Defense Civilian Personnel Advisory Services

Furlough 2013
Questions and Answers

REFERENCE

1. Office of Personnel Management (OPM) *Guidance and Information on Furloughs*

INTRODUCTION

These questions and answers augment those provided in the Office of Personnel Management's *Guidance and Information on Furloughs*, which can be found at: http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/. The questions and answers are specific to the issues raised by this furlough and may not necessarily be the same for any future furloughs.

FURLOUGH – GENERAL ADMINISTRATION

1. What is a furlough?

A furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons. For most employees, there are two basic categories of furloughs, an "emergency" furlough or a "save money" furlough, each involving different procedures.

2. Under what authority is a furlough taken?

There are three legal authorities under which a furlough can be taken. Furloughs of 30 calendar days or less are covered under adverse action procedures found in Subpart D of 5 Code of Federal Regulations (CFR) 752. Furloughs of more than 30 calendar days are covered under reduction in force (RIF) procedures found in Subpart B of 5 CFR 351. Furloughs for Senior Executive Service members are covered in Subpart H of 5 CFR Part 359.

3. How is an employee notified of a furlough?

Employees are notified of a furlough in writing by memorandum that is either personally hand-delivered to the employee, or if not available in person, is mailed by certified/return receipt to their home address of record. If required to mail a notice to an employee, the certified/return receipt mail option provides proof of mailing that is a legally acceptable means of delivery.

4. How is an employee told to come back?

For planned furloughs with a specific duration, the written furlough notice instructs employees of the date when the employee is expected to return to duty. For unplanned furloughs such as those that result from a lapse in appropriations, employees are instructed to listen to public broadcasts, including checking official Web sites, such as the Office of Personnel Management, for information pertaining to resolution of the reason

that prompted the unplanned furlough (such as the passing of a continuing resolution or an approval of an appropriation), after which the employee is expected to return to duty on the next regular duty day.

5. How is time on a furlough documented?

A Standard Form-50 (SF-50), "Notification of Personnel Action," must be prepared for each individual subject to furlough. A furlough of 30 calendar days or less is processed using Nature of Action 472 and Legal Authority Code VAJ (5 United States Code (U.S.C.). 75). A return-to-duty SF-50 will also be necessary (Chapters 15 and 16 of The Guide to Processing Personnel Actions (GPPA).

6. What effect will a furlough have on the calculation of an employee's creditable service?

Time spent in a non-pay status (including furlough) is credited as follows:

- **Career tenure:** The first 30 calendar days of each non-pay period is creditable service. (5 CFR 315.201(b)(4)(ii)(A))
- **Probationary period:** An aggregate of 22 workdays in a non-pay status is creditable service. (5 CFR 315.802(c))
- **Qualification standards**: There is no requirement to extend qualifying periods by the amount of non-pay status. However, agencies may require such extensions in order to meet training requirements or ability to perform. (5 CFR 335.103(b)(3), OPM Qualification Standards, General Policies and Instructions, part E.3.(f))
- **Time-in-Grade:** Non-pay status is creditable service. (5 CFR 300.605(a))
- **Service Computation Date-LEAVE:** Up to six months in non-pay status is creditable. (5 U.S.C. 6303(a))
- **Service creditable for within-grade-increases:-**The time in a non-pay status that is creditable is determined by the employee's current step (See 5 CFR 531.406(b) for GS & 532.417(c)(2) for FWS)

7. Who makes the call regarding employees exempt from a furlough?

Office of Management and Budget (OMB) Bulletin 80-14, dated August 28, 1980 and subsequent amendments require all agencies to maintain contingency plans for an orderly shutdown in the event of an appropriations hiatus. OMB provided guidance on activities agencies may continue (e.g. national security, protection of life and property, activities necessary for the orderly phase down of other activities). Other activities that are not funded with annual appropriations (e.g., Non-Appropriated Funds (NAF)) may also be exempt.

The guidance leaves to the agency heads, the authority to make determinations regarding exempt activities, using the normal agency process for resolution of

issues of policy or law. Questions that cannot be answered by an agency should be addressed to OMB or Office of Legal Counsel of the Department of Justice for unresolved questions relative to the Anti-deficiency Act.

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8. What effect does a furlough have on time limited appointments or promotions?

Furloughs do not extend the not-to-exceed date of time limited appointments or promotions. Agencies have the option to separate temporary employees rather than including them in the furlough.

