

Restructuring Information Handbook Module 5

Reduction in Force Furlough

Unit B, Guidance (August 2003 version)

Introduction The U.S. Office of Personnel Management developed the **Restructuring Information Handbook** to assist Federal agencies in identifying the mandatory statutory and regulatory procedures that apply to restructuring situations.

The Handbook also offers agencies options for minimizing or even eliminating the disruption that often results from restructuring.

There is no requirement for Federal agencies to use this Handbook. Also, the United States Court of Appeals for the Federal Circuit stated in **James v. Von Zemenszky**, 284 F.3D 1310 (2002), that: “. . . OPM’s Restructuring Information Handbook is not a formal regulation, but merely an informal statement of agency views.”

The structure of the Handbook assists the user in locating as much or as little restructuring information as the user needs. Some Modules contain only one **Unit**, while other Modules have two or more Units.

For subjects with mandatory statutory or regulatory requirements, **Unit A (Mandatory Requirements)** provides the user with both a crash course on the subject, and also with detailed information, complete with citations of requirements contained in law and regulation.

When appropriate, **Unit B (Guidance)** provides the user with useful guidance, including key appeals decisions from appellate bodies such as the Merit Systems Protection Board.

The summaries of appeals decisions are guidance prepared by individual OPM employees. The appeals summaries do not represent official summaries approved by OPM, the Board, or other appellate organizations, and are not intended to provide legal counsel or to be cited as legal authority. Instead, the appeals summaries inform and help the user locate relevant appellate precedents on a specific downsizing subject.

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Unit F (Basic Index to Module) and **Unit G (Detailed Index to Module)** help the user readily locate information within a specific Module.

Other Modules may contain additional Units, such as **Unit C (Appeals Index)**, and **Unit D (Samples)**.

Finally, Module 1 contains **Unit H, (Detailed Index to the Restructuring Information Handbook)**.

We welcome comments on the Restructuring Information Handbook.

Send any comments and suggestions to the Center for Talent and Capacity Policy at (202) 606-0960; FAX (202) 606-2329; or e-mail Thomas A. Glennon at taglenno@opm.gov.

Contents

OPM's Restructuring Information Handbook Modules contain the following topics:

Topic	Module	Unit(s)
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Using the Handbook

The Modules contain many cross-references to additional pertinent material. To assist in searches, each Module features a unique index system that assists the user in readily locating information in that Module or in the other Modules.

For example, a reference to "**3-A-15-3**" refers to:

- (1) Module 3 ("**Reduction in Force**"),
- (2) Unit A ("**Required Procedures**"),
- (3) Section 15 ("**Credit for Performance in Reduction in Force**"),
- (4) Paragraph 3 ("**Time Period Covered by Employees' Performance Ratings**").

For a second example, a reference to "**3-B-6-5-(b)**" refers to:

- (1) Module 3 ("**Reduction in Force**"),
- (2) Unit B ("**Guidance**"),
- (3) Section 6 ("**Reorganization and Job Erosion**"),
- (4) Paragraph 5 ("**Use of RIF Procedures in Job Erosion Situations**"),
- (5) Subparagraph (b).

All of the Modules use the same index system.

For example, a reference to "**4-A-4-3**" refers to:

- (1) Module 4 ("**Transfer of Function**"),
 - (2) Unit A ("**Required Procedures**"),
 - (3) Section 4 ("**Determining Whether the Transfer of Function Provisions are Applicable**"),
 - (4) Paragraph 3 ("**Basis for Transfer of Function Decisions**").
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RESTRUCTURING INFORMATION HANDBOOK MODULE 5

Reduction in Force Furlough

Unit B, Required Procedures (August 2003 version)

Introduction Restructuring Information Handbook Module 5 provides guidance on OPM's reduction in force furlough regulations published in section 351.604 of title 5 of the Code of Federal Regulations (section 5 CFR 351.604). Module 5 also summarizes OPM's adverse action furlough regulations published in subpart 5 CFR 752-D. Module 5 consists of five Units: (1) Unit A, "Required Procedures," (2) Unit B, "Guidance," (3) Unit C, "Furlough Appeals Index," (4) Unit F, "Basic Index to Module 5," and (5) "Detailed Index to Module 5." This is the August 2003 version of Unit B.

