

Restructuring Information Handbook Module 5

Reduction in Force Furlough

Unit A, Required Procedures (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:

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Planning and Alternatives for Restructuring	1	B, F, G, H
Human Resource Responsibilities in Restructuring	2	B, F, G
Reduction in Force	3	A, B, C, D, E, F, G
Transfer of Function	4	A, B, C, F, G
Reduction in Force Furlough	5	A, B, C, F, G
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Voluntary Separation Incentive Payments	10	A, B, C, F, G

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 A, 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 A.

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Section 1, Overview of OPM’s Furlough Regulations

Introduction This section provides an overview of OPM's reduction in force and adverse action furlough regulations. Each paragraph in Section 1 summarizes a specific transfer of function topic. For more detailed information on a topic, each paragraph in Section 1 has a reference to the appropriate section in Module 5. The "Additional Information" paragraph below lists these references.

Contents This section contains the following topics:

Topic	See Paragraph
OPM’s Furlough Regulations	5-A-1-1
Two Types of Furlough	5-A-1-2
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Additional Information This section in Restructuring Information Handbook Module 5, Unit A, has references to other sections in Unit 5-A for more detailed information on specific transfer of function topics.

To find additional information in this Module on the overview paragraph below in Unit 5-A,	In Unit 5-A see section, or paragraph:
5-A-1-1	5-A-3
5-A-1-2	5-A-3
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A In Section 1, this symbol highlights where you can find more detailed information in Unit 5-A on a furlough topic.

Section 1, Overview of OPM's Furlough Regulations

5-A-1-1 OPM's Furlough Regulations

OPM's furlough regulations are authorized by the Veterans' Preference Act of 1944, as the law was later amended and codified in title 5, United States Code, sections 7511 through 7514 (5 U.S.C. 7511 through 7514).

- (a) OPM implements the law through:
 - (1) Reduction in force regulations published in title 5 of the Code of Federal Regulations, Part 351, section 351.604 (5 CFR 351.604); and
 - (2) Adverse action regulations published in title 5 of the Code of Federal Regulations, Part 752, subparts C and D, (subparts 5 CFR 752-C and -D).
- (b) The former Civil Service Commission defined adverse action and reduction in force furloughs as different actions. The law does not distinguish between the two types of furlough.
- (c) Members of the Senior Executive Service are covered by furlough provisions found in paragraph 5 U.S.C. 3595(a), and subpart 5 CFR Part 359-H.
- (d) Administrative Law Judges are covered by furlough provisions in section 5 U.S.C. 7521, and 5 CFR Part 930.

A [See Section **5-A-3** for more detailed guidance.]

5-A-1-2 Two Types of Furlough

The two types of furlough are:

- (a) **"Reduction in Force Furloughs"** of more than:
 - (1) 30 continuous calendar days; or
 - (2) 22 discontinuous workdays (for example, 1 workday per

week for 25 weeks); and

- (b) **"Adverse Action Furloughs"** of up to:
- (1) 30 continuous calendar days; or
 - (2) 22 discontinuous workdays (for example, 1 workday per pay period for six pay periods).

A

[See Section **5-A-3** for more detailed guidance.]

5-A-1-3

Applicability of the Furlough Regulations

An agency must use the appropriate furlough regulations to place an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

A

[See Sections **5-A-2** and **5-A-3** for more detailed guidance.]

- (a) An agency may furlough an employee under reduction in force regulations only when the agency plans to recall the employee to duty within 1 year in the position that the employee held when furloughed.

A

[See paragraph **5-A-2-2** for more detailed guidance.]

- (1) When furloughing some, but not all, employees under the reduction in force regulations, the agency must determine the employees' relative retention standing.
- (2) An employee on continuous reduction in force furlough may have an assignment right (a **"Bump"** or **"Retreat"** right) to another position.

A

[See Section **5-A-6** for more detailed guidance.]

- (b) An agency may furlough an employee under the adverse action regulations only when the agency plans to recall the employee to duty within 30 calendar days (or within 22 workdays for a discontinuous furlough) in the same position the employee held before the furlough.

[See Section **5-A-9** for more detailed guidance.]