9. What happens to time limited appointments that expired during a furlough?

Furloughs do not extend the time limits for temporary (5 CFR 316.401(c)) and term (5 CFR 316.301(a)) appointments. If you intend to extend the time limited appointment, it may be extended prior to the furlough or, the individual may be reappointed after the furlough in accordance with 5 CFR 316.401(c) or 5 CFR 316.302(b) (7).

10. May an employee volunteer to do his or her job on a non-pay basis during a furlough period?

No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual. (31 U.S.C. 1342)

LEAVE

11. If an employee who received a furlough notice had previously scheduled annual or sick leave, what happens to the scheduled leave?

Upon furlough, all scheduled leave is canceled (annual leave, sick leave, or other). Absences during the furlough may not be charged to leave.

12. May employees who were designated as exempt from the furlough be granted paid leave?

No. If an exempt employee is unavailable to be at work and perform the duties determined by the employing agency to be allowable activities the employee must be furloughed. An agency may subsequently terminate the furlough if the employee's services are still required for exempted activities following the absence.

13. If an employee is on approved leave without pay (LWOP), but affected by the furlough, would the employee be furloughed and LWOP terminated?

No. The status of employees in LWOP is not disturbed unless there is indication that the employee may return from the LWOP during the furlough.

14. How will employees on home leave be affected?

Employees on home leave will be placed in a furlough status. Home leave may be extended at the discretion of senior management officials.

15. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count towards the 12-week entitlement to FMLA leave?

An employee who is on approved LWOP under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. However, an employee who was scheduled during the furlough to take paid leave under the FMLA (i.e., an employee chooses to substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. No days associated with a shutdown furlough period will be counted against an employee's 12-week FMLA leave entitlement.

Q. If an employee has properly scheduled "use-or-lose" annual leave before the start of the third biweekly pay period prior to the end of the leave year, but is unable to use some or all of the scheduled leave because of the furlough, does the furlough constitute an "exigency of the public business" that would permit an agency to restore the leave after the beginning of the new leave year?

A. Employees in this situation should make every effort to reschedule "use-or-lose" annual leave for use before the end of the current leave year. However, if this is not possible due to a lapse in appropriations, agency heads (or their designees) are encouraged to use their discretionary authority to restore any lost annual leave by determining that the employee was prevented from using his or her leave because of an exigency of the public business - namely, the need to furlough employees because of the lapse in appropriations

Q. Will the furlough impact my leave accrual?

A. The accumulation of nonpay status hours during a leave year can affect the accrual of annual leave and sick leave. 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. For part-time employees, leave accrual 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.

PAY

16. If an employee performs National Guard or Reserve duty while furloughed is it a dual compensation situation?

It is not a dual compensation situation because furloughed employees are not in a pay status. They will be compensated by the military and continue to be carried in an Absent-US status.

17. Will employees going overseas with advanced pay be able to get advanced pay or recoup their expenses?

Employees will not be able to get advanced pay as long as there is no appropriation in place to pay them. Once appropriations are in place, the employee can file a claim for reimbursement. Exceptions would include employees paid from "trust" or the Defense Business Operations Fund, if funds are available.

18. What about travel pay for those employees on renewal agreement travel, or student travel?

With no appropriation, there is no money to pay renewal agreement travel, or student travel; however, reimbursement claims can be filed once the appropriations are in place.

19. Will employees in Temporary Duty (TDY) status during the furlough period be paid? How are employees in TDY status informed and advised in the event of a furlough?

If employees in a TDY status are determined to be exempt, they will be entitled to be paid when funds are appropriated. However, nonexempt employees will be in a furlough status and will not be paid. These employees will be reimbursed for travel and per diem after appropriations are approved. Nonexempt employees on TDY should be contacted as expeditiously as possible and advised to return home and remain there in a furlough status until further notice.

Q. What happens to allowances during the furlough period?

A. Allowances for persons in excepted positions will continue, except for the following allowances which will be suspended:

Representation Allowance
Education Allowance
Educational Travel Allowance will be provided only if necessary for human safety (i.e., if the school closes for a holiday and the students must vacate the dorm).