Contents This publication contains the following topics:

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Coverage of the Reduction in Force Furlough Regulations	4-1
Selecting Employees for Release by Furlough	5-1
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Restructuring Information Handbook Module 5

Reduction in Force Furlough

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Section 2, Management Rights in Furlough

Introduction This section contains additional guidance on the furlough definitions covered in Section 2 of Module 5, Unit A (5-A-2).

Contents This section contains the following topics:

Topic	See Paragraph
Furlough Decisions	5-B-2-1
One Year Limit for Furlough	5-B-2-2

Additional Information When appropriate, Restructuring Information Handbook Module 5, Unit B (Guidance), has additional information on material in Unit 5-A.

To find additional information on these key paragraphs in Unit 5-A,	In Unit 5-B see paragraph:
5-A-2-1	5-B-2-1
5-A-2-2	5-B-2-2

A This symbol highlights the references back to Unit 5-A.

① This symbol guides you toward more general references on the subject in Module 5 or in other Modules.

Section 2, Management Rights in Furlough

5-B-2-1 **Management Rights In Furlough**

A [Guidance for subparagraph **5-A-2-1-(b)**.]

The agency decides whether a furlough is necessary, how long it will last, which positions are affected, and when employees are recalled. (5 U.S.C. 7106(a)(2)(A))

(b) Under the general authority of subparagraph 5 U.S.C. 7106(a)(2)(A), each agency decides how long the furlough will last.

- **Explanation**-In **Clerman v. Interstate Commerce Commission**, 35 M.S.P.R. 190 (1987), the Merit Systems Protection Board addressed the question of whether a furlough should be adjudicated on the anticipated or actual length to decide if the action is a reduction in force or an adverse action furlough.

Even though the furlough in **Clerman** actually covered the time span of an adverse action, the Board affirmed the appellants' furloughs under reduction in force procedures, noting that the agency was forced to estimate the length of a budget crisis in deciding what procedural rights apply. The Board concluded that, absent a showing of bad faith, it would not overturn a furlough action because the agency incorrectly estimated the necessary length of a furlough.

A [Guidance for subparagraph **5-A-2-1-(c)**.]

(c) Under the general authority of subparagraph 5 U.S.C. 7106(a)(2)(A), each agency decides which positions are furloughed.

- **Explanation**-In scheduling a furlough for an employee:
 - (1) **On a flexible work schedule**, the agency should define the furlough in terms of number of hours required, not days or specific dates or times.

- (2) **On a compressed work schedule**, the agency should schedule the furlough for days and times employees would normally work under the compressed work schedule.
- (3) **On a part-time work schedule**, the agency should compute the number of furlough days as an equal proportion to the number of furlough days for full-time employees.
- (4) **On duty in a seasonal position at the time the agency proposes the furlough**, the agency should consider the employee the same as other employees who are in a pay and duty status (for example, full-time or part-time employees).
- (5) **In a seasonal position in a nonduty, nonpay status at the time of the furlough**, the agency should decide whether to recall the employee based on the applicable conditions of employment and agency needs.
 - The agency may call an intermittent employee to work during a furlough period.

5-B-2-2 **One Year Limit for Furlough**

A [Guidance for paragraph **5-A-2-2**.]

An agency may furlough a competing employee only when the agency intends to recall the employee within 1 year to the position held by the employee at the time the furlough began. (5 CFR 351.604(a))

- **Explanation-In Cook v. Interior**, 74 M.S.P.R. 454 (1997), the Merit Systems Protection Board considered the purpose of furloughs, noting that furlough allows agencies to avoid other reduction in force actions (for example, separations and downgrades) by temporarily placing employees in a nonduty and nonpay status for up to 1 year in lack of work or shortage of funds situations.
-

Section 3, Furlough Definitions

Introduction This section contains additional guidance on the furlough terminology in Section 3 of Module 5, Unit A (5-A-3).