A

- An agency may furlough an employee under the adverse action regulations without regard to the employee's relative reduction in force retention standing.
- (c) OPM's furlough regulations do not apply when an agency places an employee in a temporary nonpay, nonduty status under preestablished conditions of employment.

A

[See paragraphs **5-A-4-2** and **5-A-9-2** for more detailed guidance.]

5-A-1-4

Furlough Appeals and Grievances

Except as modified below, a furloughed employee can appeal to the Merit Systems Protection Board if the employee believes that the agency did not properly follow OPM's furlough regulations:

A

[See Sections **5-A-7** and **5-A-8** for more detailed guidance.]

- (a) **Reduction in Force Furlough:** A bargaining unit employee covered by a negotiated grievance procedure must use that procedure, or may appeal to the Board if the employee alleges discrimination is alleged.

A

[See Section **5-A-7** for more detailed guidance.]

- (b) **Adverse Action Furlough:**

- (1) A bargaining unit employee covered by a negotiated grievance procedure may use that procedure or may appeal to the Board, but not both.

A

[See Section **5-A-8** for more detailed guidance.]

- (2) A non-bargaining unit employee may use the administrative grievance procedure (or other dispute resolution process), or the employee may appeal to the Board, but not both.

5-A-1-5 **Recall From Furlough**

An agency uses employees' relative reduction in force retention standing order to recall the employees from a reduction in force furlough (for example, the agency recalls the highest-standing employee first).

- (a) An agency may recall employees from an adverse action furlough without consideration of the employees' relative retention standing.
- (b) An agency may not use reduction in force procedures to separate a furloughed employee. Instead, the agency recalls the employee and then determines whether the employee has a right to another position under OPM's reduction in force regulations.

A [See Section **5-A-10** for more detailed guidance.]

5-A-1-6 **Furlough Benefits and Other Furlough Information**

OPM's website at www.opm.gov/furlough/furlough.htm offers additional information in "**Guidance and Information on Furloughs**" (dated December 1998).

- The guidance includes a comprehensive summary of both adverse action furlough procedures, and furlough-related benefits.
-

Section 2, Management Rights in Furlough

Introduction This section covers the agency's responsibility to make furlough decisions. This section also explains the difference between the longer reduction in force furlough actions covered by OPM's reduction in force regulations, and the shorter furlough actions covered by OPM's adverse action regulations.

Contents This section contains the following topics:

Topic	See Paragraph
Furlough Decisions	5-A-2-1
One Year Limit for Furlough	5-A-2-2
Other Personnel Actions During Furlough	5-A-2-3

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 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

B This symbol highlights where you can find additional material in Unit 5-B.

i 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-A-2-1 Furlough Decisions

Under the general authority of subparagraph 5 U.S.C. 7106(a)(2)(A), each agency decides:

- (a) Whether a furlough is necessary;
- (b) How long the furlough will last ;

B [See subparagraph **5-B-2-1-(b)** for additional guidance.]

- (c) Which positions are furloughed;

B [See subparagraph **5-B-2-1-(c)** for additional guidance]; and

- (d) When employees are recalled from furlough.
-

5-A-2-2 One Year Limit for Furlough

An agency may furlough a "**Competing Employee**" under OPM's reduction in force regulations only when the agency plans to recall the employee within 1 year to the position the employee held at the time the furlough began. (5 CFR 351.604(a))

- ①
 - See Section **5-A-4** for information on which employees are covered by OPM's reduction in force regulations.
- ①
 - Subparagraph **3-A-4-1-(d)** in Restructuring Information Handbook Module 3 ("**Reduction in Force**") also defines "**Competing Employee.**" (5 CFR 351.203)

B [See paragraph **5-B-2-2** for additional guidance.]

5-A-2-3 Other Personnel Actions During Furlough

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The agency's need to furlough employees does not suspend the agency's authority and responsibility to take other personnel actions, including reduction in force. (5 U.S.C. 7106(a))

- An agency may take other personnel actions before, during, or after a furlough.
-

Section 3, Furlough Definitions

Introduction This section covers furlough terminology. All of the terms are defined in OPM's regulations.

Contents This section contains the following topics:

Topic	See Paragraph
Reduction in Force Furlough	5-A-3-1
Adverse Action Furlough	5-A-3-2
Explanation of Discontinuous Furlough	5-A-3-3

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

B This symbol highlights where you can find additional information on material in Unit 5-B.

