



National Guard Bureau
Guidance for Administrative Furlough

Updated 1 March 2013

Updated information is presented in bold italicized font.

Overview

The enclosed guidance, prepared by the National Guard Bureau, Technician Personnel Management Division (NGB-J1-TN), provides Human Resources Officers (HRO) information specific to administrative furloughs. By definition, an administrative furlough is a planned event which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or other budgetary situations other than a lapse in appropriations.

This guidance includes general discussion of legal issues, including collective bargaining obligations. Analysis of statutes, regulations, collective bargaining agreements, and decisions of courts and the Federal Labor Relations Authority may be required to properly address specific questions. This guidance is not regulatory in nature, nor is it a “collective bargaining agreement negotiated at the national level.” Users should be informed that the language of the guidance is general, not definitive, or ultimate, and that on specific questions it is not a substitute for consulting primary legal sources.

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General Information

1. What is Sequestration?

Sequestration is an across-the-board reduction in Federal budgetary resources in all budget accounts that are not exempted by statute. Under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011, across-the-board reductions took effect on March 1, 2013. Sequestration reduces each agency's budgetary resources in non-exempt accounts for the remainder of the fiscal year (which runs through September 30, 2013).

2. What is a furlough?

Furlough is an action placing a technician, in a temporary non-duty, non-pay status, because of lack of work or funds, or other non-disciplinary reasons.

3. What is an administrative furlough and why are administrative furloughs necessary?

An administrative furlough is a planned event by an agency, 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 technicians of its specific furlough plan and how many furlough days will be required. For example, a furlough may be necessary when, as a result of Congressional budget decisions, an agency is required to absorb additional reductions over the course of a fiscal year.

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

An administrative furlough is a planned event by an agency that is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. Furloughs that would potentially result from sequestration would generally be considered administrative furloughs. For more information on administrative furloughs, see <http://www.opm.gov/furlough/Guidance-for-Administrative-Furloughs.pdf>.

In contrast, where there is a lapse in appropriations, a "shutdown" furlough may occur. A shutdown furlough is necessary when an agency no longer has the funds necessary to operate and must shut down those activities that are not excepted under the Antideficiency Act. Many Federal technicians may be familiar with these types of furloughs from instances in previous years in which the Government has faced a potential shutdown. For additional information on shutdown furloughs see OPM's guidance for shutdown furloughs related to potential lapse in appropriations at <http://www.opm.gov/furlough/index.asp>.

5. 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.

6. How is a technician notified of a furlough?

Technicians are notified of a furlough in writing by memorandum that is either personally hand-delivered to the technician 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 a technician, the certified/return receipt mail option provides proof of mailing that is a legally acceptable means of delivery.

Covered Technicians

1. In planning a furlough, how does a State account for differences among certain groups of technicians or certain work units?

The Adjutant General (TAG) has discretion, *in accordance with published guidelines and local collective bargaining agreements*, to identify which technicians will be furloughed and when to schedule furloughs based on States' particular needs and mission. The Human Resources Officer *shall* engage in pre-decisional consultation with the exclusive bargaining representative regarding the exercise of management's discretion. To the extent required by law or applicable collective bargaining agreement, States must bargain over any negotiable Impact and Implementation (I&I) proposals with technicians' exclusive representative before implementing a furlough.

2. Which technicians may be affected by an administrative furlough?

Technicians not engaged in exempt or excepted activities may be furloughed. The Adjutant General is responsible for identifying the technicians affected by administrative furlough 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 factors. See Furlough Procedures and also see the Labor Management Relations Implications.

3. How will a technician be notified if they are affected by an administrative furlough?

Each Human Resources Office (HRO) will coordinate the method and timing to notify a technician as to whether or not he or she is affected by an administrative furlough. (See Sample

Notices located at the end of this document and also refer to the Labor Management Relations Implications questions and answers.)

When notifying a technician, the written notice must include the following required information: (1) reason(s) for the furlough, (2) estimated length of the furlough, and (3) right to have the furlough action reviewed by the Adjutant General. If applicable, inform the technician of the basis for selecting some positions or technicians but not others. See Sample Notice 1 for examples.

4. Who should technicians contact for information about whether sequestration will impact them and whether they may be furloughed?

Technicians should contact their Human Resources Office for information about how sequestration will impact them and whether they may be furloughed. Bargaining unit technicians may also contact their union representatives.

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

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

Designation of Furlough Days

1. How should a State schedule administrative furlough time off? Must all States follow the same procedures for furloughing technicians? Can a technician choose to take furlough days all at once or spread them out?

Each State will determine the timing of when technicians take administrative furlough days *in accordance with local collective bargaining agreements*. For technicians represented by labor unions, the timing of furlough days is subject to collective bargaining. An administrative furlough will affect each State differently depending on the extent of the budget reduction requirements. For example, a State may furlough technicians for one day per pay period for a finite period of time; designate a number of furlough hours that technicians must take; designate specific dates as furlough days off; or allow technicians to select their own furlough time off.