Contents This section contains the following topics:

Topic	See Paragraph
Explanation of Discontinuous Furlough	3-B-3

Additional Information When appropriate, Restructuring Information Handbook Module 5, Unit B (Guidance), has additional information on material in Unit 5-A.

To find additional information on this key paragraph in Unit 5-A,	In Unit 5-B see paragraph:
5-A-3-3	5-B-3-3

A This symbol highlights the references back to Unit 5-A.

① This symbol guides you toward more general references on the subject in Module 5 or in other Modules.

Section 3, Furlough Definitions

3-B-3-3

Explanation of Discontinuous Furlough

[Guidance for paragraph **5-A-3-3**.]

3. Discontinuous Furlough. An agency may furlough employees on a discontinuous basis (for example, one workday per week over 25 weeks instead of 25 consecutive workdays).

- A "**Discontinuous Furlough**" allows the agency to achieve the same results as a continuous furlough, but with less disruption to both agency productivity and employees.
-

Section 4, Coverage Under OPM's Reduction in Force Furlough Regulations

Introduction This section contains additional guidance on the coverage of OPM's reduction in force furlough regulations. Section 4 of Module 5, Unit A, contains the basic guidance.

Contents This section contains the following topics:

Topic	See Paragraph
RIF Furlough Does Not Apply to Preestablished Conditions of Employment	5-A-4-2
Modifications to General Coverage	5-A-4-3
Employees Excluded	5-A-4-4

Additional Information When appropriate, Restructuring Information Handbook Module 5, Unit B (Guidance), has additional information on material in Unit 5-A.

To find additional information on these key paragraphs in Unit 5-A,	In Unit 5-B see paragraph:
5-A-4-2	5-B-4-2
5-A-4-3	5-B-4-3
5-A-4-4-(b)	5-B-4-4-(b)
5-A-4-4-(e)	5-B-4-4-(e)
5-A-4-4-(f)	5-B-4-4-(f)

A This symbol highlights the references back to Unit 5-A.

① This symbol guides you toward more general references on the subject in Module 5 or in other Modules.

Section 4, Coverage under OPM's Reduction in Force Furlough Regulations

5-B-4-2 **Not Applicable to Preestablished Conditions of Employment**

A [Guidance for paragraph **5-A-4-2**.]

OPM's reduction in force furlough regulations do not apply when the agency places an employee in a temporary nonpay, nonduty status under preestablished conditions of employment set at the time of the employee's appointment to the position. (5 CFR 351.202(c)(6))

- This type of placement into a nonduty and nonpay status is also not covered by OPM's 5 CFR Part 752 adverse action regulations. (5 CFR 752.401(b)(14))
- (a) For additional information on the application of preestablished conditions of employment, see:
- (1) **Schmidt v. Treasury**, 19 M.S.P.R. 202 (1984), covering seasonal positions.
 - (2) **Lopez v. Air Force**, 26 M.S.P.R. 369 (1985), covering on-call positions;
 - (3) **Drake v. Army**, 77 M.S.P.R. 424 (1997), covering intermittent positions; and
 - (4) **Adams et. al. v. Internal Revenue Service**, 314 F.3d 1367 (2003, Fed. Cir.).
- (b) These additional decisions also cover seasonal positions:
- (1) **Strickland v. Merit Systems Protection Board**, 748 F.2d 681 (1984, Fed. Cir.);
 - (2) **Wik v. SBA**, 41 M.S.P.R. 97 (1989);
 - (3) **Sommers v. Agriculture**, 62 M.S.P.R. 519 (1994); and
 - (4) **Drake v. Army**, 77 M.S.P.R. 424 (1997)

5-B-4-3 **Modifications to General Coverage**

A [Guidance for subparagraph **5-A-4-3-(a)-(2)**.]

- (a) **Indian Preference.** Positions covered by Indian preference are subject to modified reduction in force procedures under 25 U.S.C. 472a. For more information, see **Antoine v. Interior**, 63 M.S.P.R. 184 (1994).

A [Guidance for subparagraph **5-A-4-3-(b)**.]