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

Section 3, Furlough Definitions

5-A-3-1

Definition of Reduction in Force Furlough

A "**Reduction in Force Furlough**" means placing a competing employee in a temporary nonduty and nonpay status for: (5 CFR 351.203)

- (a) More than 30 continuous calendar days; or
 - (b) More than 22 discontinuous workdays.
 - Before continuously furloughing an employee under reduction in force regulations, the agency first determines whether the employee has the lowest retention standing and is released from the competitive level. (5 CFR 351.601(a))
 - The agency then determines whether the employee has an assignment right (a right to "**Bump**" or "**Retreat**") to another position. (See paragraph **5-A-6** for more guidance on reduction in force assignment rights.) (5 CFR 351.603)
- ①
-

5-A-3-2

Definition of Adverse Action Furlough

An "**Adverse Action Furlough**" means placing an employee in a temporary nonduty and nonpay status for:

- (a) 30 consecutive calendar days or less; (5 CFR 752.402(c)), or
 - (b) 22 nonconsecutive workdays or less as a discontinuous furlough. (5 CFR 351.203)
-

5-A-3-3

Explanation of Discontinuous Furlough

A "**Discontinuous Furlough**" means placing an employee in a temporary nonduty and nonpay status when some or all of the furlough days are nonconsecutive.

- For example, an agency could furlough an employee 2 days a week for 12 weeks as a reduction in force furlough (a total of 24 days discontinuous furlough); in another example, an agency could furlough an employee 1 day a pay period for 8 pay periods as an adverse action furlough (a total of 8 days discontinuous furlough).
- The same procedures apply whether a furlough is continuous or discontinuous.
- Paragraph **5-A-6-5** explains that "**Undue Interruption**" precludes assignment rights in a discontinuous reduction in force furlough.

①

B

[See paragraph **5-B-3-3** for additional guidance.]

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

Introduction This section explains which employees are covered under OPM's reduction in force furlough regulations. This section also explains when the furlough regulations do not apply.

Contents This section contains the following topics:

Topic	See Paragraph
Employees Covered	5-A-4-1
Employees Excluded	5-A-4-2
RIF Furlough Does Not Apply to Preestablished Conditions of Employment	5-A-4-3
Modifications to General Coverage	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	5-B-4-4

B This symbol highlights where you can find additional material in Unit 5-B.

i 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-A-4-1 Employees Covered

Except as noted below, OPM's 5 CFR Part 351 retention regulations, including the furlough provisions, apply to each employee:

- (a) In the executive branch of the Federal Government (5 CFR 351.202(a)(1)); and
 - (b) In a position outside the executive branch that is subject by statute to competitive service requirements, or is determined by the appropriate legislative or judicial administrative body to be covered. (5 CFR 351.202(a)(2))
 - Any employee eligible to be placed in retention tenure group I, II, or III employee is a "**Competing Employee**" and is covered by OPM's retention regulations. (5 CFR 351.203)
- ①
- Section **3-A-12** of Restructuring Information Handbook Module 3 ("**Reduction in Force**") covers retention tenure groups in detail.

5-A-4-2 RIF Furlough Does Not Apply To Preestablished Conditions of Employment

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 that the agency set at the time of the employee's appointment to the position. (5 CFR 351.202(c)(6))

- Paragraph **5-A-9-2** notes that this placement in a temporary nonpay, nonduty status under preestablished conditions of employment is also not covered by OPM's adverse action regulations. (5 CFR 752.401(b)(14))

B [See paragraph **5-B-4-2** for additional guidance.]

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

- (a) The following employees are covered by OPM's reduction in force regulations, as modified by an appropriate authority:
- (1) **Administrative Law Judges** are covered by the modified procedures found in 5 CFR Part 930. (5 CFR 351.202(a)(2))
 - (2) Positions covered by **Indian Preference** positions are covered by the modified procedures found in Section 25 U.S.C. 472a. (See paragraph **5-B-4-3** for more information.)
- (b) **U.S. Postal Service** employees eligible for veterans' preference are covered by OPM's reduction in force regulations under 39 U.S.C. 1005(a)(2), which was approved in the Postal Reorganization Act of 1970.
- Postal Service employees who are not eligible for veterans' preference are not covered by OPM's reduction in force regulations.

