

**Administrative Services State
Personnel & Employee
Relations Divisions**

NEBRASKA STATE GOVERNMENT FURLOUGH GUIDE



Revised September 2019

This guide is meant to provide general guidelines and is not meant to cover every aspect of furlough planning and implementation. Furlough planning and implementation may require consideration of state-wide or agency-wide issues and necessities, or any combination thereof.

Introduction:

This guide will take you through several critical decision-making questions to assist your agency in determining whether or not to implement a furlough. Every agency experiencing a reduction in funds or work will have unique business factors relating to their particular agency. The mission of the agency and specific funding or workload situation will often dictate whether a furlough is appropriate.

Definition - What is a furlough?

Furlough is defined as the placement of an employee in a temporary non-duty, non-pay status because of lack of funds. An intermittent furlough is a furlough action in which the non-duty, non-pay status occurs discontinuously over a period of time (e.g. one work day per month for a six month period) rather than consecutively.

What is the goal of implementing furlough provisions?

The goal of implementing a furlough is to provide State agencies with a tool that provides for continuation of critical work within the agency and retention of valuable human resources.

Who determines when a furlough is implemented?

Each agency head, or the Governor, is responsible for determining when a furlough would be beneficial. Agencies are responsible for developing their own furlough plan(s). The DAS Employee Relations Division will make recommendations for plan approval to the Governor for employees covered under the FOP 88 Labor Contract (FOP 88), NAPE/AFSCME Labor Contract (NAPE) and the DAS State Personnel Director will make recommendations for plan approval to the DAS Director for employees covered under the Classified System Personnel Rules and Regulations (Rules).

General questions to consider:

- 1) How long will the situation last? Is this a temporary short-term situation versus long-term?
- 2) Is the funding decline part of the normal budget process or is this a unique situation such as a reduction in grant or federal funds?
- 3) Are the affected employees covered under a labor contract or the Rules?

Decision-making factors when determining if a furlough is appropriate:

- If funding is reduced in a program or work unit and the agency believes the source will be restored within the foreseeable future; or if another action such as a pending retirement, resignation or transfer will resolve the funding shortfall, a furlough may be an appropriate option in lieu of layoff.
- If funding is eliminated for a work unit/program area and there is still a critical need to continue a portion or all of the work, an agency may consider shifting PSL from another program area to retain all or a portion of a position. A furlough may be implemented in this situation to retain workers in a critical area.
- If an agency does not expect a funding reduction to be restored in the next budget cycle and the agency does not have the ability to reorganize work, a layoff may be the appropriate option.
- When a work unit or agency incurs a significant unexpected expense or an emergency situation exists for which they have not budgeted nor can obtain deficit funding, a furlough may be appropriate if a date is known when funding will be restored to previous levels.
- FOP 88 covered employees cannot be furloughed for more than 29 days in a six-month period.
- NAPE covered employees cannot be furloughed for more than 29 days in a six-month period.
- SCATA covered employees cannot be furloughed for more than 29 days.

How does an Agency Director determine which employee(s) are subject to furlough?

- Employees who have special skills or are considered “essential” may be excluded from participation in furloughs. Essential employees should be identified early in the process to avoid the appearance of preferential treatment.
- If time and circumstances allow, agencies may wish to consider implementing voluntary furloughs prior to implementing an involuntary furlough. Employees from other non-affected work areas may volunteer and be selected for furlough if the furlough will result in a savings that offsets the funding shortfall.
- Uniform selection criteria should be developed by the agency and consistently applied. The agency must first consult the appropriate labor contract (Article 5, for FOP 88 and NAPE covered employees, Article 9 for SCATA covered employees) or the Rules (Chapter 13) to determine which employees will be affected by the furlough.

- Supervisory and management employees should not necessarily be excluded from the furlough requirement unless there are business-related factors preventing their participation.
- Furlough shall not be used as a substitute for permanent part-time employment.

