have the right to be represented in this matter by an attorney or other person you may choose.

If you have the right of appeal and wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB

website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [*identify appropriate regional office*]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [*contact information including the official's mailing address, email address, telephone and fax number.*]

If you are a bargaining unit employee, you may grieve this action in accordance with the applicable negotiated agreement [*negotiated agreement citation*] or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. Your election to proceed under one process will be considered made when you timely file a grievance in writing, or timely file a notice of appeal, whichever event occurs first. To obtain information on filing a grievance under the negotiated grievance procedure, contact [*name of exclusive union representative*].

*[Under the Board's October 2012 regulations, notices must also include:*

*Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:*

- (1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;*
- (2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;*
- (3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and*
- (4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]*

*Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]*

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*].

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision.

\_\_\_\_\_  
Employee's signature

\_\_\_\_\_  
Date

### **Sample Notice 3** **Notice of Career SES Furlough (5 CFR Part 359)**

*This is a sample of the 30 day advance written notice of furlough required for career SES appointees by 5 CFR part 359, subpart H. It should be used only as an illustration in preparing an agency's own notice, which must be based on specific circumstances in the agency. This sample communicates the agency's decision to implement an administrative furlough on discontinuous days (i.e., 22 workdays or less). Agencies choosing to furlough on a continuous-day basis (i.e., 30 calendar days or less) should amend the sample accordingly.*

This memorandum notifies you that [agency name] intends to furlough you no earlier than 30 calendar days from receipt of this notice. This furlough is being taken pursuant to the authority in 5 CFR part 359, subpart H [briefly explain the reason for furlough, e.g., "because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding, and the present rate of spending, when annualized, will result in an expenditure in excess of our authorized budget"]. Although many actions are being taken within the agency to curtail spending, this furlough is being taken to avoid a deficit of funds in FY [year].

If other employees in your organization are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous [intermittent] days, beginning [date], through [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time will be prorated, based on your work schedule.

*[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]*

2. Due to uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.

4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer but must remain away from your workplace. At this time, we do not reasonably anticipate the need for furlough of more than 22 workdays; however, should additional days be necessary to meet this agency's financial obligations, affected appointees will be given another notice consistent with the provisions of 5 CFR part 359 subpart H.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359 subpart H or this agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board (MSPB). Career SES appointees may inspect the regulations and records pertinent to this action at the following location [identify location and times, as appropriate].

If you wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [contact information including the official's mailing address, email address, telephone and fax number.] You also have the right to be represented in this matter by an attorney or other person you may choose.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

---

Issuing Official



I acknowledge receipt of this notice.

\_\_\_\_\_  
Employee's signature

\_\_\_\_\_  
Date

*[Note: For a probationary SES employee, an agency should advise that, as provided in 5 CFR 317.503(d)(2): 1) time in a nonpay status (e.g., LWOP and furlough) while in an SES position is credited up to a total of 30 calendar days (or 22 workdays) toward completion of the SES probationary period; and 2) after 30 calendar days, the probationary period is extended by adding time to it equal to that served in a nonpay status.]*

**Sample Notice 4**  
**Furlough Due to Planned Reduction in Agency Expenditures (5 CFR Part 351)**  
**More Than 22 Discontinuous Workdays**

*[Note: This is a sample written notice for a furlough of more than 22 discontinuous days under the reduction in force procedures of 5 CFR 351 (implementing 5 U.S.C. 3502(d)) when an agency effects an administrative furlough to absorb funding reductions. Agencies choosing to furlough on a continuous basis for more than 90 calendar days may have to conduct full reduction in force procedures (, such as round I competition to remain in the competitive level and round II to determine assignment rights to another position).]*

SUBJECT: Specific Notice of Furlough under Reduction in Force Procedures

I regret to inform you that [agency name] will furlough you for 25 discontinuous workdays between [date] and [date]. You will be placed in a non-duty and non-pay status on your designated furlough days. You will continue in your position of record on your non-furlough days.

[Insert the reason for furlough, e.g., The [agency name] has received a 20 percent reduction in salaries and expenses funding. At the present rate of spending, this reduction will result in an expenditure in excess of our authorized budget. Although we have taken other cost-cutting measures, furlough is required to avoid a deficit of funds in FY [year]. You are included in the furlough because you occupy a position that is directly affected by the funding reduction.]

This action is taken in accordance with the reduction in force (RIF) regulations in title 5, Code of Federal Regulations, part 351. Importantly though, while this action is taken in accordance with RIF regulations, a furlough is a temporary action, not a permanent separation from service. We have determined that assigning you to a different position for [number of days] per pay period would result in an undue interruption to required work. Therefore, under 5 CFR 351.607, you do not have a right to another position in your competitive level or within your competitive area.