For persons in non-excepted positions, allowances related to the protection of life or property will continue. This means that, for persons in non-excepted positions the following allowances will continue during a furlough:

Living Quarters Allowance
Supplementary Post Allowance
Post COLA
Home/Foreign Service Transfer Allowance
Temporary Lodging Allowance
Separate Maintenance Allowance
Subsistence Allowance (paid in the event of an evacuation).

Allowances for persons in non-excepted positions, the following allowances will not be paid during a furlough:

Post Differential
Danger Pay (We assume that all or nearly all positions at danger pay posts would be excepted.)
Representation Allowance
Education Allowance
Educational Travel Allowance will be provided, as is the case for persons in excepted positions, only if necessary for human safety, i.e., if the school closes for a holiday and the students must vacate the dorm.

BENEFITS

Federal Employees Health Benefits (FEHB)

20. To what extent does non-pay status affect Federal Employee Health Benefits (FEHB) coverage?

FEHB enrollment continues for no more than 365 days in a non-pay status. The non-pay status may be continuous or broken by periods of less than four consecutive months in a pay status. The Government contribution continues while employees are in a non-pay status. The employee can choose between paying the agency directly on a current basis while in a non-pay status or having the premiums accumulate and be withheld from his or her pay upon returning to duty.

21. If an employee chooses to repay health benefit premiums on a bi-weekly basis while in a non-pay status, where should he/she send the payments?

Bi-weekly payments must be sent to the Defense Finance Accounting Service (DFAS) Disbursement Center at the following address:

DFAS-Cleveland
P.O. Box 99555
Cleveland, Ohio 44199

Checks should be made payable to DSSN-8522-DFAS Cleveland.

Note: Premiums paid directly to DFAS are not eligible for the pre-tax benefit. Premiums are deducted prior to payroll taxes withholdings. If an employee chooses to pay premiums bi-weekly, the employee must continue to send payments for each pay period while in a non-pay status. The following information must be submitted along with the payment to ensure employee's account is properly credited:

- *Your Social security number*
- *A statement that the payment is for FEHB and the pay period effective date*
- *Your servicing Payroll Office Number (can be found on your Leave and Earnings Statement)*

Employees are encouraged to maintain proof of payment. Examples of proof of payment include cancelled checks and bank statements.

22. What happens if an employee chooses to cancel FEHB coverage while in a non-pay status in order to avoid the expense?

Employees who cancel FEHB coverage to avoid payment of premiums while in a non-pay or reduced status do not have to wait for an FEHB open season to re-enroll. Cancellation of FEHB coverage will not affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

23. Will an employee continue to be covered under the FEHB program if the agency is unable to make its premium payments on time?

Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Federal Employees Group Life Insurance (FEGLI)

24. To what extent does non-pay status affect FEGLI coverage?

Life insurance coverage continues for 12 consecutive months while in a non-pay status without cost to the employee or the agency. The non-pay status may be continuous or it

may be broken by a return to duty for periods of less than four consecutive months.

Thrift Savings Plan (TSP)

25. Will TSP investments be affected by a Government shutdown? What about disbursements?

Investment activity will continue. Share prices and account balances will continue to be updated each business day, and loans and withdrawals will continue to be disbursed.

26. What happens to my contributions?

Because you are not paid during a furlough, your TSP contributions will stop, and, if you are a Federal Employee Retirement System employee, you will not receive agency contributions during this time.

27. Can I take a TSP loan while I'm furloughed?

Yes. By law, a TSP participant may take a TSP loan any time before separation. 5 U.S.C. 8433(g)(1). The TSP has adopted an administrative rule that provides that TSP participants must be in a pay status in order to take a TSP loan. 5 C.F.R. 1655.2(b). The TSP adopted this rule because it generally requires TSP participants to agree to repay their loans through payroll deduction. 5 C.F.R. 1655.12(b). The first payment is due on or before the 60th day following the loan issue date. 5 C.F.R. 1655.14(c).
Since shutdowns are rare occurrences and are typically of short duration, the TSP's Executive Director has determined that it is in the best interest of TSP participants to interpret the requirement that participants be in a pay status to mean that a break in pay due to a Government shutdown does not disqualify one from TSP loan eligibility. A short-term break in pay status would still allow participants to commence payment by payroll deduction within the required 60 days of the loan issue date. If a shutdown were to extend beyond 60 days, participants would still be responsible for making loan payments (see next question).