B [See paragraph **5-B-4-3** for additional guidance.]

5-A-4-4 **Employees Excluded**

OPM's retention regulations do not apply to:

- (a) A National Guard technician. (5 CFR 351.202(c)(5))
- (b) A member of the Senior Executive Service. (5 CFR 351.202(b)(1))

B [See subparagraph **5-B-4-4-(b)** for additional guidance.]

- (c) An employee in a position outside the executive branch, except for a position that is subject by statute to competitive service requirements, or is determined by the appropriate legislative or

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judicial administrative body to be covered by the retention regulations. (5 CFR 351.202(a)(2))

- (d) An employee whose appointment is confirmed by, or made with the advice and consent of, the United States Senate. (5 CFR 351.202(b)(2))
- (e) A reemployed annuitant, unless the agency allows the annuitant to compete under reduction in force procedures.

B [See subparagraph **5-B-4-4-(e)** for additional guidance.]

- Under paragraph 5 U.S.C. 3323(b), a reemployed annuitant serves at the will of the appointing officer and may be separated at any time by the agency.
 - If the agency does not separate the reemployed annuitant before a reduction in force, the agency determines the reemployed annuitant's retention standing without regard to the individual's reemployed status. The employee then competes in the reduction in force on equal terms with other competing employees.
- (f) A foreign national employee appointed under the Foreign Service Act of 1980, section 408 (22 U.S.C. 3968), which may include special reduction in force plans.

B [See subparagraph **5-B-4-4-(f)** for additional guidance.]

- In these plans, an agency may consider local labor laws and practices and supplement the factors in the retention regulations consistent with the public interest. There is no right to appeal actions taken under these special plans to the Merit Systems Protection Board.
-

Section 5, Selecting Employees for Release by Furlough

Introduction This section explains how the agency selects competing employees for furlough actions under OPM's reduction in force regulations. This section also explains the 1-year maximum time limit for a furlough action.

Contents This section contains the following topics:

Topic	See Paragraph
Reduction in Force Regulations Required	5-A-5-1
One Year Furlough Limit	5-A-5-2
Establishing Competitive Level	5-A-5-3
Release From Competitive Level	5-A-5-4
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 this key paragraph in Unit 5-A,	In Unit 5-B see paragraph:
5-A-5-5	5-B-5-5

B This symbol highlights where you can find additional material in Unit 5-B.

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

Section 5, Selection Employees for Release by Furlough

5-A-5-1 Reduction in Force Regulations Required

The agency must apply OPM's reduction in force regulations to furlough an employee for more than 30 consecutive calendar days, or for more than 22 discontinuous workdays. (5 CFR 351.601(a); 5 CFR 351.603))

- (a) Furlough is one of several actions (including separation and downgrading) that can result when an employee is reached for release from a reduction in force competitive level.
- (b) The agency must establish a "**Competitive Level**" before furloughing an employee
- (c) Before furloughing the employee, the agency must determine whether the released employee has an assignment right (a right to "**Bump**" or "**Retreat**") to a position held by lower-standing non-furloughed employees.



[See paragraph **5-A-3** below for additional guidance on competitive levels.]

5-A-5-2 One Year Furlough Limit

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

- (a) An agency may not furlough a competing employee for more than 1 year. (5 CFR 351.604(c))
 - (b) The 1-year maximum limit applies to both continuous and discontinuous furloughs.
 - (c) The 1-year maximum length of a furlough begins with the first day of the furlough, and ends 1 year from the beginning date of the furlough; the same procedure applies to both continuous and discontinuous furloughs.
-

5-A-5-3 **Establishing Competitive Level**

Before an agency can conduct a reduction in force furlough, the agency must establish "**Competitive Levels**" that include groups of interchangeable positions. (5 CFR 351.403(a))