2. Is the one day a week model mandated, or may States accomplish the furlough action differently? Can different schedules be implemented at different work locations within the state (i.e., one Wing may want to take a two-week “block furlough” during AT or for a shutdown, but others may want to retain the one-day-a-week model).

Although DoD has established a general rule that no more than 16 hours per pay period should be executed, this presupposes all technicians are on a standard workweek and there are no local collective bargaining agreements detailing furlough procedures.

3. Can technicians be furloughed for partial days?

Yes. States have discretion to schedule an administrative furlough in a variety of ways. For example, OPM encourages agencies to take into account the effect of commuting when multiple partial furlough days are scheduled. Adjutants General may make an allowance for military technicians to schedule furlough days during Annual Training.

4. How should a State schedule administrative furlough time off for a technician who is on a flexible or compressed work schedule under an alternative work schedule (AWS) program?

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

5. How should the State schedule administrative furlough time off for a technician who does not work a standard work schedule (e.g., part time or uncommon tour of duty)?

Furloughs of part-time, or uncommon tour of duty technicians, must comply with the procedures in TPR 715 or TPR 351 if the technicians are otherwise covered. In scheduling such furloughs, it would be equitable to prorate a technician's furlough requirement by computing the furlough days as furlough hours in the same proportion to those hours scheduled for full-time technicians working 80 hours biweekly, based on work schedules. The hours of furlough might be computed as a percentage of the work schedule for full-time technicians working 80 hours biweekly. For example, a part time work schedule of 64 hours a pay period would equate to $64/80$ of a fulltime work schedule, or 80%. This percentage could then be multiplied by the number of hours that a full-time technician is furloughed. The same method of proration would be used for uncommon tours of duty. For example, to derive the hours of furlough for a technician working 144 hours a pay period, a factor of $144/80$, or 180%, would be multiplied by the number of hours of furlough designated for full-time technicians working 80 hours biweekly.

6. How should the State schedule administrative furlough time off for a technician who works on a seasonal or intermittent basis?

The State has the discretion to call seasonal or intermittent technicians to duty during an administrative furlough. The seasonal technician is recalled to duty at identified periods of the

year in accordance with pre-established conditions. The intermittent technician is in a non-full-time status without a regularly scheduled tour of duty.

Working During Furlough

1. May a technician volunteer to do his/her job, in a non-pay status, during any hours or days designated as furlough time off?

No. A technician is not permitted to serve as an unpaid volunteer and will remain away from the work place until recalled.

2. What happens to a technician scheduled for training during an administrative furlough?

In the event that scheduled training occurs during a furlough period, affected technicians must be placed in a furlough status and ordered not to attend the scheduled training. Technicians currently on temporary duty will return to home station as soon as possible. Also, a technician cannot work on any training assignments on a furlough day. Technicians should consult with the training provider to make other arrangements (e.g. make-up sessions or rescheduling the course.)

3. May a technician take other jobs during a period designated as furlough time off?

While on furlough, a technician remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct (the standards, at 5 CFR 2635). In addition, there are specific statutes that prohibit certain outside activities and potentially State specific supplemental rules that may require prior approval of, and sometimes prohibit, outside employment.

4. May a technician work during a period designated as furlough time off to earn compensatory time?

No. A technician may not work to earn compensatory time during hours and/or days designated as furlough time off.

5. May a technician work during a period designated as furlough time off to accumulate religious compensatory time off hours for religious observances?

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

Pay and Compensation

1. When a technician's pay is insufficient to permit all deductions to be made because furlough time off occurs in the middle of a pay period, resulting in a partial paycheck, what is the order of withholding precedence?

The United States Property and Fiscal Office (USPFO) will follow the guidance, at the below referenced website, to determine the order of precedence for applying deductions from a technician's pay when the gross pay is insufficient to cover all authorized deductions.

<http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477>

2. May the State deny or delay within-grade or step increases for a General Schedule or Wage System technician during a furlough?

It depends on the length of the furlough. Within-grade and step increases for General Schedule (GS) and Wage Grade (WG) technicians 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 non-pay status (e.g. furlough for lack of funds) may affect the timing of such increases. For example, a GS technician in steps 1, 2, or 3 of the grade, who is furloughed for more than 2 work weeks during the waiting period, would have his/her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406(b))

3. Are technicians entitled to unemployment compensation while on furlough?

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

4. Will technicians in a Temporary Duty (TDY) status during the furlough period be paid their salary?

During an administrative furlough, salaries continue except furlough days are non-pay days.

5. What resources are available if a technician needs financial assistance during a furlough period?

Some Employee Assistance Programs (EAP) includes financial consultation services. The HRO should counsel the technician on the benefits of utilizing the services of the EAP. The HRO should provide contact information to include a phone number. The technician may want to contact his/her financial institution or research options at the TSP website at <http://www.tsp.gov>.