28. What impact does the furlough have on an employee's loan payments?

If you have an outstanding loan and you are furloughed, your loan payments will stop because they are deducted from your pay. Loans are not considered in default until the participant has missed more than 2½ payments. If you miss a loan payment (or two) as a result of the furlough, you always have the option to make direct payments to the TSP using the Loan Payment Coupon available in the Forms & Publications section on the TSP Web site. Otherwise, your loan term will be extended or, if you have requested the maximum loan term, you may have a balloon payment at the end of the loan term. If you miss more than 2½ payments, TSP will notify you by mail that you must mail in a personal check for the "cure" amount to get your loan back on track.

29. Are agencies required to send in a Form TSP-41 notifying the TSP when employees have been furloughed?

Your agency should not send a Form TSP-41 to the TSP during a Federal Government shutdown. A shutdown is a rare occurrence and is typically of short duration. The Form TSP-41 is intended for participants who are being placed on extended leave without pay, e.g., due to illness, military furlough, maternity leave, etc. It is not practical for the agencies to complete and submit Forms TSP-41 for all of their furloughed employees who have TSP loans (both at the beginning of the furlough and at the end), and it is not practical for the TSP to process these forms.

30. Can the Government take money from the TSP to resolve the financial situation?

No, the money in the TSP is held in trust for its participants. Neither Congress nor the Administration can take money from an employee's TSP account.

31. To what extent does non-pay status affect Thrift Savings Plan (TSP) coverage?

Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Thrift Savings Plan (TSP) premium(s). Employees cannot contribute to their TSP account while on furlough. Employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation. The fact sheet can be found at http://www.tsp.gov/forms/oc95-4w.pdf.

Flexible Spending Account (FSA)

32. To what extent does non-pay status affect Flexible Spending Account (FSA) coverage?

Health Care Expenses: Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Flexible Spending Account (FSA) premium(s). If the employee is in a non-pay status and has not pre-paid the FSA allotment, their FSA account will be frozen and the employee will not be eligible for reimbursement of any health care expenses incurred during that period until he/she returns to a pay status and allotments are successfully restarted.

Dependent Care Expenses: Dependent care expenses incurred during the period in a non-pay status which meet IRS guidelines for eligible expenses (i.e., the employee must incur the expenses in order to allow the employee and his/her spouse to work or attend school) may be reimbursed up to the FSA account balance. When the employee returns to a pay status, allotments will be recalculated based on the number of pay dates remaining in the Benefit Period.

Long Term Care (LTC)

33. To what extent does non-pay status affect LTC coverage?

Deductions cease when the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue LTC coverage, the employee must make payments while in a non-pay status. Visit the LTC Web site, https://www.ltcfeds.com/documents for more information.

Federal Employees Dental and Vision Insurance Plan (FEDVIP)

34. To what extent does non-pay status affect FEDVIP coverage?

FEDVIP deductions cease when an employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for FEDVIP coverage to continue, employees must make payment while in a non-pay status. If premiums are not paid, coverage will be terminated at the end of the pay period in which premiums were last paid.

To avoid termination of FEDVIP benefits, an employee can be moved to a Direct Bill payment plan, by request. With this option, an employee would receive a statement by postal delivery and the invoice must be paid by check. Employees are required to pay all Direct Bills IN FULL to avoid the cancellation of their coverage/plan. If a full payment is not received by the due date, the coverage will be cancelled.

Employees can mail direct bill premiums to:

BENEFEDS
P.O. Box 797
Greenland, NH 03840-0797

Visit the FEDVIP Web site https://www.benefeds.com for more information.

Retirement Coverage

35. To what extent does non-pay status affect retirement coverage?

Retirement coverage continues for up to six months for periods of non-pay status per calendar year.

UNEMPLOYMENT COMPENSATION

36. Are Human Resources Offices required to provide furloughed Federal employees with an SF-8, Notice to Federal Employee about Unemployment Insurance?

Federal agencies are required to provide employees with an SF-8 if they will be in a non-duty status for seven or more consecutive days. For this reason, the SF-8 should be

distributed to furloughed employees, since it is not known how long the furlough will last.

37. What address should be provided on the SF-8? What is the Federal Identification Code (FIC)?

The address on the SF-8 should be the address for the Civilian Personnel Office (CPO) or Human Resource Office. The FIC is 421 for Department of Defense (DoD) Agencies, 422 for the Department of the Army, 423 for the Department of the Navy and 424 for the United States Air Force.