- The terms "**Competitive Level**" and "**Retention Register**" are generally used interchangeably.
 - A competitive level becomes a "**Retention Register**" when the agency applies the four factors required by paragraph 5 U.S.C. 3502(a) (the four factors are (1) tenure, (2) veterans' preference, (3) length of service, and (4) performance ratings). The Retention Register then lists competing employees in their relative retention standing order. (5 CFR 351.401)
 - The same competitive level procedures used for reduction in force separations and downgrades apply to reduction in force furloughs.
- ①
- Section **3-A-9** of Restructuring Information Handbook Module 3 ("**Reduction in Force**") has more information about establishing competitive levels.
-

5-A-5-4 **Release From Competitive Level**

The same retention procedures used for other reduction in force actions (such as separation or downgrading) apply to a reduction in force furlough. (5 CFR 351.601(a))

- (a) An agency may not separate an employee covered by OPM's reduction in force regulations while retaining on furlough a lower-standing employee in the same competitive level. (5 CFR 351.601(c))
- (b) After the agency furloughs all "**Noncompeting Employees**" (employees who are not covered by OPM's reduction in force regulations) from the competitive level, the agency then releases the competing employees from the retention register in the inverse order of their retention standing. (5 CFR 351.601(a))

- The employee with the lowest retention standing is the first employee released from the competitive level. (5 CFR 351.601(a))
- ①
- Section **3-A-17** of Module 3 has more information on releasing employees from competitive levels.
-

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

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

- (a) The 60-day notice period applies whether the furlough is continuous or discontinuous. (5 CFR 351.801(a)(1))
 - (b) When the reduction in force furlough is caused by "**Unforeseeable Circumstances**," an agency may request OPM approval for a shorter notice period. (5 CFR 351.801(b))
- ①
- Sections **3-A-29** and **-30** of Module 3 contain detailed information on reduction in force notices.
- ①
- Section **3-A-31** of Module 3 covers an agency's request to OPM for an exception to the 60-day notice period.
- ①
- (c) Section **3-A-29** of Module 3 covers an employee's status during a reduction in force notice period: (5 CFR 351.806)
 - (1) When possible, the agency must retain the employee in an active duty status during the notice period.
 - (2) If, in an emergency, the agency lacks work or funds for all or part of the notice period, the agency may place the employee:
 - (i) On annual leave with or without the employee's consent (see subparagraph for more information);

B [See paragraph **5-B-6-5-(c)-(2)-(i)** for additional guidance.]

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- (ii) In a leave-without-pay status with the employee's consent; or
- (iii) In nonpay status without the employee's consent.

B [See subparagraph **5-B-5-5-(d)** for a sample continuous reduction in force furlough notice, and a sample discontinuous reduction in force furlough notice.]

Section 6, Assignment Right to Another Position

Introduction This section explains the conditions under which an employee furloughed under OPM's reduction in force regulations has a potential "bump" or "retreat" right to a continuing position.

Contents This section contains the following topics:

Topic	See Paragraph
Reduction in Force Furlough Only if No Assignment Right	5-A-6-1
Right of Assignment to Another Position	5-A-6-2
Undue Interruption-General	5-A-6-3
Undue Interruption-Continuous Furlough	5-A-6-4
Undue Interruption-Discontinuous Furlough	5-A-6-5

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 this key paragraph in Unit 5-A,	In Unit 5-B see paragraph:
5-A-6-2	5-B-6-2

B This symbol highlights where you can find additional information on material in Unit 5-B.

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

Section 6, Assignment Right to Another Position

5-A-6-1 Reduction in Force Furlough Only if No Assignment Right

The agency may use reduction in force furlough procedures only if the released employee: (5 CFR 351.603)

- (1) Has no assignment right to another position; or
 - (2) Declines an offer to another position that satisfied the employee's assignment right.
-

5-A-6-2 Right Of Assignment To Another Position

Before furloughing a released employee in a reduction in force furlough, the agency must determine if the employee has an assignment right ("**Bump**" or "**Retreat**") to an "**Available Position**" held by an employee with lower retention standing. (5 CFR 351.701(a))

B [See paragraph **5-B-6-2** for additional guidance.]