Leave and Other Time Off

1. May a technician take paid leave or other forms of paid time off (e.g., annual, sick, court, military leave, leave for bone marrow or organ donor leave, any compensatory time off earned, or time off awards) instead of taking administrative furlough time off?

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

2. If a technician who received a furlough notice had previously scheduled annual or sick leave on a furlough day, what happens to the scheduled leave?

Scheduled leave is canceled on furlough days only (annual leave, sick leave, or other). Absences during scheduled furlough days may not be charged to leave. Leave may be requested and approved on scheduled workdays.

3. How does the State treat a technician, who is on approved leave without pay (LWOP), during an administrative furlough period?

If a technician is scheduled to be on approved LWOP during the furlough period, he/she may designate any hours and/or days of LWOP as furlough time off in order to meet the furlough requirement. States are not required to provide a technician with a furlough notice if the technician is not expected to work during the furlough period. (e.g. the technician is deployed for a period in excess of the planned furlough period or the technician is currently serving on an AGR tour) If the technician returns to work before the end of the furlough period, the State could require the technician to take furlough time off, based on the State's furlough requirement. If upon return to service, the technician has taken enough LWOP to cover the State's requirement for furlough time off, the State may choose not to place the technician in a furlough status.

4. For technicians who are currently mobilized who restore to their technician position sometime after 26 April, is their 22-day furlough prorated? In other words, the technician restores after 1 June 2013, how many furlough days must said technician take before 30 Sep 2013?

If the technician returns to work before the end of the furlough period, the State could require the technician to take furlough time off, based on the State's furlough requirements. If, upon

return to service, the technician has taken enough LWOP to cover the State's requirement for furlough time off, the State may choose not to place the technician in a furlough status.

5. May a technician take LWOP under the Family and Medical Leave Act (FMLA) during an administrative furlough period?

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

6. What happens under sequestration if a technician has use-or-lose leave or earned compensatory time off?

Sequestration should not affect a technician's ability to take approved use or lose annual leave before the end of the leave year or to use earned compensatory time off within the established timelines.

7. Can technicians be required to perform compensatory time on non-furlough days to perform work that otherwise would be performed on a furlough day? No.

8. Will the furlough impact leave accrual?

Once a technician's balance of non-pay hours equals their scheduled hours in a pay period (e.g., 80 hours in a biweekly pay period, fewer hours for part-time technicians), the employee will not accrue leave for that pay period. Leave accrual resumes the next pay period. This will occur twice if the furlough period is 22 days.

9. May technicians who were designated as exempt from an administrative furlough be granted paid leave?

Yes. Technicians exempted from administrative furloughs would see no change from normal leave situations, subject to supervisory approval.

Holidays

1. May a technician be administratively furloughed on a holiday?

Yes. However, the State 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, the State may not properly furlough a technician 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). Nor would it be proper to furlough a technician solely on a holiday. (See Comptroller General Opinion B-222836, May 8, 1986).

2. If a technician has 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 the technician be paid for the holiday?

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

3. If a technician has a designated administrative furlough day off on the last workday before a holiday and the first workday after a holiday, will the technician be paid for the holiday?

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

Benefits

1. Will a technician continue to be covered under the Federal Employees Health Benefits (FEHB) Program during an administrative furlough?

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

2. Will a technician's Flexible Spending Account Program (FSAFEDS) be impacted during an administrative furlough?

The technician's FSAFEDS coverage continues, and allotments made by the technician continue if the technician's salary in each pay period is sufficient to cover the deduction(s). If the technician's salary is insufficient to cover his/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 technician's annual election amount). Incurred eligible dependent care expenses may be reimbursed up to whatever balance is in the technician's dependent care account, as long as the expenses incurred allow the technician (or technician's spouse if married) to work, look for work, or attend school fulltime. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the technician's annual election amount.

3. Will a technician continue to be covered under the Federal Employees' Group Life Insurance (FEGLI) during an administrative furlough?

The technician's FEGLI coverage continues while in a non-pay status due to furlough for up to 12 months without cost to the technician or to the agency. However, if the furlough is for only part of a pay period the FEGLI premiums are required. If the technician receives 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 technician's salary becomes insufficient to pay FEGLI premiums due to the furlough, the leave without pay/insufficient pay rules apply: (<http://www.opm.gov/insure/health/reference/handbook/fehb13.asp>).

4. Will the technician continue to be covered under the Federal Employee Dental and Vision Insurance Program (FEDVIP) during an administrative furlough?

Yes. Just as with scheduled LWOP, if BENEFEDS is unable to take the necessary premium deduction from a technician's pay, BENEFEDS collects the 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 technician. The technician should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

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

Yes. Eligible claims will continue to be paid. Coverage will terminate if premiums are not paid. If the contractor does not receive premiums 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 premiums will result in the contractor billing the technician directly.

The technician also has the option to change to direct billing or to make a 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 technician has 35 days, from the date of the letter in which to pay the premium; otherwise, the technician will be disenrolled retroactively to the last pay period in which premium was paid.