38. Are furloughed employees stationed overseas eligible to file for Unemployment Compensation (UC) benefits?

Overseas employees are not eligible to file for UC benefits unless they return to the United States (U.S.). Their UC claim would then be based on their state of residence.

39. Could an overseas employee file a retroactive claim when they return to the U.S. at the end of their tour of duty in two years?

No. None of the State Employment Security Agencies (SESA) would backdate a claim two years. If an UC claim was filed at that time, the claim would be effective when it was filed and not retroactive to the time of the furlough.

40. Can excepted employees file an UC claim, since they are not getting paid?

No. Excepted employees cannot file an UC claim, since they are not unemployed. In addition, in order to receive UC benefits, you must be able and available to accept work. Excepted employees would not meet this requirement since they are already working.

41. Is the UC claim based on the state where you live, or where you work?

UC claims are based on the state in which the work was performed (this does not include overseas employees).

41. Are employees who are lower than a Grade 9 Step 5, or lower than a YB-2 in NSPS, exempt from paying back UC benefits if they are later paid for the furlough period?

The decision on whether or not employees would have to pay back UC benefits would be decided by each SESA based on their UC law. Overpayment requirements apply to all employees for a particular state, regardless of their grade or salary.

42. Is information available as to what the states require before processing a claim for unemployment because of a furlough?

Yes. The list below gives Web sites or instructions for each state when filing an initial claim for unemployment; different procedures often apply when filing claims for additional benefits. You should also note that Kentucky has a Web site – at http://www.oet.ky.gov/des/ui/staterefguide.asp - that lists state Web sites, plus telephone numbers, for about 40 states.

Alabama – http://dir.alabama.gov/uc
Alaska – http://www.labor.state.ak.us/esd_unemployment_insurance/biff-splash.htm
Arizona – https://www.azdes.gov/landing.aspx?id=4211
Arkansas - http://www.arkansas.gov/esd/UI/index.htm
California – https://eapply4ui.edd.ca.gov/
Colorado – https://wwws.coworkforce.com/ucontinuedclaims/default.asp?ci=0&ps=0&er=0&li=e
Connecticut –http://www.ctdol.state.ct.us/progsupt/unemplt/M1A/LogInIntro.htm
Delaware – http://www.delawareworks.com/Unemployment/welcome.shtml
District of Columbia – https://does.dcnetworks.org/InitialClaims/
Florida – http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim
Georgia - http://www.dol.state.ga.us/
Hawaii – http://hawaii.gov/labor/ui
Idaho – http://labor.idaho.gov/dnn/Default.aspx?alias=labor.idaho.gov/dnn/idl
Illinois – http://www.ides.state.il.us/individual/certify/default.asp
Indiana – http://www.in.gov/dwd/
Iowa – http://www.iowaworkforce.org/ui/file1.htm#1.
Kansas – www.getkansasbenefits.gov
Kentucky – http://www.kewes.ky.gov/
Louisiana – https://laors.laworks.net/laclaims/Web site/
Maine – https://gateway.maine.gov/DOL/mics/BasePage.aspx
Maryland – electronic filing not permitted if employee worked for the Federal Government in the past 18 months. File by phone at 410-949-0022 in the Baltimore area, or 1-800-827-4839 outside the Baltimore area. Information is at http://www.dllr.state.md.us/employment/unemployment.shtml
Massachusetts – initial claim by phone or in person only. File by phone at 1-877-626-6800 from Massachusetts, 617-626-6800 outside Massachusetts. Information is at http://www.mass.gov/?pageID=dlwdconstituent&L=2&L0=Home&L1=Claimants&sid=Edwd
Michigan – http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html
Minnesota – http://www.uimn.org/
Mississippi http://mdes.ms.gov/unemployment-claims/
form must then be brought in person to a Mississippi Job Center
Missouri – http://www.labor.mo.gov/DES/Claims/
Montana – https://app.mt.gov/ui4u/index
Nebraska – https://uibenefits.nwd.ne.gov/BPSWeb/jsp/BPSClaimantWelcome.jsp