- ① • Section **3-A-19** of Restructuring Information Handbook Module 3 ("**Reduction in Force**") has information about reduction in force assignment rights.
 - ① • Paragraph **3-A-19-4** of Module 3 defines "**Available Position**."
-

5-A-6-3 Undue Interruption-General

An employee reached for release from the competitive level as the result of a reduction in force furlough has assignment rights to another position on the same basis as an employee reached for release as a result of other reduction in force actions; this includes the same standard for "**Undue Interruption**." (5 CFR 351.702(a)(4))

- (a) "**Undue Interruption**" means a degree of interruption that would prevent the completion of required work by the employee

90 days after the employee has been placed in a different position in first or second round reduction in force competition. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days, to perform the optimal quality or quantity of work. The 90-day standard may be extended if placement is made in first or second round reduction competition to a low priority program, or to a vacant position. (5 CFR 351.203)

- ①
- This definition of "**Undue Interruption**" is also covered in subparagraph **3-A-4-1-(v)** of Module 3. (5 CFR 351.203)
- (b) The agency applies the same undue interruption standard when considering whether undue interruption would result from: (5 CFR 351.203; 5 CFR 351.702(a)(4))
- (1) The displacement of a lower-standing employee in a different competitive level by the release of a higher standing employee released from the competitive level affected by the furlough action; and
 - (2) The recall of both employees to their official positions at the end of the furlough period.
 - If either displacement would cause undue interruption, the higher retention standing employee has no assignment right to that position.

5-A-6-4

Undue Interruption-Continuous Furlough

Because the undue interruption standard used in determining employees' assignment rights is based on 90 consecutive days, an employee reached for a continuous reduction in force furlough generally does not have assignment rights to a position held by a non-furloughed employee unless the furlough extends for 90 or more consecutive calendar days. (5 CFR 351.203; 5 CFR 351.702(a)(4))

5-A-6-5

Undue Interruption-Discontinuous Furlough

Because the undue interruption standard is based 90 consecutive days, an employee reached for a discontinuous reduction in force furlough does not have assignment rights to another position. (5 CFR 351.203; 5 CFR 351.702(a)(4))

Section 7, Reduction in Force Furlough Appeals

Introduction This section explains the basic right of an employee to file a reduction in force appeal to the Merit Systems Protection Board

Contents This section contains the following topics:

Topic	See Paragraph
Right to Appeal	5-A-7-1
Time Limits to Appeal	5-A-7-2
Notice of Appeal Right	5-A-7-3
Corrective Action on Appeal-Action Reversed or Modified	5-A-7-4
Corrective Action on Appeal-Action Reversed or Modified With Interim Relief	5-A-7-5

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

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

Section 7, Reduction in Force Furlough Appeals

5-A-7-1

Right To Appeal

An employee furloughed under OPM's 5 CFR Part 351 reduction in force regulations has a right to appeal to the Merit Systems Protection Board (the Board) under the Board's regulations. (5 CFR 351.901; 5 CFR 1201.3(a)(10))

- (a) An employee may not appeal if the employee accepts an assignment offer to another position at the same representative rate. (5 CFR 351.901; 5 CFR 1201.3(a)(10))
- (b) An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude reduction in force must use the negotiated grievance procedure, and may not appeal the reduction in force action to the Board unless the employee alleges discrimination. (5 CFR 1201.3(c) and 5 U.S.C. 7121(d))



- Paragraphs **5-A-8-3** and **5-A-8-5** cover this exception.



- The Board provides complete appeals information on its website at www.mspb.gov.
-

5-A-7-2

Time Limits to Appeal

An employee may file an appeal with the Board during the 30-day period beginning with the day after the effective date of the action being appealed. (5 CFR 1201.22(b))

- The Board will not accept an appeal that is filed on or before the effective date of the action. (5 CFR 1201.3(a)(10))
-

5-A-7-3

Notice of Appeal Right

When an agency issues a decision notice to an employee on a matter appealable to the Board, the agency must give the employee:

- (a) The time limits for appealing to the Board; (5 CFR 1201.21(a))
- (b) Any limits on the employee's appeal right because of a collective bargaining agreement; (5 CFR 1201.21(a))
- (c) If (b) applies, the right of the employee to elect filing an appeal to the Board based on discrimination instead of filing a grievance under the collective bargaining agreement; (5 CFR 1201.21(a))
- (d) Any right to file a grievance. (5 CFR 1201.21(d))
- (e) The address of the Board office where the employee files the appeal; (5 CFR 1201.21(a))
- (f) Any right to file a grievance. (5 CFR 1201.21(d))
- (g) The address of the Board office where the employee files the appeal; (5 CFR 1201.21(a))
- (h) A copy, or access to a copy, of the Board's 5 CFR Part 1201 regulations; (5 CFR 1201.21(b)), and
- (i) A copy of the Board's appeal form published in 5 CFR 1201-Appendix I.



