



Approved for Release
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DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES (HR) BULLETIN # 041, FY06, 5 CFR Part 752

SUBJECT: Furlough

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: N/A

BACKGROUND: Furlough is a non-disciplinary action placing an employee in a temporary non-duty and non-pay status because of lack of work or funds, or other non-disciplinary reasons. There are two categories of furloughs, each involving different procedures: a) furlough of 30 consecutive calendar days (22 workdays) or less which is covered under 5 CFR Part 752, adverse action procedures; and b) furlough of more than 30 consecutive calendar days, or 23 or more discontinuous workdays which is covered under 5 CFR Part 351, Reduction-In-Force (RIF) procedures.

PURPOSE: The purpose of this HR Bulletin is to provide clarification and guidance to Servicing HR Offices on furlough procedures.

PROCEDURES:

A. A furlough of 30 consecutive calendar days or less is covered under adverse action procedures.

A furlough of 30 consecutive calendar days or less "emergency furlough" is implemented in situations when the Department no longer has the necessary funds to operate and must shut down all activities which are not excepted by standards issued by the Office of Management and Budget (OMB). The Department usually will have very little lead time to plan for an emergency furlough, and therefore may be unable to provide advance notice or to determine how many furlough days will be required. An example of a situation which warrants an emergency furlough is when there is neither appropriations legislation nor a continuing resolution in place at the beginning of a Fiscal Year (FY) to fund activities. If a furlough is warranted:

- Communicate with employees and their representatives regarding agency plans if it becomes necessary to effect an orderly suspension of agency operations.
- Prepare draft "emergency" furlough decision notices and plans for distribution to employees to the extent possible within the limited time available.
- Determine which positions are excepted under the guidelines established by OMB.

An employee against whom a furlough of 30 consecutive calendar days or less is proposed is entitled to:

- At least 30 calendar days advance written notice stating the specific reasons for the proposed action. The 30 calendar day period begins upon an employee's receipt of the written notice.
- At least 7 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).
- Representation by an attorney or other representative;
- Right to appeal the agency's action to the Merit Systems Protection Board (MSPB).
- A reasonable amount of official time to review the material relied on to support the proposed action, to prepare an answer, and to secure affidavits, if the employee requests time and is otherwise in an active duty status. However, if the employee is covered by a negotiated agreement (union contract), the provisions of that agreement must be followed.

When no advance notice is issued the notice of decision 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.

B. A furlough of more than 30 consecutive calendar days is covered under Reduction-In-Force procedures covered in DAO 202-351.

A furlough of 30 consecutive calendar days or more "non-emergency furlough" is a planned event designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other event which requires the Department to save money. A planned furlough differs from an emergency furlough in that the Department has sufficient time to give adequate notice of its specific furlough plan and how many furlough days will be required. An example of a situation which warrants a planned furlough is if, as a result of Congressional budget decisions, the Department is required to absorb spending reductions over the course of a FY.

RIF procedures, with some flexibility, must be followed to furlough an employee when the furlough will be for more than 30 consecutive calendar days. In short, this means retention standing determinations are made, assignment rights are identified, position

offers are made and effected (on a temporary basis), and employees with no offers are furloughed.

A Bureau:

- May furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.
- May not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.
- May not furlough a competing employee for more than 1 year.

When a bureau recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with the highest standing employee.

RESPONSIBILITIES: Bureau Servicing HR Offices must inform the Department's Office of Human Resources Management of any anticipated furlough as soon as the possibility of a furlough is known, and are also responsible for assisting management officials in preparing proposed and final notices of furlough with final approval from the Department's Office of Human Resources Management.

Servicing HR Offices will provide the Department's Office of Human Resources Management with a listing of employees which identifies those who will be furloughed as much in advance of the anticipated furlough date as possible.

Bureau Servicing HR Offices should ensure that all procedures required by negotiated agreements or internal personnel policies are followed.

Furloughs, whether they are emergency or non-emergency, will be implemented in accordance with applicable statutory, regulatory procedural requirements, and negotiated agreements. Furlough will not be used in lieu of another adverse or disciplinary action.

APPEALS: Employees are responsible for filing timely appeals with MSPB or a timely grievance under a negotiated grievance procedure.

Considering the uncertain and changing circumstances surrounding a furlough, bureau Servicing HR Offices should make efforts toward assuring that employees are provided with up-to-date and accurate information as warranted. This may be done through effective union-management communication, employee briefings, periodic bulletins, newsletters or others that may be involved, so employees have as much information as possible, if they choose to appeal.

RECORDS: Bureau Servicing HR Offices will maintain copies of all regulations and records pertinent to a furlough within their organizations for at least 3 years from the effective date of the actions.

REFERENCES: 5 CFR, Parts 752, 771 and 351; Guidance and Information on Furloughs Revised December 1998

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