

State Management Guidelines: Furlough Accountability

DAS Human Resource Services Division

HR Management & Consultation

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Background and Assumptions:

Agencies are responsible to ensure State government's cost reduction goals are met by implementing the Cost Reduction Directive issued by DAS in March and July 2009. Individual managers are responsible for scheduling furlough time off and ensuring subordinate managers follow provisions of the Directive. Agencies discussed the requirements of the Directive with management employees and provided them with copies of the Directive.

The Cost Reduction Directive (Section 7) warns managers that violations of the directive may result in disciplinary action up to and including dismissal. The Directive notifies affected employees that unauthorized performance of job duties while on furlough status may result in discipline.

Affected employees filled out and signed one or more Furlough Election Forms acknowledging their understanding that performing unauthorized work on a furlough day is prohibited and could subject them to disciplinary action.

General Guidance:

DAS encourages agencies to take appropriate corrective or disciplinary action in the event that an affected employee fails to follow or disobeys the provisions of the Cost Reduction Directive. Standards and procedures for taking disciplinary action with management service employees are explained in HR State Policy 70.000.02 Management Service Discipline and Dismissal <http://www.oregon.gov/DAS/HR/docs/advice/P7000002.pdf>.

Unclassified employees, including "Executive Service" employees subject to the Directive serve at the pleasure of the Governor or the agency appointing authority and may be terminated at any time. See <http://www.oregon.gov/DAS/HR/docs/advice/P4003501.pdf> for additional information.

Appropriate disciplinary action depends on a number of case specific circumstances contributing to the seriousness of the offense and level of individual fault. Case specific circumstances are determined through the course of the agency's investigation.

Corrective Actions and Disciplinary Options:

Management retains the right to schedule and reschedule furlough time off for staff and should do so as soon as practical after learning that an employee did not take the appropriate furlough.

In cases where an agency's investigation indicates a manager failed to schedule or require subordinate employees to take appropriate furloughs days, or where an individual employee fails to take the full number of required furlough days, the agency should seriously contemplate taking one of the following disciplinary actions:

- Reprimand
- Reprimand in lieu of Salary Reduction
- Salary Reduction*

** Note: Do not reduce the salary of FLSA-exempt employees. An economic sanction imposed on an FLSA-exempt employee may only take the form of suspensions without pay of one week or more, demotion, removal, or dismissal.*

An agency should seriously consider the following disciplinary actions in more serious cases of a management employee's failure or refusal to comply with provisions of the Cost Reduction Directive such as performing unauthorized work on a furlough day:

- Suspension
- Demotion (permanent)
- Removal from management service
- Dismissal

Before an agency decides on a particular level of discipline, the agency should consider factors including but not limited to:

- The seriousness of the employee's conduct
- The level of fault
- The employee's record of performance and conduct (suitability of the employee)
- Mitigating information
- The needs of the agency

Sample Scenarios:

The following scenarios are hypothetical and for informational purposes only. The scenarios provide minimal factual details. Actual situations encountered by agencies may or may not result in the disciplinary actions identified below as "appropriate." Agencies may contact the Human Resource Management Consultation Unit or DOJ's Labor and Employment Section for advice in dealing with actual situations.

Scenario 1: A Section Manager fails to require three of his five subordinate management service employees to take their full number of furlough days off. Two employees took the one furlough day required by their tier (tier 1). The remaining three employees needed to take two furlough days based on their tier (tier 2) but took only one day.

The Agency Director and Agency Human Resource Manager met with all Division and Section Managers to instruct them on how to implement furlough leave within the Department. The agency directed managers to meet with their affected staff and “walk them through” the Directive and provide copies of the Directive and Furlough Election form to affected staff. Managers were further instructed to ensure that furlough election forms were completed by employees and copies sent to the agency human resources and payroll offices.

The agency reviewed the situation and discovered that the manager did not meet directly with staff concerning the Cost Reduction Directive. Rather, he simply forwarded the electronic mail message to the affected staff and stated, “Here is all the stuff on the furloughs we have to take. Please schedule this unpaid time off at your earliest convenience. Sorry but thanks...”

The manager approved one furlough election form from the affected employees and forwarded the form to human resources and payroll. An agency HR Analyst stated he followed up with the manager and left him a voicemail asking whether he had additional furlough election forms to submit. The Section Manager reported that he did not recall receiving this voicemail but indicated that, “it’s possible...”

The agency’s evaluation of the manager’s overall performance is that he generally performs in an adequate manner. He does a good job with programmatic concerns and issues with external stakeholders, but he sometimes fails to pay adequate attention to administrative details concerning personnel, budget, and other administrative issues. The Section Manager did not present compelling reasons why he failed to give adequate attention to managing employee furlough time, but he stated that he thought his subordinate supervisors and management staff “...would figure it out themselves.”

Appropriate Discipline: Reprimand in Lieu of Salary Reduction

Notes: This situation indicates of poor performance rather than wrongful conduct or insubordination the part of the manager. Because the manager has shown previous deficiencies in handling administrative matters and received specific instructions from the agency on how to handle the cost reductions a formal level of disciplinary action such as a reprimand in lieu salary reduction is in order.

Scenario 2: A management service, non-supervisory Fiscal Analyst 2 (FA 2) (FLSA non-exempt) took only one and one-half of her two required furlough days during the March through June 2009 period. The FA 2’s manager met with her the week following the announcement from DAS concerning the Cost Reduction Directive. The FA 2’s manager explained the number of furlough days the FA 2 needed to take over the four-month period as well as her option to elect a pay reduction in lieu of furlough. The FA 2 told the manager that she would prefer to have the time off from work rather than take a reduction.