6. Will furloughs impact wages considered when calculating a retiree's high three for CSRS/FERS retirement? No, the furlough does not affect this calculation; it is the technician's grade/step which is considered for retirement purposes.

7. Will this furlough be considered a qualifying life event/Open Season to adjust benefits? Some techs will face financial difficulties and may want to change/reduce coverage to reduce deductions, will they have that option? No, the furlough is not considered a qualifying life event. The next open season is 11 November 2013 through 9 December 2013.

8. During a furlough what is the impact to technicians who will retire this year? What about in the next 2-3 years? Generally there will be no effect on a technician's retirement pay unless the furlough causes the technician to be in a non-pay status for more than six months during a calendar year.

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

Federal Employees Retirement System (FERS) and Civil Service Retirement System (CSRS) coverage continue during an Administrative Furlough of 30 days or less.

10. Will social security contributions be affected?

Social security contributions are determined by a percentage of a technician's basic pay and may be stopped or reduced if the technician has no earnings or if basic pay is reduced.

Thrift Savings Plan (TSP)

1. What is the impact of a furlough on the TSP? What will happen to the contributions?

There will be a reduction in technician and employer contributions, unless the technician chose a set dollar amount vice percentage of pay. By law, a technician who is in a non-pay status cannot contribute to their TSP account while on furlough.

2. Will the government matching contribution to TSP be reduced during the furlough period?

Government matching contributions determined by a percentage of a technician's basic pay may be stopped or reduced if the technician has no earnings, or if basic pay is reduced.

3. Will a technician's TSP investments be affected? What about disbursement?

TSP 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.

4. Can a technician take a TSP loan while furlough?

Yes. By law, a TSP participant may take a TSP loan during a furlough which results in a short-term break in pay. The TSP Executive Director has determined a Government shutdown does not disqualify one from TSP loan eligibility. See the TSP Fact Sheet (Impact of a Government Shutdown on the Thrift Savings Plan, dated March 4, 2011) at:

<https://www.tsp.gov/PDF/formspubs/oc11-5.pdf> . The technician should be referred to the cited reference for additional information specific to loan payment requirements.

5. What impact does the furlough have on a technician's loan payments?

Payments continue. If the technician's salary is insufficient, the loan may be extended or have a balloon payment at the end.

6. Is the HRO required to send in a Form TSP-41 to notify TSP of a technician's furlough status?

No.

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

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

Unemployment Compensation

1. Is a technician entitled to unemployment compensation while on furlough?

It depends. Rules for unemployment compensation eligibility differ State to State. It is possible that a furloughed technician may become eligible for unemployment compensation immediately in some locations; whereas other states require a one-week waiting period before qualifying for compensation. In general, the State's laws, relative to the location of the technician's last official duty station while in technician service, determine eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Employees (technicians)" at

<http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>). *Before applying for unemployment compensation, the technician should contact the HRO Employee Benefits Specialist for the required SF 8 form. The HRO Employee Benefits Specialist will provide*

employment information upon request from the Department of Labor Unemployment Compensation Office. The Department of Labor's website provides links to locations of individual state unemployment compensation offices at <http://www.servicelocator.org/OWSLinks.asp>.

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

Federal agencies are required to provide technicians with an SF-8 if they will be in a nonduty status for seven or more consecutive days.

3. What address should the HR Office provide on the SF-8, Notice to Federal Technician about Unemployment Insurance? What is the Federal Identification Code (FIC)?

The address on the SF-8 should be the address for the Human Resources Office. The FIC is 422 for the Department of the Army and 424 for the Department of the Air Force.

4. Is an unemployment compensation claim based on the state where the technician lives, or where they work?

Unemployment compensation claims are based on the state in which the work was performed.

5. Are technicians who are lower than a Grade 9, Step 5, exempt from paying back Unemployment compensation benefits if they are later paid for the furlough period?

The decision on whether or not technicians would have to pay back unemployment compensation benefits would be decided by each State Employment Security Agencies based on their unemployment compensation law. Overpayment requirements apply to all technicians for a particular state, regardless of their grade or salary.

6. 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://www.coworkforce.com/ucontinuedclaims/default.asp?ci=0&ps=0&er=0&li=e>
Connecticut – <http://www.ctdol.state.ct.us/progsupt/unemplt/MIA/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-assistancecenter/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 technician 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/uicclaim.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
<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

1. If a technician 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

2. Are technicians who are injured while on furlough or LWOP eligible to receive workers compensation?

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

3. Are technicians who are currently reemployed from the Workers Compensation roles exempted from furlough?

No. A technician who has been reemployed from OWCP roles is not exempt from furlough. They are to be treated the same as any other technician. However, if a returned technician is receiving lost wages from the Department of Labor (DOL), those wages will continue to be paid by DOL.

Service Credit for Various Purposes

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

No. Both mean the technician 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 non-pay status affect technician benefits and programs?