- The Board provides a copy of its form on its website at www.mspb.gov. (5 CFR 1201.21(c))

5-A-7-4

Corrective Action on Appeal-Action Reversed or Modified

In adjudicating an appeal, the Board determines if the agency correctly applied OPM's regulations and, if an error is found, may direct appropriate corrective action. (5 CFR 1201.111(a)(5))

5-A-7-5

Corrective Action on Appeal-Action Reversed or Modified With Interim Relief

If the appellant wins an initial Board appeal, the administrative judge provides interim relief to the appellant under 5 U.S.C. § 7701(b)(2) unless the judge determines that interim relief is not appropriate. (5 CFR 1201.111(c))

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- Interim relief is effective on the initial decision's date and remains in effect until the date of the Board's final order on any petition for review. (5 CFR 1201.111(c))
-

Section 8, Reduction in Force Furlough Grievances

Introduction This section explains the basic right of an some employees covered by a collective bargaining agreement to file a reduction in force grievance.

Contents This section contains the following topics:

Topic	See Paragraph
Right to Grieve	5-A-8-1
Time Limits to Grieve	5-A-8-2
Exception to Grievance Right-General	5-A-8-3
Exception to Grievance Right-Election of Procedure	5-A-8-4
Exception to Grievance Right-Time Limits for Election	5-A-8-5
Corrective Action on Grievance	5-A-8-6

Section 8, Reduction in Force Furlough Grievances

5-A-8-1

Right to Grieve

An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude reduction in force must use that procedure, or in lieu of the grievance may appeal the action to the Merit Systems Protection Board if the employee alleges discrimination. (5 CFR 1201.3(c)(1))

5-A-8-2

Time Limits to Grieve

The applicable collective bargaining agreement contains the time limits for filing under a negotiated grievance procedure are in. (5 CFR 1201.3(c)(1))

5-A-8-3

Exception to Grievance Right-General

Paragraph 5 U.S.C. 7121(d) allows an employee to file a reduction in force appeal with the Board, in lieu of the negotiated grievance procedure, when the employee alleges discrimination under subparagraph 5 U.S.C. 2302(b)(1). (5 CFR 1201.3(c)(2))

5-A-8-4

Exception to Grievance Right-Election of Procedure

The agency must advise each employee who would otherwise have only a grievance right under a negotiated grievance procedure that the employee also has the option of filing a reduction in force appeal to the Board if the employee alleges discrimination under subparagraph 5 U.S.C. 2302(b)(1).

- The procedure that the employee first initiates in writing determines the proper procedure. (5 CFR 1201.3(c)(2))
-

5-A-8-5

Exception to Grievance Right-Time Limits for Election

An employee may not file a reduction in force appeal to the Board before the effective date of the action, even if the employee's basic right is to file a grievance under the negotiated grievance procedure.

- (a) The employee may appeal to the Board during the 30-day period beginning with the day after the effective date of the action. (5 CFR 1201.22(b))
 - (b) An employee who chooses to file a grievance follows the provisions of the negotiated procedure. (5 CFR 1201.3(c)(1))
-

5-A-8-6

Corrective Action on Grievance

An arbitrator adjudicating a grievance under a negotiated grievance procedure determines whether the agency correctly applied OPM's regulations.

- The arbitrator may direct appropriate corrective action if the arbitrator finds an error.
-

Section 9, Adverse Action Furlough-Summary

Introduction This section summarizes the procedures for furlough under OPM's adverse action regulations. This section also explains that the adverse action furlough regulations do not apply to a nonpay nonduty status under preestablished conditions of employment.

Contents This section contains the following topics:

Topic	See Paragraph
Adverse Action Short Furloughs	5-A-9-1
Exception Based Upon Preestablished Conditions of Employment	5-A-9-2
Using Competitive Levels	5-A-9-3
Adverse Action Furlough Notices	5-A-9-4
Exception to Adverse Action Notice Requirements	5-A-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

B This symbol highlights where you can find additional material in Unit 5-B.