- (b) **Postal Service Preference Eligibles.** U.S. Postal Service employees who are eligible for veterans' preference are covered by OPM's reduction in force regulations. For more information, see **Robinson v. Postal Service**, 63 M.S.P.R. 307 (1994).
- U.S. Postal Service employees who are not eligible for veterans' preference are not covered by OPM's reduction in force regulations. For more information, see **Marcoux v. Postal Service**, 63 M.S.P.R. 373 (1994).

5-B-4-4 **Employees Excluded**

A [Guidance for subparagraph **5-A-4-4-(b)**.]

OPM's reduction in force regulations do not apply to certain employees, including:

- (b) **Senior Executive Service.** A member of the Senior Executive Service is not covered by OPM's reduction in force regulations but is covered by alternative furlough procedures. (5 U.S.C. 3595a, and 5 CFR 359, subpart H)

A [Guidance for subparagraph **5-A-4-4-(e)**.]

- (e) **Reemployed Annuitant.** A reemployed annuitant serves at the will of the agency. (5 U.S.C. 3323(b)(1)) This means that the individual competes under OPM's reduction in force regulations only at the agency's option. For more information, see **Spiegel v. Department of Defense**, 33 M.S.P.R. 165 (1987), 828 F.2d

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769 (1987, Fed. Cir.).

A [Guidance for subparagraph **5-A-4-4-(f)**.]

- (f) **Foreign National Employee.** OPM's 5 CFR Part 351 reduction in force regulations do not cover a foreign service national employee who is appointed under programs authorized by Section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968); for more information, see **Montasari v. Merit Systems Protection Board**, 232 F.3d 1376 (2000, Fed. Cir.).
-

Section 5, Selecting Employees for Release by Furlough

Introduction This section has additional guidance on reduction in force furlough notices, which is covered in Section 5 of Module 5, Unit A (5-A-5-5).

Contents This section contains the following topics:

Topic	See Paragraph
Reduction in Force Furlough Notice	5-A-5-5

Additional Information When appropriate, Restructuring Information Handbook Module 5, Unit B (Guidance), has additional information on material in Unit 5-A.

To find additional information on these key paragraphs in Unit 5-A,	In Unit 5-B see paragraph:
5-A-5-5	5-B-5-5
5-A-5-5-(c)	5-B-5-5-(c)
5-A-6-5-(c)-(2)-(i)	5-B-6-5-(c)-(2)-(i)
5-A-6-5-(c)-(2)-(iii)	5-B-6-5-(c)-(2)-(iii)

A This symbol highlights the references back to Unit 5-A.
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i This symbol guides you toward more general references on the subject in Module 5 or in other Modules.
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Section 5, Selecting Employees for Release by Furlough

5-A-5-5 **Reduction in Force Furlough Notice**

A [Guidance for paragraph **5-A-5-5**.]

An agency must give each competing employee a minimum 60-day specific written notice before the effective date of a reduction in force furlough. (5 CFR 351.801(a)(1))

- Each employee must receive a specific written notice at least 60 days before the first furlough day, not counting the day the employee receives the notice or the first furlough day. This 60-day advance notice may not end on a Saturday, Sunday, or legal holiday. (5 CFR 210.102(b)(3))
- Sample reduction in force notices for continuous and discontinuous furloughs follow this Section.

A [Guidance for subparagraph **5-A-5-5-(c)**.]

(c) **Employee's Status During a Reduction in Force Notice Period** When possible, the agency must retain the employee in an active duty status during the reduction in force notice period.

A [Guidance for subparagraph **5-A-6-5-(c)-(2)-(i)**.]

(i) If, in an emergency, the agency lacks work or funds for all or part of the notice period, the agency may place the employee on annual leave with or without the employee's consent; for more information, see **Lerner v. Department of the Interior**, 7 M.S.P.R. 511 (1981). (5 CFR 351.806)

A [Guidance for subparagraph **5-A-6-5-(c)-(2)-(iii)**.]