The effects of a non-pay status (which includes furlough, leave without pay, absence without leave, and suspension) on technician 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 Benefits and Programs" at http://www.opm.gov/oca/leave/HTML/LWOP_eff.asp.

3. What effect will a furlough have on the calculation of a technician'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.*
- *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's current step (See 5 CFR 531.406(b) for GS & 532.417(c)(2) for FWS)*

Technicians on Military Duty

1. May a National Guard technician perform military duty while furloughed? And is it a dual compensation situation?

A military technician may perform military duty while he/she is furloughed. It is not a dual compensation situation because furloughed technicians are not in a paystatus. They will be compensated by the military and continue to be carried in an Absent-US status.

2. Will a technician continue to receive reservist differential payments (5 U.S.C. 5538) if the technician is affected by an administrative furlough from the technician position while on active duty?

It depends. In computing a reservist differential, the State must compare the technician's projected technician basic pay to the allocated military pay and allowances for each technician pay period. If the technician is affected by a furlough from his/her position while on active duty, the State must reduce the technician's projected 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 technician basic pay adjusted for furlough time off, no reservist differential is payable for that pay period. If the projected technician 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.

3. Will there be an impact on the within-grade increase (WGI) waiting period for General Schedule (GS) technicians affected by an administrative furlough while in an Absent Uniformed Service (AUS) status?

No. Furlough has no impact on a the WGI waiting period for GS technician's affected by a furlough while in an AUS status (i.e., Nature of Action Code 473, used when the technician 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 the technician 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).)

Miscellaneous

1. Can States offer early retirements (VERAs) or separation incentives (VSIPs) to furloughed technicians? Can VERA/VSIP be offered during sequestration? Can VERA/VSIP be offered in lieu of a furlough?

Both Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP) are programs to incentivize voluntary separations to avoid involuntary personnel actions associated with a State's decision to restructure its workforce. States with NGB-approved VERA and or VSIP may continue offering these options to covered technicians during a furlough.

VERA and VSIP result in permanent separations from the agency workforce. (Please note that VSIP recipients may not be reemployed by the Federal Government within 5 years unless they repay the VSIP to the agency that paid it.) Furloughs are associated with temporary issues, such as lack of work or funds, with the intention that technicians would return to their jobs after the furlough. The State will decide which option to take based on its situation, e.g., the need to permanently reduce or restructure its workforce or to save funds by furloughing technicians.

2. If the furlough impacts my ability to meet my financial obligations (e.g., mortgage or rent payments), will it impact my eligibility for continued Suitability for Federal employment, access to classified information, or to hold a sensitive position?

A furlough is a circumstance beyond your control. The Federal Adjudicative Guidelines specify that the adjudicative process is the careful weighing of a number of variables known as the 'whole person concept.' Mitigating factors include whether the conditions that resulted in the concern were largely beyond the person's control and whether or not the individual acted responsibly under the circumstances. As a proactive measure, you may wish to contact your local Employee Assistance Program (EAP) to see if financial planning is available.

Furlough Procedures - 22 Workdays or Less

1. May the State schedule administrative furlough days consecutively or discontinuously (e.g., one workday per week for 22 weeks)?

Yes. Nothing in law or regulation prohibits discontinuous furloughs. Moreover, discontinuous furloughs can be advantageous to both the technician and the State by distributing the furlough days over time, minimizing the financial impact on a technician, and lessening the disruption of agency services to the public.

In *AFGE, Local 32 and OPM*, 22 FLRA 307 (1986), the Labor Relations Authority held that a proposal, giving the furloughed technician 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, the State may also schedule furloughs for all technicians (both alternative work schedule and regular work schedule) in terms of hours. For example, all full-time technicians would be furloughed for 40 hours; even though for some technicians, the actual number of furlough days could be more or less than 5 days.

2. How is an administrative furlough documented?

The State will prepare an SF-50, —Notification of Personnel Action, for each technician subject to furlough (or a List Form of Notice may be prepared for a group of technicians 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 technicians 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.

If the specific furlough dates are known, the appropriate Nature of Action Code (NOAC) to use according to the Guide to Processing Personnel Actions (GPPA) Chapter 15, will be NOAC 471 - Furlough (nonconsecutive days). This particular NOAC can be processed in DCPDS two ways, manually against each individual technician or via a mass process. The mass process is the preferred way to process the actions for all technicians - either at the HRO level or NGB level. Since we will be using the NOAC 471 to document the furlough actions, according to the GPPA Chapter 16, there is no requirement for a Return to Duty (NOAC 292) personnel action to be processed on technicians at the conclusion of the furlough period.

3. How are timecards coded if technicians are on non-continuous furlough days?

The actual furlough days will be coded via technician timecards using technician leave code "KE" (Furlough).

4. How can HROs track technicians' cumulative furlough hours?

There is currently a system change being developed to have the cumulative furlough hours flow back into DCPDs from the Defense Civilian Pay System (DCPS) to allow HROs to track the hours for each technician. We will be providing you with more detailed instructions at the conclusion of the testing period and after final decisions have been made with regard to how these actions will be handled. Unpaid leave balances will be displayed on technician LESs.

