

Appendix P-4

Furlough (Discretionary and Shutdown)- Questions and Answers

Use in conjunction with: EMP-1.27 Furlough, appropriate Collective Bargaining Agreements and the NATCA/FAA Memorandum of Understanding regarding furloughs dated February 13, 2013.

Chapter 1 – Applicable to all furloughs

Section A: General

1. Q. What is a discretionary (“save money”, “administrative” or “non-emergency”) furlough?

A. A discretionary (“save money” or “non-emergency”) furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or for other non-disciplinary reasons. It is a planned event designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other event that requires the agency to save money. This kind of furlough is “non-emergency” in that the agency has sufficient time to reduce spending and therefore give adequate notification of its specific furlough plan and how many furlough days or hours will be required for each impacted employee. For most employees, there are two basic categories of furloughs, each involving different procedures. A furlough of 30 calendar days or less constitutes an adverse action and is subject to the procedures as described in the applicable collective bargaining agreement. A furlough of more than 30 calendar days constitutes a reduction in force (RIF) procedure and is subject to the procedures as described in the applicable collective bargaining agreement.

2. Q. What is a shutdown (“emergency”) furlough?

A. A “shutdown” furlough is the placing of an employee in a temporary non-duty, non-pay status in the event that funds are not available through an appropriations law or continuing resolution. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities that are not excepted pursuant to the Antideficiency Act. A shutdown furlough might also occur due to an “act of God” or other unforeseeable circumstances.

3. Q. Are there requirements for notification to employees during a furlough?

A. Notification to employees differ between discretionary and shutdown furloughs. Requirements are detailed in the respective sections below.

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

A. No.

5. Q. What appeal rights apply for employees for a furlough of 30 calendar days or less?

A. The employee may appeal the decision to furlough under the provisions of Article 9 of the appropriate collective bargaining agreement, to the Merit Systems Protection Board, or through the applicable Equal Employment Opportunity procedures. The appeal rights will be outlined in the written notice provided to employees.

6. Q. May employees take other jobs during the furlough period?

A. Even while on furlough, an individual is an employee of the Federal Government. In accordance with 5 CFR 2635.101(b)(10), (14); 2635.801(c) and FAA Order 3750.7, outside employment in general is

Appendix P-4

permitted so long as it neither conflicts with official Government duties and responsibilities nor appears to do so. Employees are permitted to engage in outside aviation employment so long as the outside employer does not conduct activities for which the employee's facility or office has official responsibility.

Should an employee submit a written request for prior approval, it will be acted upon as soon as possible, generally within thirty (30) days of receipt. When the employee accepts outside employment without prior approval due to the Agency's failure to respond within thirty (30) days to his/her written request for a determination of propriety, the Agency will take this into consideration should disciplinary action later be contemplated.

If prior approval is given and it is later determined that such employment is inconsistent with the provisions of Section 1, the following shall apply upon written notification to the employee:

- a. If the outside employment is specifically prohibited by law, the employee shall cease the employment immediately.
- b. In all other cases the employee shall cease the employment within fourteen (14) days.

7. Q. Are individuals working under an Interchange Assignment Agreement (IAA) subject to a furlough?

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

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

8. Q. What happens to employees' benefits (e.g., retirement, health benefits, life insurance, leave) if they receive temporary appointments in another agency while furloughed?

A. The leave should be transferred as if the employees had been transferred (See B-167975, 49 COMP. GEN. 383, September 1, 1970). Retirement, health benefits, life insurance, and leave should be handled as if the employees had been transferred.

Section B: Pay and Deductions from Pay

1. Q. If a furlough begins, will employees receive a pay check for the last pay period worked prior to the furlough?

A. Yes.

Appendix P-4

2. Q. If an employee's pay is insufficient to permit all deductions to be made, what is the order of precedence that deductions will be made from any salary check that the person may receive?

A. In general terms, the following deductions are taken from the employee's pay in this order: 1) Retirement; 2) Social Security tax; 3) Medicare tax; 4) Federal Income tax; 5) basic health insurance premiums (e.g. FEHB); 6) basic life insurance premiums (e.g. FEGLI); 7) State tax; 8) Local tax; 9) collection of debts owed to the federal government; 10) court-ordered collections; 11) optional benefits (e.g. FEDVIP, FLCIP, FSA, TSP); 12) other voluntary deductions (e.g. savings bonds, union dues); 13) IRS paper levies.

