U.S. Merit Systems Protection Board

Information Sheet: Furloughs
Updated 9/3/2026

This document provides general information on furloughs in the Federal government, and on certain Federal employee rights associated with furloughs. The information is not all-inclusive, nor is it regulatory in nature. Further, it should not be considered legal advice or guidance. Furloughs, which can be either an adverse action or a reduction in force, are governed by pertinent statues, regulations, and case law. Should you have specific questions about a furlough, you should contact your human resources representative or an attorney. The Merit Systems Protection Board is prohibited by statute from issuing any advisory opinion.

What is a furlough?

The law, 5 U.S.C. § 7511(a)(5), defines a furlough as "the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons." The same definition is repeated in the regulation at 5 C.F.R. § 752.402.

Is a furlough an adverse action, a reduction in force, or another type of action?

A furlough can be an adverse action or a reduction in force (RIF). Which one it is depends on its duration. The provision quoted above is part of 5 U.S.C. Chapter 75, which addresses adverse actions. While the law does not specifically distinguish between the two types of actions, the Office of Personnel Management RIF regulation at 5 C.F.R. § 351.203 defines a furlough as "the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, but not more than 1 year." Thus, a furlough of 22 or fewer discontinuous days is an adverse action; one for 23 or more days is a RIF. The distinction turns on the fact that 22 workdays equate to 30 calendar days. *See Clerman v. Interstate Commerce Commission*, 35 M.S.P.R. 190 (1987). The definition at § 351.203 specifically excludes an emergency shutdown furlough caused by a lapse in congressional appropriations where the ultimate duration of the furlough is not known by the agency at the outset of the furlough. The Board does not have jurisdiction over furloughs taken by RIF; OPM has exclusive jurisdiction over appeals from RIF actions.

What are the notice requirements for an adverse action furlough?

The same notice requirements apply to furloughs as to any other adverse action, such as a removal or suspension. They are set out at 5 U.S.C. § 7513(b): at least 30 days' advance written notice stating the specific reasons for the proposed action; a reasonable period, not less than 7 days, to answer; the right to be represented; and a written decision that conveys the specific reasons for the action, at the earliest practicable date. A regulation specific to furloughs, 5 C.F.R. § 752.404(b)(2), adds that "When some but not all employees in a given competitive level are being furloughed, the notice of proposed action must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough."

Are Administrative Law Judges (ALJs) and members of the Senior Executive Service (SES) subject to the same rules as other employees?

Not entirely. An adverse action may be taken against an ALJ "only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board." 5 U.S.C. § 7521(a). Members of the SES are subject to furlough under 5 C.F.R. §§ 359.801-359.807.

Are there many Board decisions on the merits of adverse action furloughs that illustrate what issues the Board will consider?

No. Earlier furlough appeals have generally been rendered moot when the appellants have received back pay prior to the Board's adjudication. However, as is true of any appealable action that is within the Board's jurisdiction, the Board is authorized to overturn the action if the appellant shows harmful error in the application of the agency's procedures in arriving at its decision; that the decision was based on any prohibited personnel practice described in 5 U.S.C.
§ 2302(b); or that the decision was not in accordance with law. 5 U.S.C. 7701(c)(2)(A)-(C).

May I raise a claim that a furlough was contrary to the requirements of my collective bargaining agreement?

Yes. The Court of Appeals for the Federal Circuit has held that the MSPB has jurisdiction to determine whether employees were properly "laid off" in accordance with Federal regulations and the terms of the applicable collective bargaining agreement. *See Horner v. Schuck*, 843 F.2d 1368 (Fed. Cir. 1988).

If I am a seasonal or on-call employee and I am laid off, may I appeal on the basis that I have been furloughed?

No, not if the lay-off is in accordance with the terms of your appointment. *See National Treasury Employees Union v. Merit Systems Protection Board*, 743 F.2d 895 (D.C. Cir. 1984) (seasonal employees) and *Prior v. Department of the Air Force*, 56 M.S.P.R. 561 (1993) (on-call employees).

Do I have the right to a hearing on appeal?

Yes. If you have suffered an appealable furlough, that right is provided by law in 5 U.S.C. § 7701(a)(1).

What rules apply to my hearing right?

The Board's regulations make hearings public unless closing the hearing would be in the best interests of the appellant, a witness, the public, or any other person affected by the proceeding. 5 C.F.R. § 1201.52. The rules at 5 C.F.R. §§ 1201.51-1201.58 govern Board hearings, and the authority of the administrative judge (AJ) who hears your case is set out at 5 C.F.R. § 1201.41. An appellant may waive the right to a hearing by a clear, unequivocal, informed act. *See Nugent v. U.S. Postal Service*, 59 M.S.P.R. 444 (1993); *Rogers v. U.S. Postal Service*, 59 M.S.P.R. 647 (1993).

Do I have the right to an in-person hearing?

The Board has held that a hearing need not be conducted in person and may instead be conducted by video in the absence of a showing of prejudice. *Koehler v. Department of the Air Force*, 99 M.S.P.R. 82, 87 (2005). An appellant may also request a telephonic hearing, and although telephone hearings are appropriate in only limited circumstances, even in situations where the Board has found error in an AJ's decision to order a telephone hearing over an appellant's objection, the issue is whether it had a potential adverse effect on the appellant's substantive rights. *See Lowe v. Department of Defense*, 67 M.S.P.R. 97, 100 (1995); *Jezouit v. Office of Personnel Management*, 97 M.S.P.R. 48 (2004).