The FA 2 was supposed to submit a completed Furlough Election Form to her manager by March 13 but did not do so. On March 16th, the manager asked the employee to submit the form as soon as possible. On March 20, the manager still did not receive the form and reminded the FA 2. The FA 2 filled out the form requesting April 1 and June 25, 2009, but she did not sign the form. The manager brought the unsigned form to the employee at her desk and asked that she sign. The FA 2 asked “Do I have to?” The manager replied, “Yes, I need you to sign it.” The FA 2 signed the document quickly passed it back to the manager as she returned to look at her computer screen. The manager thanked her, made a copy of the signed and approved form, and gave it back to the employee.

The FA 2 took her furlough day off on April 1 and properly recorded 8 hours of “LA” for the month. In June, the Fiscal Section’s workload increased significantly with quick turnaround times needed on fiscal impact statements for the Legislative Fiscal Office. On June 3, the manager returned to the office at 5:20 from a meeting and found that the FA 2 was still working on a costing spreadsheet. The manager reminded the FA 2 that all overtime needs to be specifically authorized by management before the time is worked. The manager also reminded the employee that this issue arose approximately 9 months earlier and the FA 2 received a Letter of Expectations that she was not to work overtime without authorization. The FA 2 said she “...sort of forgot about that issue” and also lost track of the time. The manager ultimately agreed to allow the employee to work until 6 pm and complete one hour of overtime.

The FA 2 worked approximately six additional overtime hours the first three weeks of June in order to meet these deadlines. The manager authorized all of these OT hours in advance based on workload and deadlines.

On June 24, the FA 2 received a request from the Legislative Fiscal Office (LFO) to complete a fiscal impact statement on an amendment to a bill as soon as possible. The FA 2 forwarded the email to her manager and asked, “Do you think it would be alright if I got this done by Friday?” (June 26). The manager replied “Yes” to the e-mail.

On June 30, 2009, the manager reviewed the FA 2’s timesheet and discovered she recorded 4 hours “LA” and 4 hours “Reg” for Wednesday June 25. The manager confronted the employee and asked why she reported working on her furlough day off. The employee said, “well, you sort of told me to because I needed to get a fiscal impact statement to LFO before June 26” The FA 2 found an e-mail she sent using her remote access to the state’s computer system to the LFO on June 25 at 4:55 p.m. with an attached spreadsheet. She also gave the manager a copy of the e-mail exchange on June 24. The manager told the FA 2 that he did not intend to have her work on the FIS on June 25, but to do so on June 26 when she returned to work. The FA 2 explained that she interpreted “by June 26” to mean that it need to be done and submitted prior to that date, not on it.

Appropriate Discipline: One-Step, One-Month Pay Reduction

Notes: The manager in this case took all appropriate steps to ensure that the affected employee scheduled appropriate furlough leave. The employee’s purported

misunderstanding of the manager's intent to have her work on her furlough day was unreasonable. Past events made it clear to the employee that she needed specific authorization to work additional time for the employer. In light of previous cautions to the employee (Letter of Expectation, signing the furlough form), she should have known that she needed specific authorization from her manager to be brought out of furlough status to perform this work.

Scenario 3: A management service Administrative Specialist 2 (AS 2), received adequate managerial instruction on the need for him to take one furlough day between March 1 and June 30, 2009. The AS 2 initially requested to take Friday June 19 as his furlough day off. Due to pre-approved vacation for other staff in his work unit, the AS 2's manager requested he choose another date. The AS 2 elected to take Friday June 26, as a furlough day. The manager approved the request and mentioned to the AS 2 that she is also taking a furlough on that day, and vacation the following Monday. The manager reminded the AS 2 that it is critical that he does not exceed 32 total hours of work for the week.

When the manager returned to work on June 30, she spent the morning in two separate staff meetings. In the afternoon, she reviewed the electronic time records submitted by each of her 14 staff to approve before the afternoon deadline. She noticed the AS 2 recorded eight regular hours worked on June 26. She double checked her records and verified that he was supposed to be on furlough. When the AS 2 returned from his afternoon break, the manager asked him why he did not record furlough time. He told her, "Well, I worked the day – I can't afford to have a pay cut this month. I'm already behind on my bills and if I miss another payment, I'll lose my car."

The manager asked the AS 2 if he understood the document he signed that warned him that he would be subject to discipline if he worked on a furlough day. The AS 2 replied, "Well I guess so, but can't I just make it up in another month? I didn't think you would take this so seriously."

Management had previous problems with the AS 2 failing to follow agency and state policies. In fact, 9 months earlier the manager issued the employee a written reprimand for excessive personal internet use during work time. The reprimand warned him that, "Further instances of your failure to follow this or other agency policies may result in disciplinary action including removal from management service or dismissal from state service."

Appropriate Discipline: Removal from Management Service

Notes: This employee demonstrated in more than one instance that he is "unwilling or unable to fully and faithfully perform the duties of his position satisfactorily" per ORS 240.570(3). Because he had no prior classified service, his removal from management terminated his employment from the state. If he had immediate prior classified service, the agency would have considered whether sufficient evidence existed to dismiss him pursuant to ORS 240.555 (malfeasance and/or insubordination).