Nevada – http://www.ui.nvdetr.org/UI_Agreement.html
New Hampshire – http://www.nh.gov/nhes/
New Jersey – http://lwd.dol.state.nj.us/labor/ui/ui_index.html
New Mexico – http://www.dws.state.nm.us/
New York – https://ui.labor.state.ny.us/UBC/home.do?FF_LOCALE=1
North Carolina – https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp
North Dakota – https://secure.apps.state.nd.us/jsnd/uiiaclaims/login.htm
Ohio – http://unemployment.ohio.gov/
Oklahoma – https://unemployment.state.ok.us/instructions.asp?x=n
Oregon – http://findit.emp.state.or.us/ocs
Pennsylvania – https://www.paclaims.state.pa.us/UCEN/
Puerto Rico - http://www.trabajo.pr.gov/
Rhode Island – https://uiclaims.state.ri.us/RI-ICS/Intro/index.aspx?AC=yes
South Carolina – http://dew.sc.gov/
South Dakota – http://dlr.sd.gov/ui/default.aspx
Tennessee – http://www.state.tn.us/labor-wfd/esdiv.html
Texas – http://www.twc.state.tx.us/ui/uiclaim.html
Utah – http://jobs.utah.gov/ui/WebInitialCubs/Welcome.aspx
Vermont – file by phone only, by calling 1-877-214-3330. Information is at http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx
Virginia – http://www.vec.virginia.gov/vecportal/seeker/jslogin.cfm
Virgin Islands – file in person only; contact information is listed at http://www.vidol.gov/OP/Contact.htm
Washington – http://www.esd.wa.gov/uibenefits/index.php
West Virginia – http://www.wvuc.org/
Wisconsin – https://ucclaim-wi.org/InternetInitialClaims/InfoBasicRequirements.asp
Wyoming - https://doe.state.wy.us/InetClaims/

INJURY COMPENSATION

43. If an employee was in receipt of Federal Employees' Compensation Act (FECA) wage-loss compensation and was then furloughed, what effect would the furlough have on his/her compensation?

None. FECA wage-loss compensation is not considered wages and, therefore, is not affected by a lack of funding at the employing agency.

44. If an employee sustains a traumatic injury at work and begins to receive continuation of pay (COP) what happens to the COP when he is furloughed?

When employees are furloughed due to a lapse in appropriations, there is no legal authority to pay COP or any similar payment. However, lapsed appropriations do not abrogate the employee's entitlement to COP in any way. Therefore, although COP disbursements may be suspended during a furlough caused by lapsed appropriations, retroactive payment is mandatory once funding has been appropriated. Once the furlough

begins, COP is placed in abeyance pending the resumption of funding. When funding is available any remaining COP entitlement must be paid on a retroactive basis. The Department of Labor recognizes that they cannot force an agency to make payments of salary to furloughed employees when the agency has no funds to legally do so. If Congress does not decide to pay furloughed employees for the days off, COP would still have to be paid retroactively under 5 U.S.C. 8118.

PRIORITY PLACEMENT PROGRAM (PPP)

45. Do activities have to continue matching vacancies during furlough if they have no one in the office to download resumes through the Automated Stopper and Referral System (ASARS)? Can recruiting continue?

If recruitment continues during the furlough period, you are still obligated to fulfill all PPP requirements.

46. When a Priority Placement Program (PPP) registrant was selected, had an established entrance on duty (EOD) date, and the gaining activity says there is no one there to process the registrant, can the EOD date be delayed?

Yes, but the gaining activity should first try to arrange for courtesy processing by another human resources office. If a delayed EOD would cause the registrant to suffer a break in service, the gaining activity must make arrangements for processing the registrant. In these cases, the Component PPP Coordinator may need to be involved.

47. A PPP registrant was selected and has an established EOD date. The gaining activity says the employee will be furloughed upon EOD. The PPP registrant is in a duty status at the losing activity. Can the losing and gaining activities agree to delay the EOD date?

Yes. However, the registrant's separation date should be taken into account. If he or she is scheduled to be separated prior to the end of the furlough period, the registrant must be allowed to choose between delaying the EOD and being processed on the gaining activity's rolls and immediately placed on furlough.

48. Can an employee (PPP registrant) immediately go into an annual leave status upon arrival at the new activity to preclude furlough?

No. Employees placed through PPP are covered by the same rules as other employees. Registering and gaining activities may agree to delay the EOD date.

49. A PPP registrant will be reporting to an activity (in a work status) during the furlough period. The gaining activity has been instructed that the tour of duty cannot include an Alternate Work Schedule (AWS) until after the furlough period. The employee's PPP offer had an AWS. Is the offer still valid?