Your retention standing as of the first furlough date is as follows:

- Competitive area:
- Service [*i.e., competitive or excepted*]:
- Position title, series, and grade:
- Competitive level:
- Tenure and subgroup:
- Service computation date (SCD):
- Three most recent performance rating with years credited:
- Adjusted SCD (SCD-RIF):

Your furlough will be on discontinuous (intermittent) days, beginning [date] through [date]. As a full-time employee, you will be furloughed 25 workdays or 200 work hours. You may request a specific schedule for your discontinuous furlough days or switch your designated furlough day(s)

within a pay period through a written request to your supervisor. We will consider all change requests with approvals based on position function, workload considerations, and employee retention standing.

*[If part-time: As a part-time employee with a work schedule of [xx] hours per pay period, your prorated furlough is XX work hours to be served within your designated work schedule.]*

Annual, sick, court, or military leave which was approved for a designated furlough day is hereby cancelled. However, you may request that the furlough day be rescheduled if you wish to use leave as approved.

Attachment 1 has general information about leave and benefits during a furlough. Attachment 2 has information on [*State*] unemployment insurance program.

At this time, we do not reasonably anticipate the need for furlough beyond 25 workdays. However, should additional furlough days be necessary, you will be issued another notice.

You may review the information related to your furlough action. Copies of retention registers, RIF regulations, and related records are available in the Human Resources Office. You may make an appointment to review this material by contacting [*HRO name and contact information*].

You may appeal this action to the Merit Systems Protection Board (MSPB). You may file an appeal within 30 calendar days after the effective date of your first furlough day. If you do not file an appeal within this 30-day time limit, the MSPB may dismiss it unless you can show good cause for the delay. A copy of the appeal form and the MSPB's regulations are available on the Board's website at [www.mspb.gov](http://www.mspb.gov). You should send your appeal to the MSPB office at [*appropriate office address*]. The Board will send an Acknowledgment Order and copy of your appeal to [*contact information including the official's mailing address, email address, telephone and fax number.*] [*Note: MSPB appeal rights for furloughs apply to non-bargaining unit employees or bargaining unit employees where the negotiated grievance procedure excludes furloughs from coverage.*]

*[If the employee is a bargaining unit employee and furloughs are covered under the negotiated grievance procedure: You may grieve this action in accordance with the applicable negotiated agreement [negotiated agreement citation] in accordance with the procedures outlined in the agreement. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].*

*[Under the Board's October 2012 regulations, notices must also include:*

*Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:*

- (1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;*
- (2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;*
- (3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and*
- (4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]*

*Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]*

This furlough under the RIF regulations does not reflect on your service, performance, or conduct. It is taken solely for the reason stated in this notice.

We recognize the difficult personal financial implications of any furlough, no matter its length. We will make every effort to keep you informed as additional information regarding agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*].

\_\_\_\_\_  
Agency Official Signature

\_\_\_\_\_  
Date

Attachments

I acknowledge receipt of this notice.

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Employee signature

\_\_\_\_\_  
Date

**Table of Recent Changes to Guidance for Administrative Furloughs**

<b>Date</b>	<b>Question</b>	<b>Change</b>	<b>Description</b>
<b>March 8, 2013</b>	B.1.	Revised	Factors used in determining coverage of furlough
	B.6.	Revised	Treatment of detailees
	B.8.	New	Volunteering for leave without pay
	H.2.	Revised	Resources for Thrift Savings Plan guidance
	H.3.	New	Resources for Thrift Savings Plan guidance
	L.3.	Revised	Scheduling furlough time off for employees with part-time or uncommon tours of duty
	M.10.	New	Providing electronic notice of a furlough action
<b>March 5, 2013</b>	B.5.	New	Treatment of detailees
	B.6.	New	Treatment of detailees
	B.7.	New	Treatment of detailees
	E.2.	Revised	Treatment of employees on approved leave without pay
	E.3.	Revised	Taking leave without pay under the Family and Medical Leave Act (FMLA)
	H.1.	Revised	Resources for unemployment compensation guidance
	O.1.	Revised	Collective bargaining obligations
	O.1a.	New	Satisfying collective bargaining obligations before issuing furlough notices
<b>February 27, 2013</b>	P.1.	New	Travel expenses during a furlough
<b>February 26, 2013</b>	E.4.	New	Accrual of annual and sick leave
	G.6.	New	Retirement annuity benefits
<b>February 20, 2013</b>	D.4.	New	Assigning work hours outside the basic workweek
	D.5.	New	Compensating employees who work hours outside the basic workweek
	D.6.	New	Earning credit hours



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