5. If a discontinuous administrative furlough extends for more than 30 calendar days, is it a furlough covered by procedures in TPR 715, or is it covered by the reduction-in-force (RIF) procedures in TPR 351?

Based on the definition of "day" as "calendar day" (5 CFR 210.102), OPM has determined that 22 workdays equate to 30 calendar days for adverse action purposes for technicians. Thus, a discontinuous furlough of 22 workdays or less would be covered by **Voluntary and Non-Disciplinary Action** procedures (TPR 715), and one of more than 22 workdays would be covered by RIF procedures (TPR 300(351)). For example, if a holiday is included in a furlough of 22 consecutive workdays, the furlough might equate to more than 30 calendar days (e.g. 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). **In this situation, TPR 715 procedures are used for the furlough of 22 consecutive workdays, even though, due to holidays, the calendar period of the furlough is more than 30 days.**

6. What procedural rights would apply for an administrative furlough of 30 calendar days or less for technicians covered under TPR 715?

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

- At least 30 calendar days advance written notice, from the organization, 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 effective upon the technician's *receipt* of the written notice. Therefore, the HRO should plan accordingly and 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.)
- A technician may request a review of the furlough action, in writing, through the HRO to the Adjutant General (TPR 715, paragraph 3-7/TPR 351).
- The right of the technician to be represented by an attorney or other representative.
 - Allow at least seven calendar days for the technician to answer, orally and in writing, to the proposal notice and to furnish documentary evidence in support of his/her answer. (A summary of any oral answer must be made and maintained by the HRO.)
- A written decision by the organization with the specific reason(s) for the action at the earliest time practicable.

Additionally, TPR 715 requires that the HRO inform the technician of the right to review the material it relied on to support the reasons for its action. The State must designate an oral reply official who can either make or recommend a decision, and must issue its decision on or before the effective date of the action.

NOTE: In accordance with TPR 715, the Adjutant General has the inherent authority to furlough any or all of its technicians if there are legitimate reasons. If the State is furloughing some, but not all technicians in a competitive level, the notice of proposal must state the reasons for the furlough. States who anticipate furloughing some, but not all technicians, should ensure the accuracy of established competitive levels in order to meet the obligations under this guidance. The term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable. Where bargaining unit technicians are concerned, additional procedural rights may be provided by their negotiated agreement.

7. What procedures and appeal rights are applicable for probationers, technicians under temporary appointments, technicians in the Excepted Service with less than 2 years of continuous service, and others not covered by 5 U.S.C. Chapter 75 but also affected by an administrative furlough?

There are no mandatory procedures. However, States 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. Any request to review/appeal a furlough is limited to the Adjutant General. (Note: VRA appointments are initially made as two year excepted appointments followed by noncompetitive conversion to a competitive appointment.)

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

While it is desirable, whenever possible, to inform the affected technician of a specific number of furlough days in the decision letter, the State only needs to set out the maximum time that may be involved, so that the technician has as much information as possible.

Furlough Procedures - More Than 22 Workdays (Extended Furlough)

1. When is the Adjutant General required to use reduction in force (RIF) procedures to administratively furlough technicians?

The Adjutant General must follow RIF procedures for an extended furlough of more than 30 continuous calendar days, or of more than 22 discontinuous workdays. (NOTE: a furlough is a temporary placement in a non-pay/non-duty status. It is not a permanent separation from service).

2. Is there a maximum period a technician may be administratively furloughed for an extended period?

Yes. A technician may be placed on an extended furlough only when the State plans to recall the technician to his/her position within 1 year. The furlough may not exceed 1 year.

3. If the State needs to administratively furlough a technician for more than 30 calendar days (or more than 22 workdays) must all RIF procedures be followed?

Yes. The RIF procedures in TPR 351 must be followed, and include a minimum lead time of 60 days for a specific written notice of the furlough action. The only exception to the regular procedures involves assignment rights referenced in Question 4.

4. When does a technician, who is reached for an extended furlough action during an administrative furlough, have a right of assignment to another position?

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

Because of the requirement in TPR 351 that assignment rights apply only to positions lasting at least 3 months, a technician reached for an extended continuous furlough does not have assignment rights to a position held by another technician who is not affected by the furlough, unless the furlough extends for 90 or more consecutive days. A technician 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 TPR 351, “undue interruption” essentially means that a higher-standing technician, who is otherwise qualified for the assignment, may exercise the assignment right only if the technician is able to perform the work of the position of the lower standing technician within 90 days of the assignment. In such cases, the State must consider whether undue interruption would result from both (1) the displacement of a lower-standing technician from the competitive level affected by the furlough, and (2) the recall of both technicians to their official positions at the end of the furlough period.

5. Are there any other situations in which a TAG may restrict a technician’s assignment rights in an administrative furlough situation?