Yes.

50. A gaining activity has not been able to contact a registering activity either through fax, telephone, or e-mail. May it disregard the match and move on to another PPP registrant?

No. If all efforts to contact the registering activity fail, the gaining activity should seek assistance from its Civilian Assistance Reemployment (CARE) Program Coordinator.

51. The registering activity cannot get in contact with a furloughed PPP registrant to make a job offer. The gaining activity wants the registering activity to consider this a declination. Is this acceptable?

No. The registering activity must make a concerted effort to contact the registrant, up to and including certified mail with a return receipt.

52. Can an activity continue to conduct PPP business such as submitting registrations and requisitions and downloading resumes?

Yes. ASARS will continue to process transactions in accordance with standard procedures.

53. If a registering activity is unable to reach a registrant immediately, when does the job offer response time begin (i.e., two days for CONUS registrants and three days for OCONUS registrants)?

As always, the response period does not begin until the registering activity establishes contact with the registrant and actually extends the job offer. Call the appropriate CARE Program Coordinator for guidance in problem cases.

54. Will 30-day notices continue to be mailed out for Military Spouse Preference Program (Program S) registrants due to drop from the program (i.e., unless extended by the registering activity)?

Yes.

55. An activity is on furlough and will be unable to retrieve matches for active requisitions or the daily report. Will the matches remain in the system until the activity returns from furlough?

Yes, adjustments will be made for necessary actions to ensure the data is available at the end of the furlough period.

56. Are furloughed employees eligible to register in the PPP?

Employees are not eligible to register in the PPP on the basis of furlough alone unless the furlough period is six months or longer. However, if they are eligible based on some other qualifying event such as RIF, declination of transfer of function, completion of an overseas tour, etc., they may register in accordance with the timelines of that event.

EMPLOYEE RELATIONS

57. What information should my Agency provide in its notice to me?

The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations.

The notice must include a statement of applicable appeal and grievance rights. You are reminded that adverse action coverage for exempted service employees was substantially expanded by the Civil Service Due Process Amendments of 1990 (P.L. 101-376). If a copy of the Merit Systems Protection Board (MSPB) appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form and where their appeal should be filed.

58. What procedural rights would apply for a planned furlough of 30 calendar days or less for employees covered under 5 CFR Part 752?

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

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

In addition, the 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.

59. What about time frames for Equal Employment Opportunity Commission (EEOC), MSPB, grievances, etc.? Will a period of furlough extend the time frames? Also what about time frames such as response to discovery, etc., established by MSPB and EEOC? For pending MSPB and EEOC cases where there will be a make-whole remedy, will the furlough be considered in back pay, overtime, etc.? What effect will this have on interim relief orders?

Furloughs will not automatically extend time limits in these various proceedings. Thus, timely requests should be made to extend time limits in situations where the adjudicator has the authority to extend them. Decisions will likely be made on a case-by-case basis. Parties to a collective bargaining agreement may, of course, agree to extend time limits in any agreement where those time frames are governed by the agreement and otherwise not outside the authority of the parties to control because they are established by an outside third party (e.g., the MSPB). Time limits for employees to file grievance under the DoD Administrative Grievance System shall be extended during any period of furlough. Periods of furlough incurred by the employee, or which would have been incurred by the employee but for the employee's absence (e.g., due to removal for cause) should be taken into consideration in any make-whole remedy or interim relief order. In this regard, the Anti-deficiency Act, 32 U.S.C. 1341 *et. seq.*, prohibits federal personnel from being employed except in emergencies, unless otherwise authorized by law. In view of this prohibition, if the employee would not have been employed during the furlough period, the employee has no entitlement to pay during the furlough period.

60. How should the decision letter be framed if the agency has not set a specific number of furlough days in the proposal?

While it is desirable when possible to inform the affected employee of a specific number of 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, if they choose to appeal.

61. What if an employee did not report or was late reporting to work at the beginning of the shift after the furlough was over?

If an employee fails to report for duty as directed, normal supervisory discretion applies.