Section C: Service Credit for Various Purposes:

1. Q. Is furlough considered a break in service?

A. No, the employee is in non-pay, non-duty status for those days/hours. However, extended furlough may affect the calculation of creditable service for certain purposes.

2. Q. To what extent will the furlough (non-pay, non-duty status) affect my annual and sick leave accruals?

A. When a full-time employee accumulates 80 hours in a non-pay status (which includes furlough, leave without pay, absence without leave, and suspension), the amount of annual and sick leave that may be accrued in that pay period is reduced by the amount of leave the employee would normally earn during the pay period. When a part-time employee is in a non-pay status, he or she will accrue less annual leave and sick leave, since part-time employees earn leave on a pro-rata basis--i.e., based on hours in a pay status. For purposes of computing accrual rates for annual leave, creditable service for time in a non-pay status is limited to an aggregate of 6 months in a calendar year (5 U.S.C. 8332(f)).

3. Q. To what extent does a furlough affect other civil service benefits and programs?

A. Non-pay status is credited as follows for:

- **Permanent (career) tenure** - the first 30 calendar days of each non-pay period is creditable service.
- **Probationary period** – an employee's probationary period is not changed due to placement in a non-pay status.
- **Qualification requirements** - If an employee's developmental training is interrupted for thirty (30) days or more, the employee shall be granted sufficient training time to attain the level of proficiency he/she had at the time of the interruption, prior to the resumption of the remaining allotted training hours.
- **Time-in-grade requirements** – non-pay status is creditable service (applicable for employees in the FG Pay Plan).
- **Retirement purposes** - an aggregate non-pay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a non-pay status. When employees are in a non-pay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411). The exception would be an employee who had substantial time in a non-pay status earlier in the year if the furlough causes him or her to have more than six months time in a non-pay status during the calendar year.
- **Health benefits** - 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 (5 USC Chapter 89). The agency contribution continues while employees are in a non-pay status. The agency is also responsible for advancing the employee's share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and to be withheld from his or her pay upon returning to duty.

Appendix P-4

- **Life insurance** - coverage continues for 12 consecutive months in a non-pay status without cost to the employees or to the agency (5 USC Chapter 87). 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. If an employee is in active duty military status while in non-pay status, FEGLI coverage continues at no cost to the employee until time in non-pay status totals 12 months. The employee may elect to continue FEGLI coverage for an additional 12 months by paying both the employee and agency premiums (Basic coverage) and by paying the entire cost (Optional coverage). Per Section 1102 of Public Law 110-181, such an election must be made before the end of the first 12 months in non-pay status.
- **Within-grade/range increases (FG Pay Plan Only)** - an aggregate of 2 workweeks (or 80 hours for a full-time employee) non-pay status in a waiting period is creditable service for advancement to steps 2, 3, and 4; four workweeks (160 hours) for advancement to steps 5, 6, and 7; and six workweeks (240 hours) for advancement to steps 8, 9, and 10. For prevailing rate employees (FW Pay Plan), an aggregate of one workweek non-pay status (40 hours) is creditable service for advancement to step 2, three weeks (120 hours) for advancement to step 3, and four weeks (160 hours) for advancement to steps 4 and 5.
- **Severance pay** – non-pay status time is fully creditable for the 12-month continuous employment period required by the appropriate collective bargaining agreement.
- **Thrift Savings Plan (TSP)** - Employees should refer to the TSP Fact Sheet - Effect of Non-pay Status on Your TSP Account, available from the TSP web site at www.tsp.gov.
- **Military duty or workers' compensation** – non-pay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

Section D: Retirement and Insurance

1. Q. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?

A. Generally there will be no effect on the high-3 average unless the furlough causes the employee to be in a non-pay status for more than 6 months during the calendar year.

2. Q. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?

A. Yes.

3. Q. What happens if an employee terminates his or her Federal Employee Health Benefits (FEHB) coverage while in a non-pay status in order to avoid the expense?

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

4. Q. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program if the agency is unable to make its premium payments on time?

A. Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time. Since the employee will be in a non-pay status, the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.