The TAG may make a temporary exception to the order of release and assignment rights to keep the incumbent in his/her position for 90 days or less after the commencement of the furlough, when needed to continue an activity without undue interruption. (See TPR 351 for additional reasons that a temporary exception may be used.)

The TAG may make a continuing exception to the order of release and assignment rights to keep the incumbent in a position that no higher standing technician can take over within 90 days and without undue interruption to the activity.

6. What action is taken if a technician refuses an offer of assignment during an administrative furlough?

The technician is furloughed from his/her position.

7. If a technician “bumps” to a different job as a result of an administrative furlough, is the technician temporarily assigned to that job?

No. The technician becomes the incumbent of that job even though the furlough anticipates the technician’s eventual recall to his/her former job.

8. If circumstances change and the State is unable to recall an administratively furloughed technician at the point specified in the technician’s extended furlough notice, what additional action is required?

In this situation, the State must issue the technician a new notice of an extended furlough or proposed RIF separation, as the situation requires. This new action must meet all the requirements in TPR 351 (e.g., 60 day advance notice).

9. Do these requirements also apply if the State finds that it can recall a technician before he/she has reached the administrative furlough limits specified in the notice?

No.

10. What happens to a temporary technician serving under an appointment limited to 1 year or less in extended administrative furlough situations?

The State may not retain a temporary technician in pay status to furlough a permanent technician in the same competitive level. The temporary technician is either separated or furloughed in such situations, and is not entitled to the protections of adverse actions or RIF procedures when this occurs. As a matter of good human resources management, the State should try to give the temporary technician as much advance written notice as possible.

Time spent in furlough status by a temporary technician counts the same as time in a pay status toward the appointment's not-to-exceed date and the 2 year limit on the overall service specified in 5 CFR 316.401(c).

11. What notice must the State provide to a technician of an extended administrative furlough action?

The State must give the technician a minimum 60 day specific written notice before the effective date of any action, including furlough. The same notice requirements are applicable to both a continuous and a discontinuous furlough.

12. What option is available if the State is unable to provide a technician with the minimum required notice of an extended administrative furlough?

When the action is caused by unforeseeable circumstance, the State may request that NGB authorize a notice period of less than 60 days. However, the State must still provide each technician with a minimum of 30 calendar days written notice of the action.

13. Is the State required (or permitted) to register technicians administratively furloughed in the DoD's Reemployment Priority List, or is the technician eligible for priority consideration under placement programs such as the DoD Priority Placement Program or the Interagency Career Transition Assistance Program?

No. These programs are only available to technicians who are separated. These programs are not available to technicians who are furloughed.

14. What if the State 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 TPR 351 furlough procedures when it extends the furlough beyond 22 workdays?

If the State's initial assessment resulted in a furlough of 22 workdays or less, OPM recommends that the State complete that furlough effected under TPR *715* procedures and issue new furlough notices under either TPR *715* or TPR 351, as appropriate, in the event it determines that additional savings are necessary.

Labor Management Relations Implications

1. When the State is required to effect an administrative furlough, what is the State's obligation to bargain?

The decision to furlough technicians, and *determination of* those activities exempt from furlough, are management rights that are not subject to bargaining. See 5 U.S.C. 7106(a).

When the State determines that an administrative furlough is necessary, the TAG is required to notify the exclusive representatives and, upon request, bargain over any negotiable impact and implementation proposals the labor organization may submit; unless the matter of furlough is already "covered by" a collective bargaining agreement.

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

State contracts may also contain provisions regarding "adverse actions" and "reduction-in-force" (RIF) whereby States must comply in giving notice to bargaining unit technicians of pending furloughs. It is advisable to check the State's individual labor agreements for applicable "adverse action" and "reduction in force" notice provisions, and to comply with those provisions.

In the event that States 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, States 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, the written notice of furlough, to individual technicians, and the 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. ***The statutory requirement that agencies provide appropriate notice to labor organizations of changes in conditions of employment, however, still applies.***

2. May the State effect an administrative furlough for technicians in a bargaining unit before negotiations are completed?

If the parties bargain to impasse and the labor organization does not invoke the services of the Service Impasses Panel in a timely manner, the State may furlough technicians without further delay provided the State HRO gives the labor organization adequate notice of its intent to implement its last bargaining offer on a specific date. If the labor organization invokes the services of the Service Impasses Panel by that date, the State may not furlough technicians unless it can show it is necessary to do so without further delay.

States 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 a furlough could not be delayed pending resolution of the bargaining impasses. If bargaining is not completed and the State must furlough technicians, the State should continue to bargain and, if possible, implement any agreement retroactively. NGB advises that all attempts should be made to complete the collective bargaining process first, if possible.

3. While no decision has been made to administratively furlough technicians, the labor organization has submitted a midterm bargaining request on furlough procedures regarding any possible future administrative furlough. A State's collective bargaining agreement is silent on furlough procedures and the labor organization is invoking its right to initiate mid-term bargaining on matters not covered by the agreement. Does a State have an obligation to bargain when no decision has been made to furlough technicians?