62. What affect does the furlough have on an employee who is currently serving a suspension? (Note: The employee's position is not designated as exempted):

In most cases, agencies may avoid suspending an employee during a furlough period by waiting to suspend the employee until the furlough period is over, or where a decision has already been issued, by appropriately amending the decision. The Merit Systems Protection Board has held that an employee who is already in a non-duty, non-pay status (e.g., furlough status) at the time of an agency action suspending the employee, is not being placed into a non-duty, non-pay status, and therefore, is not receiving a "suspension". *Weaver v. Department of Agriculture, 55 MSPB 569 (1992).* In *Weaver,* the Board noted that 5 USC 7501(2) defines a "suspension" as "…the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay." The Board ruled that since the employee was already in a non-duty, non-pay status, (the employee was receiving Workers' Compensation benefits) at the time of the agency's action, he was not "placed" into that status by the agency and thereby deprived of his duties and pay. The Board decided that since the employee did not receive a "suspension," he was not entitled to appeal the action.

LABOR RELATIONS

63. What is an agency's obligation to bargain when it becomes necessary to furlough employees?

The decision to furlough employees is a management right protected from collective bargaining by 5 U.S.C. 7106 (a) (2) (A). Further, during an emergency furlough, the agency may "take whatever actions may be necessary to carry out the agency mission during emergencies (5 U.S.C. 7106(a) (2) (D)). However, the agency must provide an opportunity to bargain over the procedures for implementing its decision and appropriate arrangements for employees adversely affected by the furlough, unless the matter of furloughs is already ***"covered by"*** the agreement. In 47 FLRA Nos. 96, 99 and 114, and other cases, the Authority has applied its ***"covered by"*** doctrine to determine whether the agreement provisions relieve the agency of any duty to bargain on impact and implementation on this matter. To the extent possible, the agency should provide adequate notice and bargain on impact and implementation, rather than run the risk of being ordered to provide back pay to furloughed employees as a remedy for committing an unfair labor practice for failure to bargain. Notwithstanding the above agency obligations, adequate advance notice of an emergency furlough may not be possible. Consequently, a shortened period to complete bargaining or post implementation bargaining may be required.

64. What should the agency do about employees who were on 100% official time and at work on union representational duties during the furlough?

Unless employees who have been granted official time to represent the union are otherwise exempted from the furlough, they must be furloughed and will have no entitlement to official time during the furlough period.

65. A union has proposed that management rotate the designation of "exempted from the furlough" among employees who are equally qualified. This minimizes the impact on all employees, especially if Congress does not provide pay for those furloughed. Is this negotiable?

Yes. Management retains the right to assign work, to determine which duties and responsibilities must be performed during the furlough, and which employees are qualified to perform such duties and responsibilities. How these employees are selected from among those that are qualified, however, is negotiable. While the exempted designation is not negotiable, once it has been determined which positions are exempted, the determination of which among equally qualified employees should be designated exempted is negotiable.

67. In the event of a lapse of appropriations necessitating a "shutdown" furlough, what is an agency's obligation to bargain?

Although the circumstances are more urgent than those pertaining to a planned furlough, agencies still have a duty to notify the union and bargain upon request on whatever negotiable impact and implementation proposals the union may submit. Because the agency must act by a date certain, whatever bargaining that takes place must be accomplished in the little time available before action is necessary. If agreement isn't reached in the time allowed, the agency should tell the union what actions it will take. Although the union may try to invoke the services of the Federal Services Impasses Panel (FSIP), it is unlikely that, in the circumstances posed by this question, the Panel will have time to get involved. But whether or not the FSIP gets involved, the agency can justify its actions--as the Federal Labor Relations Authority (FLRA) put it in Treasury, 18 FLRA No. 61--where "consistent with the necessary functioning of the agency."

68. What are the implications if an agency furloughs employees before it gives the union timely notice and meets its bargaining obligations?

It is an unfair labor practice to refuse to negotiate in good faith. If the Federal Labor Relations Authority finds that the agency engaged in an unfair labor practice it may order the agency to renegotiate an agreement with retroactive effect and may require reinstatement of affected employees with back pay.

OTHER ISSUES

Foreign National Employees

69. How does furlough apply to foreign nationals?

Foreign national employees paid with host country funds are exempt from furlough. Additionally, foreign national employees governed by country to country agreements that prohibit furloughs are exempt.

Recall

70. Will recall procedures vary for each activity?

Dependent upon an activity's size, a procedure should be established to recall employees to work. For smaller organizations, individual recall by telephone or letter may be feasible. (Larger organization should reference Q4 for additional guidance and instruction).