Section E: Impact on other Benefits Programs

Appendix P-4

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

A. Deductions will cease for periods of non-pay status where there are 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. However, if the employee has a Dependent Care Flexible Spending Account (DCFSA), 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.

If the employee prepays his/her premiums by accelerating allotments prior to being placed in a non-pay status, allowable health care expenses incurred during the period in a non-pay status will be eligible for reimbursement. Visit the FSAFEDS website, www.fsafeds.com for more information.

2. Q. To what extent does non-pay status affect Long Term Care (LTC) coverage?

A. 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 Long Term Care (LTC) coverage, employees must make payments while in a non-pay status. Visit the LTC website, <https://www.ltcfeds.com/documents> for more information.

3. Q. To what extent does non-pay status affect Federal Employees Dental and Vision Insurance Plan (FEDVIP) coverage?

A. 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 FEDVIP coverage, employees must make payments while in a non-pay status. For more information visit www.benefeds.com.

Section F: FMLA Leave during a furlough

1. Q. If an employee is furloughed during absences covered by the Family and Medical Leave Act of 1993 (FMLA), does the furlough count toward the 12-week entitlement to FMLA leave?

A. No. Consistent with applicable laws and Agency policy, furlough during absences covered by the FMLA is not counted against the 12-week FMLA entitlement.

Section G: Injury While on Furlough

1. Q. Are employees who are injured while on furlough 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 are not in a duty status. An employee who is receiving workers' compensation payments will continue to receive workers compensation payments during a furlough period and will continue to be charged LWOP.

2. Q. How is Continuation of Pay (COP) under the Federal Employees' Compensation Act affected by a furlough?

A. The Department of Labor's Office of Workers' Compensation Programs, which administers the Federal Employees' Compensation Act (FECA), advises that, in the event of a furlough, an employee who is disabled due to his or her injury is to be maintained in COP status during the furlough period unless the

Appendix P-4

agency does not have monies available to pay the salary of that employee. If the agency does not have monies to pay salary during the furlough period but the agency's budget is subsequently restored in such a way as to allow for retroactive payment of salary during the furlough period, the employee should receive COP for any period of disability that occurs within the furlough. In the event an agency is legally unable to pay COP to an employee because of a furlough, the employee may file a claim for regular FECA wage loss compensation for that period.

Section H: Unemployment Compensation for Federal Employees (UCFE)

1. Q. Are employees entitled to UCFE benefits while on furlough?

A. It is possible that employees may be eligible for UCFE benefits, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Once employees are in a non-pay status they should contact their State unemployment office for more information regarding filing for unemployment benefits. The list below gives Web sites or instructions for each state when filing an initial claim for unemployment.

Alabama – <http://dir.alabama.gov/uc/>

Alaska –

http://www.labor.state.ak.us/esd_unemployment_insurance/call-centers.htm

Arizona –

<https://www.azdes.gov/landing.aspx?id=4211>

Arkansas –

<http://dws.arkansas.gov/UI/index.htm>

California – <https://eapply4ui.edd.ca.gov/>

Colorado –

<http://www.colorado.gov/cs/Satellite/CDLE-UnempBenefits/CDLE/1248095315427>

Connecticut –

<http://www.ctdol.state.ct.us/progsupt/unemplt/FileClaim.htm>

Delaware – <http://ui.delawareworks.com>

District of Columbia –

<http://does.dc.gov/service/unemployment-compensation-process>

Florida – <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim>

Georgia –

http://www.dol.state.ga.us/js/file_unemployment_insurance_claim.htm

Hawaii – <http://labor.hawaii.gov>

Idaho –

<http://labor.idaho.gov/dnn/Default.aspx?TabID=681&AspxAutoDetectCookieSupport=1>