Steps for Furlough Plan Approval:

Each plan should include a cover letter requesting review and approval of the furlough plan addressed to either the Employee Relations Administrator (for furloughs involving FOP 88 and NAPE covered employees) or the State Personnel Director (for Rules covered employees). The letter should include the following:

- The letter should explain the reasons (budget shortfall, decrease in federal or grant funds, etc.) for the furlough. The explanation should also include facts related to the temporary nature of the event causing the furlough action.
- The letter should include a summary of the budgetary analysis conducted by the agency and how the furlough action will relieve budgetary shortfalls, if applicable. The summary should also include an explanation of how the specific funding deficit relates to the affected work areas.
- The letter should include the effective date of the furlough, and the expected length of the furlough.

The furlough plan for implementing the action must include the following:

- 1) The plan should begin with an explanation of how employees will be selected. If time and circumstances allow, agencies are encouraged to seek volunteers for voluntary furlough prior to implementing an involuntary furlough. Agencies should indicate in their plan whether they intend to seek volunteers prior to implementing an involuntary furlough.
- 2) The tentative schedule for the furlough and number of employees affected should be pre-established in the plan. As an example, the furlough schedule for six employees in a work unit may be one day a week for a period of six weeks. The actual days off for voluntary and involuntary furlough should be determined with as much employee input and flexibility as possible without compromising the mission of the work unit. Selection of employees subject to furlough and the method of implementing the furlough must be in compliance with the applicable labor contract or Rules.
- 3) The plan should include the effective date of the furlough. Employees should be given as much advance notice as possible when implementing an involuntary furlough. Timeframes as outlined in the applicable labor contract or Rules should be followed. The plan should include the date when employees will be notified.
- 4) The plan should specify whether labor contract or Rules covered employees are affected and their job classifications.
- 5) A seniority list (seniority within classification in affected work area) of affected employees must be provided for labor contract employees.
- 6) The duration of the furlough should be stated in the furlough plan as directed in the applicable labor contract or Rules. Furloughs should not be used as a long-term solution.

- 7) The plan should include a draft letter to employees designated for involuntary furlough. The letter should include an explanation of the reason and duration of the furlough. The letter should include the following:
 - a. The letter should explain the reasons (budget shortfall, decrease in federal or grant funds, etc.) for the furlough. The explanation should also include facts related to the temporary nature of the event causing the furlough action.
 - b. The letter should include a summary of the budgetary analysis conducted by the agency and how the furlough action will relieve budgetary shortfalls, if applicable. The summary should also include an explanation of how the specific funding deficit relates to the affected work areas.
 - c. The letter should include the effective date of the furlough, and the expected length of the furlough.

FAQ's Related to Furloughs:

- 1) **If an employee works overtime during a week in which a furlough has been designated, will they receive overtime compensation?** Time not worked during a furlough will not be counted as work time for purposes of computing overtime.
- 2) **Will an employee's service anniversary date be adjusted for a furlough?** Under the FOP 88 and NAPE Contracts, a furlough does not constitute a break in continuous service; therefore, an employee's service date will not be adjusted. Under the authority of Neb. Rev. Stat. § 81-1317 (2014), a memo issued in July of 2008 by Mike McCrory, State Personnel Director, provides the same for Rules covered employees.
- 3) **What will happen to an employee's health insurance while on furlough?** The State will continue to make the same premium contribution toward health insurance coverage during a period of furlough as though it was a period of paid work time for FOP 88 and NAPE employees. Under the authority of Neb. Rev. Stat. § 81-1317 (2014), a memo issued in July of 2008 by Mike McCrory, State Personnel Director, provides the same for Rules covered employees.
- 4) **Will an employee's leave accrual rates change during furlough?** A furlough does not impact leave accrual rates for FOP 88 and NAPE covered employees. Under the authority of Neb. Rev. Stat. § 81-1317 (2014), a memo issued in July of 2008 by Mike McCrory, State Personnel Director, provides the same for Rules covered employees.
- 5) **How will furloughs in a work unit impact employees on Family and Medical Leave?** If an employee is on unpaid FMLA, there is no need to apply a furlough action.
- 6) **Can an employee be on furlough and still be on-call or on stand-by?** Employees on furlough shall not be scheduled for stand-by or on-call duty.
- 7) **Can employees on paid military leave be scheduled for furlough?** Employees should not be scheduled for furlough during periods of paid military leave. Employees may be scheduled for furlough upon return to work.
- 8) **If an employee is already in an unpaid status at the time they are designated for furlough, will they have to take a later furlough date when they return to work?** If an employee is already in an unpaid leave status at the time they are designated for furlough, they will not have to take an alternative furlough date unless the furlough action for the work unit is extended beyond their return date.
- 9) **If an employee's retirement contributions are reduced because they are in an unpaid status, can the employee make up retirement contributions?** The current statutes do not allow employees to "make up" contributions.
- 10) **Can an employee substitute paid leave (vacation, sick or compensatory time) for a period of furlough?** An employee may not substitute paid leave for a period of furlough, except in the case of SCATA employees.