Even though no decision has been made to furlough technicians, it is possible that the State has a duty to bargain regarding the labor organization initiated mid-term bargaining request; assuming the matter is not already covered by the State collective bargaining agreement. The law requires a State 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 labor organization has waived its right to bargain about the subject matter involved. With this in mind, the State will have to evaluate the circumstances of the situation to determine whether or not there is a duty to bargain on furlough procedures.

4. Along with a bargaining request on furloughs, the labor organization has submitted an information request under 5 U.S.C. 7114 seeking information, such as the State administrative furlough plan and a list of technicians expected to be furloughed, and whether or not the furloughs are planned to be continuous or discontinuous. Does the State have to provide this information?

It depends. The State is required to provide data that is normally maintained, reasonably available, and necessary to perform the representational duties of a labor organization. A labor

organization who is requesting information must establish a particular need for the information by articulating, with specificity, why it needs the requested information, including how the labor organization will use this information and the connection between the use of this information and the labor organization's representational responsibilities under statute. The labor organization must establish that the requested information is required in order for it to adequately represent its members. A State denying a request for information must assert and establish any countervailing anti-disclosure interests. The State may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, the State must evaluate the circumstances of the situation to determine whether to provide the requested information.

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

The time limits and other procedures applicable to bargaining unit technicians are spelled out in applicable provisions of the State's negotiated collective bargaining agreements.

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

The law grants a union the right to be represented at certain meetings between managers and one or more bargaining unit technicians 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).

7. Are technicians who serve as union representatives on 100% official time subject to the furlough?

Yes. Unless technicians who have been granted 100% 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.

SAMPLE NOTICE 1—FURLOUGH PROPOSAL DUE TO PLANNED REDUCTION IN THE EXPENDITURES (TPR 715)

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

1. This memorandum notifies you that the [State name] National Guard proposes to furlough you no earlier than 30 days from receipt of this notice. The furlough is being proposed under the authority of TPR 715 [briefly explain reason for furlough, e.g., because the agency has received an XX percent reduction in Operations and Maintenance (OMNG) 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].

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

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

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

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

b. Due to the uncertain and potential fluctuating amount of funding which may be available to this State, 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 State 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].

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

d. 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 non-pay 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.

4. At this time, we do not reasonably anticipate the need for furlough beyond 22 workdays. However, should additional furlough days be necessary, technicians 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].

5. 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 pay status, you and/or your representative, if an agency technician, 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:

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

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

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

Proposing Official,

Date

I acknowledge receipt of this notice ().

Print Technician Name

Signature

Date

SAMPLE NOTICE 3—FURLOUGH DUE TO PLANNED REDUCTION IN EXPENDITURES (TPR 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 TPR 351 when the State effects an administrative furlough to absorb funding reductions. States 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 the [State name] National Guard will furlough you for XX 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 [State name] National Guard received a XX% reduction in Operations and Maintenance 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) provisions in TPR 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 TPR 351, 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 technician, you will be furloughed XX workdays or XX 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 technician retention standing.

[If part-time: As a part-time technician 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 XX 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 Adjutant General. You may file an appeal within 30 calendar days after the effective date of your first furlough day.

If you a bargaining unit technician, 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].

This furlough under 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 [HRO contact name, phone number, and email address].

Official Signature Date

Attachments

I acknowledge receipt of this notice ().

Print Technician Name

Technician Signature Date

SAMPLE NOTICE 4— NOTIFICATION TO UNION OFFICIAL OF PLANNED TECHNICIAN FURLOUGH

[Note: This is the advance written notice required by collective bargaining agreements, when the State is planning an administrative furlough in order to absorb reductions in funding over a period of time. This sample has been written for the scenario where the State chooses to furlough on discontinuous days. States who choose to furlough on a continuous-day basis should amend the sample accordingly.]

1. Under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011, across-the-board reductions are scheduled to take place March 1, 2013, unless legislation is enacted that avoids such reductions. If this happens, sequestration will reduce each agency's budgetary resources in non-exempt accounts for the remainder of the fiscal year (which runs through September 30, 2013).
2. If sequestration occurs, the Department of Defense and National Guard Bureau have directed the execution of technician furloughs not to exceed 22 discontinuous days. A furlough is the placing of a technician in a temporary non-duty, non-pay status because of lack of work, reduction/ lack of funds, or other non-disciplinary reasons.
3. This letter serves as management's advance notice of a possible furlough affecting bargaining unit technicians in the [state] National Guard. Our Human Resources Office personnel are reviewing furlough procedures outlined in our collective bargaining agreement(s). We invite a cooperative approach from your officers to help us all get through these challenging times.
4. Questions or concerns regarding this correspondence may be addressed to [name of labor relations specialist], [state] Human Resources Office, [POC email and phone number].

Sincerely,

Signature Block



“Supporting those who are Always Ready...Always There”