(iii) If in an emergency when the agency lacks work or funds for all or part of the reduction in force notice period, the agency may place the employee on annual leave with or without the employee's consent in a leave-without-pay status with the employee's consent, or in a nonpay status without the employee's

consent; for more information, see **Stewart v. Tennessee Valley Authority**, 77 M.S.P.R. 565 (1997). (5 CFR 351.806)

- **Explanation-Stewart** is the only reference decision from the Merit Systems Protection Board concerning the option of placing the employee in a nonpay status without the employee's consent.

In **Stewart**, the agency referenced section 5 CFR 351.806 in placing the employee in a nonpay status for more than 30 consecutive calendar days during the notice period of a reduction in force separation action. The agency claimed that an unexpected shortage of funds justified use of section 5 CFR 351.806 to place the employee in an involuntary nonpay status during the notice period, while the appellant argued that the action was by itself a second reduction in force action subject to Board review.

Although the Administrative Judge initially dismissed the appeal, the Board subsequently reopened the case for remand back to the Administrative Judge to determine whether the appellant sought to appeal both his placement into a nonpay status and his reduction in force separation, or just the placement into a nonpay status for more than 30 calendar days.

A [Guidance for subparagraph **5-A-6-5-(d)**.]

(d) **Sample Reduction in Force Furlough Notices-Background Information For the Sample Continuous and Discontinuous Furlough Notices:**

- (1) If the agency retains a lower retention standing employee in the competitive level beyond the normal release date because of undue interruption, the agency should amend the employee's reduction in force notice to explain the reasons for the exception.

- ① • See Restructuring Information Handbook Module 3 ("**Reduction in Force**"), paragraphs **3-A-3-17-9** through **-11**, for information concerning a "**Discretionary Continuing Exception**."

- ① • See paragraph **3-A-3-17-12** of Module 3 for information concerning a "**Permissive Temporary Exception**."

- ①
- (2) Agencies should check their collective bargaining agreements for other required negotiated provisions.
 - (3) OPM publishes Guidance and Information on Furlough on our website at www.opm.gov/furlough/furlough.htm. This booklet provides information on furlough in general and answers specific questions about adverse action and reduction in force furloughs and benefits while on furlough.
 - The following two sample reduction in force furlough notices assume that the agency has a funding shortfall which requires a furlough of more than 30 consecutive calendar days in a continuous furlough (sample 1), and more than 22 workdays in a discontinuous furlough (sample 2).

Sample Continuous Reduction In Force Furlough Notice--More Than 30 Continuous Days

[Agency Letterhead]

Memorandum

To: **(Employee Name)**

From: **(Agency Official)**

Subject: Specific Notice of Reduction in Force (RIF) Furlough

I regret to inform you that you will be furloughed (i.e., placed in a non-duty/non-pay status) for 40 consecutive days beginning March 1, 2001. Your return to duty date from furlough is April 9, 2001.

(Insert Reason for RIF Furlough. Example: We need to furlough employees because of a severe funding reduction in the Bureau of Automated Information. The Bureau does not have enough salary and expense (S&E) appropriations to keep all employees in a continuous pay and duty status for the whole fiscal year. We believe we can stay within our S&E appropriations by using the furlough process.)

The reason we are using the RIF rules in title 5, Code of Federal Regulations, Part 351, is because the furlough is more than 30 continuous days and is not considered an adverse action under 5 CFR Part 752. Retention registers were prepared to determine who to furlough. We determined your retention standing as of the RIF furlough effective date based on the following information:

Competitive Area:

Type of Service:

Position Title, Series, Grade:

Competitive Level:

Tenure Group and Subgroup:

Service Computation Date (SCD):

Three Most Recent Performance Ratings (with years credited):

Adjusted SCD (SCD-RIF):

You will be in a nonpay, nonduty status during your furlough. During

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this period, you cannot visit your workplace, work at home, or serve as an unpaid volunteer.

Any leave currently scheduled and approved during your furlough period is hereby cancelled.

Attachment 1 has general information about leave and benefits during a furlough. Attachment 2 has information on unemployment insurance under the **(State's Name)** Workforce Investment Act of 1998 Program.

We are taking this action under the applicable civil service RIF regulations and procedures. Copies of the retention registers, RIF regulations, and related records for this action are in the Human Resources Office. You may make an appointment to review this material by calling **(HR Representative's Name)** on **(Phone)**.