Illinois –

<http://www.ides.state.il.us/individual/certify/default.asp>

Indiana – <http://www.in.gov/dwd/2508.htm>

Iowa –

<http://www.iowaworkforce.org/ui/file1.htm#1>

Kansas –

<https://www.getkansasbenefits.com>

Kentucky – <http://www.kewes.ky.gov/>

Louisiana –

http://www.laworks.net/UnemploymentInsurance/UI_Claimants.asp

Maine –

<http://www.maine.gov/labor/unemployment/claims.html>

Maryland –

<http://www.dlir.state.md.us/employment/unemployment.shtml>

Massachusetts –

<http://www.mass.gov/lwd/unemployment-insur/>

Michigan –

<http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html>

Minnesota –

<http://www.uimn.org/uimn/applicants/>

Mississippi –

<http://mdes.ms.gov/unemployment-claims/>

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 –

<https://nhuis.nh.gov/claimant/>

New Jersey –

http://lwd.dol.state.nj.us/labor/ui/fileui/file_in dex.html

New Mexico –

<http://www.dws.state.nm.us/UnemploymentInsurance/UIClaimsandBenefitsSystem/NMWorkforceConnectionUISystem>

Appendix P-4

New York –

<http://www.labor.ny.gov/unemploymentassistance.shtm>

North Carolina –

<https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp>

North Dakota –

<http://www.jobsnd.com/unemployment-for-individuals>

Ohio – <http://unemployment.ohio.gov/>

Oklahoma –

<https://unemployment.state.ok.us>

Oregon –

<http://www.oregon.gov/employ/ui/pages/index.aspx>

Pennsylvania –

<http://www.uc.pa.gov/portal/server.pt/communty/eligibility/20593>

Puerto Rico – file via phone by calling 787-754-5353

Rhode Island – <http://www.dlt.ri.gov/ui/>

South Carolina – <http://dew.sc.gov/claim-land.asp>

South Dakota –

<http://dlr.sd.gov/ui/uibenefits.aspx>

Tennessee – <http://www.tn.gov/labor-wfd/Claimants/appintro.html>

Texas –

<http://www.twc.state.tx.us/ui/uicclaim.html>

Utah –

<http://jobs.utah.gov/ui/Jobseeker/FileNew.asp>

Vermont –

<http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx>

Virginia –

<http://www.vec.virginia.gov/unemployed>

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/apply/eligibility/am-i-eligible.php>

West Virginia –

http://www.wvcommerce.org/business/workforce/vv/unemployment_compensation/claimants/default.aspx

Wisconsin – <http://dwd.wisconsin.gov/ui/ben/>

Wyoming –

<https://doe.state.wy.us/InetClaims/>

Section I: Labor Management Relations Implications

1. Q. Does a furlough cancel or supersede any provision contained within the collective bargaining agreement or other Memorandum of Understanding (MOU)?

A. No. All provisions and Agency obligations contained within the collective bargaining agreements and national, regional or local MOU's remain in full force and effect.

2. Q. Are Union representatives entitled to official time during the furlough period?

A. Yes. All provisions and Agency obligations contained within the collective bargaining agreements and national, regional or local MOU's remain in full force and effect.

3. Q. Will procedures to effect the furlough be developed?

A. Yes. The Parties at the National level will negotiate implementation procedures, although the timing of these negotiations may be different for a discretionary and a shutdown furlough.

Appendix P-4

Chapter 3 – Shutdown Furlough (emergency shutdown or for extended emergency due to an Act of God or unforeseeable circumstances)

Section A: General

1. Q. In the event of a shutdown furlough, can an employee be furloughed without first receiving a written notice of decision to furlough?

A. Yes While an employee must ultimately receive a written notice of decision to furlough, it is not required that such written notice be given prior to effecting the emergency furlough or in person. Advance written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (e.g., telephonic, oral, personal email, or by mail promptly after the furlough) is permissible.

2. Q. Are there employees that are “excepted” from a shutdown furlough?

A. The strict requirements for determining which employees are excepted or non-excepted is based on legally established criteria which does not apply to a discretionary furlough, as it does to a lapse of appropriation furlough. When the furlough is a result of the lapse of an appropriation, the term “excepted employees” refers to employees who are excepted from a furlough, by law because they: (1) perform emergency work involving the safety of human life or the protection of property, (2) are involved in the orderly suspension of agency operations, or (3) perform other functions exempted from the furlough. Note: “excepted employees” is not to be confused with “employees in the excepted federal service.”

3. Q. How will the length of furlough day hours be calculated? Is this based on employees' work schedules, e.g. 8, 9, or 10 hours?

A. In a shutdown furlough, non-exempted or non-excepted employees will be furloughed for the entirety of their workday.