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-A-9-1 Adverse Action Short Furloughs

An agency must use OPM's adverse action regulations to furlough an employee for 30 consecutive calendar days or less, or 22 nonconsecutive workdays or less. (5 CFR 752.401(a)(5) and 5 CFR 351.203))

- The agency uses the same procedures to implement an adverse action furlough that are used for other adverse action actions (such as removal, suspensions for more than 14 days, and reductions in grade or pay). (5 CFR 752.401(a))

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

OPM's adverse action furlough regulations do not apply when the agency places an intermittent or seasonal employee in a temporary nonduty, nonpay status under preestablished conditions of employment set at the time of the employee's appointment to the position. (5 CFR 752.401(b)(14))

B [See paragraph **5-B-9-2** for additional guidance.]

5-A-9-3 Using Competitive Levels

When an agency uses adverse action procedures to furlough some, but not all, employees from a competitive level, the agency must notify a furloughed employee of the basis for selecting the employee for furlough. (5 CFR 752.404(b)(2))

- ① • See paragraph **5-A-6-3** for information on reduction in force "**Competitive Levels**."
- ① • Section **3-A-9** of Restructuring Information Handbook Module 3 ("**Reduction in Force**") has detailed information establishing competitive levels.

5-A-9-4 **Adverse Action Furlough Notices**

An agency must give each covered employee a written notice at least 30 days before the effective date of an adverse action furlough. (5 CFR 752.404(b))

- The notice must state the reason for the furlough action and give the employee an opportunity to respond.
-

5-A-9-5 **Exception to Adverse Action Notice Requirements**

An agency is not required to give a 30-day advance written notice when the adverse action furlough resulted from "**Unforeseeable Circumstances.**" (5 CFR 752.404(d)(2))

- (a) "**Unforeseeable Circumstances**" may include:
- (1) Sudden breakdowns in equipment;
 - (2) Acts of God; or
 - (3) Sudden emergencies requiring the agency to immediately curtail activities.
- (b) The exception to the adverse action notice requirements may also apply to the employee's right under paragraph 5 CFR 752.404(c) to respond to the proposed furlough action. (5 CFR 752.404(d)(2))

B [See paragraph **5-B-9-5** for additional guidance.]

Section 10, Recall From Furlough

Introduction This section covers the procedures in the furlough regulations used by agencies to recall employees from reduction in force or adverse action furlough

Contents This section contains the following topics:

Topic	See Paragraph
Recall Order From Reduction in Force Furlough	5-A-10-1
Reduction in Force During Furlough	5-A-10-2
Recall From Adverse Action Furlough	5-A-10-3
Failure to Return From Furlough	5-A-10-4

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

<p>① This symbol guides you toward more general references on the subject in Module 5 or in other Modules.</p>
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Section 10, Recall From Furlough

5-A-10-1 Recall Order From Reduction in Force Furlough

The agency recalls employees to their competitive levels in relative retention standing order. (5 CFR 351.604(d))

- For example, the agency must first recall the employee with the highest retention standing in the competitive level.
-

5-A-10-2 Reduction in Force During Furlough

When an agency finds that the situation changed and is unable to recall an employee furloughed by reduction in force within the 1-year maximum time period, a subsequent separation or other actions affecting the furloughed employee is a new reduction in force actions. (5 CFR 351.201(a)(2))

In carrying out a new reduction in force action, the agency must give the employee a new specific reduction in force notice a minimum 60 days before the effective date of the action. (5 CFR 351.801(a)(1))

- ① • Paragraph **5-A-5-5** has more information on reduction in force notice requirements.
-

5-A-10-3 Recall Order From Adverse Action Furlough

The agency may recall employees to their competitive levels from an adverse action furlough without regard to the employees' relative reduction in force retention standing.

5-A-10-3 Failure to Return From Furlough

When a furloughed employee refuses or fails to respond to an agency recall notice, the agency should consider whether the employee abandoned the position.

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- In this situation, the agency should first notify the employee that the individual is absent without leave (AWOL), and then consider what action is appropriate.
-