If you want to challenge this action, you may appeal this action to the Merit Systems Protection Board **(MSPB)**, **(City)** Regional Office, **(Street Address)**, **(City)**, **(State)**, **(ZIP Code)**. You must submit your appeal in writing. You can file an appeal after the first furlough day and until 30 calendar days from the first furlough day. If you do not file your appeal within this time limit, the MSPB may dismiss it unless you can show good cause for the delay. Attachment 3 is a copy of the appeal form and the MSPB appeal regulations.

This RIF furlough action does not reflect on your service, performance or conduct. We have taken it solely for the reason(s) stated in this notice.

We recognize the harmful impact of any furlough. We will inform you as additional furlough information becomes available.

(Agency signature)

Attachments

1. Benefits Information during a Furlough
2. **(State's Name)** Workforce Investment Act of 1998 Program Information
3. MSPB Appeal Form and Regulations

RECEIPT ACKNOWLEDGED:

U.S. Office of Personnel Management-Division for Strategic Human Resources Policy
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Signature _____

Date _____

(Typed Employee Name)

Sample Discontinuous Reduction In Force Furlough Notice--More Than 22 Discontinuous Days

[Agency Letterhead]

Memorandum

To: **(Employee Name)**

From: **(Agency Official)**

Subject: Specific Notice of Reduction in Force (RIF) Furlough

I regret to inform you that you will be furloughed (i.e., placed in a non-duty/non-pay status) for at least 26 nonconsecutive days between October 3, 2000, and September 30, 2001. Your designated furlough day is the first Tuesday of each pay period.

(Insert Reason for RIF Furlough. Example: We need to furlough employees because of a severe funding reduction in the Bureau of Automated Information. The Bureau does not have enough salary and expense (S&E) appropriations to keep all employees in a continuous pay and duty status for the whole fiscal year. We believe we can stay within our S&E appropriations by using the furlough process.)

The reason we are using the RIF rules in title 5, Code of Federal Regulations, Part 351, is because the furlough is more than 22 discontinuous days which is not considered an adverse action under 5 CFR Part 752. Retention registers were prepared to determine who to furlough. We determined your retention standing as of the first RIF furlough effective date based on the following information:

Competitive Area:

Type of Service:

Position Title, Series, Grade:

Competitive Level:

Tenure Group and Subgroup:

Service Computation Date (SCD):

Three Most Recent Performance Ratings (with years credited):

Adjusted SCD (SCD-RIF):

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You will continue in your present position during non-furlough days.

You will be in a nonpay, nonduty status on your furlough day. On your furlough day, you cannot visit your workplace, work at home, or serve as an unpaid volunteer.

Any leave currently scheduled and approved for your designated furlough day is hereby cancelled.

Attachment 1 has general information about leave and benefits during a furlough. Attachment 2 has information on unemployment insurance under the **(State's Name)** Workforce Investment Act of 1998 Program.

If you want to switch your designated furlough day to another day in the pay period, you must submit a written request to your supervisor by **(Date)**. We will review all change requests with approvals based on position function and employee retention standing. Furlough days must be spread over the entire two-week pay period to meet workload and office coverage requirements.

If you need to reschedule a specific furlough date, please submit your written request as far ahead as possible so we may consider it in view of office needs.

We are taking this action under the applicable civil service RIF regulations and procedures. Copies of the retention registers, RIF regulations, and related records for this action are in the Human Resources Office. You may make an appointment to review this material by calling **(HRO Representative's Name)** on **(Phone)**.

If you want to challenge this action, you may appeal this action to the Merit Systems Protection Board (MSPB), **(City)** Regional Office, **(Street Address)**, **(City)**, **(State)**, **(ZIP Code)**. You must submit your appeal in writing. You can file an appeal after the first furlough day and until 30 calendar days from the first furlough day. If you do not file your appeal within this time limit, the MSPB may dismiss it unless you can show good cause for the delay. Attachment 3 is a copy of the appeal form and the MSPB appeal regulations.