- 11) **Can an employee request or an agency designate furlough days before or after a designated paid holiday?** Yes, furlough dates may be established before or after a designated paid holiday without the loss of holiday pay for the furloughed employee.
- 12) **Can employee be allowed to take a voluntary furlough in lieu of moving to a permanent part-time status?** No. Employees desiring part-time employment on a permanent basis are not eligible for furlough. Generally, furloughs should not be extended beyond a six-month period.

Sample Furlough Plan

FURLOUGH PLAN DEPARTMENT DATE

- i. Explanation of employee selection-Voluntary/Involuntary
- ii. Tentative schedule for furlough-number of days/weeks
- iii. When notice will be given to affected employees—Voluntary/Involuntary
- iv. Effective date of furlough
- v. Duration of furlough
- vi. List of labor contract or rules covered positions with seniority dates
- vii. Draft letter to employees
- viii. Attachment of questions/answer sheet

Sample Employee Letter-Agency Wide

August 9, 2019

Name-Position
Agency Address
Lincoln, NE

Dear Name:

Regrettably, due to a shortfall in tax receipts, it is necessary to temporarily reduce the number of paid work hours performed by your position. You will be placed in a temporary non-duty, no-pay status for two work days during the period of (insert date) through (insert date). The actual days of the week on which you will be furloughed, will be discussed with you and determined based on your preference and the workload and coverage needs of the work unit.

This furlough action is in no way a reflection on you or your work performance. This action is being taken as a measure to address a funding shortfall. Furlough actions allow the agency to retain valuable human resources while continuing your employment with the State of Nebraska.

If you are participating in the State Health Insurance Program, the State will continue to make the same premium contribution toward your coverage. You will continue to accrue vacation and sick leave at your current rate. Your state service anniversary date will not be adjusted as a result of this action. Should you have any questions about how this furlough action will affect your employment, please contact your agency human resource office at NUMBER.

On behalf of the Department of AGENCY, I want you to know your participation in the furlough program will ultimately benefit the AGENCY and the citizens of Nebraska.

Sincerely,

Director
Department of Agency

Sample Employee Letter-Individual Position

August 9, 2019

Name-Position
Agency Address
Lincoln, NE

Dear Name:

Regrettably, due to a temporary shortfall in funds related to PROGRAM OR AREA, it is necessary to temporarily reduce the number of paid work hours performed by your position. You will be placed in a temporary non-duty, no-pay status one day each week beginning DATE and ending DATE. The actual day of the week on which you will be furloughed, will be discussed with you and determined based on the workload and coverage needs of the work unit.

This furlough action is in no way a reflection on you or your work performance. This action is being taken as a short-term measure to address a temporary funding shortfall and is an alternative to layoff. Furlough actions allow the agency to retain valuable human resources while continuing your employment with the State of Nebraska.

If you are participating in the State Health Insurance Program, the State will continue to make the same premium contribution toward your coverage. You will continue to accrue vacation and sick leave at your current rate. Your state service anniversary date will not be adjusted as a result of this action. Should you have any questions about how this furlough action will affect your employment, please contact your agency human resource office at NUMBER.

On behalf of the Department of AGENCY, I want you to know your participation in the furlough program will ultimately benefit the AGENCY and the citizens of Nebraska.

Sincerely,

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