This RIF furlough action does not reflect on your service, performance or conduct. We have taken it solely for the reason(s) stated in this

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notice.

We recognize the harmful impact of any furlough, no matter how limited its length. We will inform you as additional furlough information becomes available.

(Agency signature)

Attachments

1. Benefits Information during a Furlough
2. **(State's Name)** Workforce Investment Act of 1998 Program Information
3. MSPB Appeal Form and Regulations

RECEIPT ACKNOWLEDGED:

Signature _____

Date _____

(Typed Employee Name)

Section 6, Assignment Right to Another Position

Introduction This section contains additional guidance on a released employee's potential "bump" or "retreat" right to a continuing position, which is covered in Section 6 of Module 5, Unit A (5-A-6).

Contents This section contains the following topics:

Topic	See Paragraph
Right of Assignment to Another Position	5-A-6-2

Additional Information When appropriate, Restructuring Information Handbook Module 5, Unit B (Guidance), has additional information on material in Unit 5-A.

To find additional information on this key paragraph in Unit 5-A,	In Unit 5-B see paragraph:
5-A-6-2	5-B-6-2

A This symbol highlights the references back to Unit 5-A.

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Section 6, Assignment Right to Another Position

5-B-6-2

Right of Assignment to Another Position

A

[Guidance for paragraph **5-A-6-2**.]

An employee released from the competitive level because of a reduction in force furlough has a potential assignment right to an "**Available Position**" in a different competitive level before the employee is actually furloughed. (5 CFR 351.701(a))

- An agency may furlough an employee under the reduction in force provisions only if the employee has no right of assignment ("**Bump**" or "**Retreat**") to a position held by a lower-standing employee, or the employee refuses an assignment offer to another position. (5 CFR 351.603)
 - **Explanation**-In **Allen v. Labor**, 19 M.S.P.R. 80 (1984), and in **Head v. Labor**, 20 M.S.P.R. 658 (1984), an employee reached for a furlough of 90 continuous days had a right of assignment to a position held by a lower-standing employee.
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Section 9, Adverse Action Furlough-Summary

Introduction This section contains additional guidance on OPM's adverse action regulations, which are summarized in Section 9 of Module 5, Unit A (5-A-9)

Contents This section contains the following topics:

Topic	See Paragraph
Exception Based Upon Preestablished Conditions of Employment	5-B-9-2
Exception to Adverse Action Notice Requirements	5-B-9-5

Additional Information When appropriate, Restructuring Information Handbook Module 5, Unit B (Guidance), has additional information on material in Unit 5-A.

To find additional information on these key paragraphs in Unit 5-A,	In Unit 5-B see paragraph:
5-A-9-2	5-B-9-2
5-A-9-5	5-B-9-5

A This symbol highlights the references back to Unit 5-A.

i This symbol guides you toward more general references on the subject in Module 5 or in other Modules.

Section 9, Adverse Action Furlough-Summary

5-B-9-2 Exception Based Upon Preestablished Conditions of Employment

A [Guidance for paragraph **5-A-9-2.**]

See the same appeals decisions cited in paragraph **5-B-4-2 ("RIF Furlough Does Not Apply to Preestablished Conditions of Employment.")**

5-B-9-5 Exception to Adverse Action Notice Requirements

[Guidance for paragraph **5-A-9-5.**]

An agency is not required to meet the 30-day advance written notice requirement set by subparagraph 5 U.S.C. 7513(b)(1) if the adverse action furlough resulted from unforeseeable circumstances, such as sudden breakdowns of equipment, Acts of God, or sudden emergencies where activity must cease. (5 CFR 752.404(d)(2))

- **Explanation-**In **Horner v. Andrzejewski**, 811 F.2d 571 (Fed. Cir. 1987), the United States Court of Appeals for the Federal Circuit found that OPM's emergency furlough provisions authorized by subparagraph 5 CFR 752.404(d)(2) are valid. The emergency furlough provisions permit an agency to furlough an employee under the adverse action regulations without regard to certain due process procedures otherwise required by section 5 U.S.C. 7513 when the furlough is necessary because of a sudden emergency requiring curtailment of activities, or a similar reason.
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