

Considerations Regarding Furloughs

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Definition of furlough - Pursuant to K.A.R. 1-14-11, "furlough" is defined as leave without pay for a preset number of hours during each pay period covered by the furlough plan.

General Issues

- A furlough can be of whatever duration best fits the needs of the enterprise, but generally take one of two forms:
 - A set number of hours of furlough required to be taken over the course of a fiscal year (i.e., one day per pay period or month); or
 - Requiring all hours of a furlough be taken in a relatively short period of time (i.e., reduce all employees to half time for a set number of pay periods, or even completely eliminating hours in pay status for a workweek or pay period).
- The impact on employees' annual pay is the same, but the timing can have tremendous impact.

FLSA Issues

- It is important to note that we have been notified that the United States Department of Labor (US DOL) will be paying very close attention to the way that the State of Kansas administers any furlough.
- As a result, the biggest issue with respect to furloughs are the FLSA issues that result from the furlough of exempt employees
- Exempt employees are those employees who are not eligible for overtime compensation due to the nature and type of duties that they perform and receive a bi-weekly salary as opposed to hourly compensation.
- Pursuant to Federal regulations, exempt employees must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.
- After speaking with staff from US DOL in Washington D.C. and then confirming the information with the Regional office in Kansas City, due to the number of potential pitfalls and the close scrutiny of US DOL, the safest way to proceed during a furlough is to convert exempt employees to non-exempt (i.e., hourly employees who are eligible for overtime) for the entire duration of the furlough.
- US DOL specifically informed us that flipping an employee from exempt to non-exempt over the course of a furlough would not be tolerated.
- This makes a long-term furlough (i.e., one day furlough per pay period or month) very difficult as exempt employees would be required to be non-exempt the entire time.
- This essentially means that employees who are regularly expected to work more than 40 hours to complete the duties assigned to them must either stop working when they reach the allotted number of hours or earn overtime if they are required to complete the work.

Essential vs. Non-Essential Staff

- Due to the unique nature of services provided by government agencies, it is simply not feasible to furlough all employees.
- It is recognized that employees considered essential will not be included as part of a furlough, but it is vital that it be determined which employees are to be considered essential, or at least who will be responsible for making that decision.
- If furloughs are to be required in FY2010, it is imperative that the issue of which employees are to be considered essential is determined in advance of implementation.
- This determination can be made on a classification basis, by particular position responsibilities (dependent on the timing of the furlough) or can be left to the discretion of agencies.
- It is also important to remember that the distinction between “essential” and “nonessential” employees is likely to have a significant impact on employee morale.
- This is due to the fact that one group would be forced to endure a reduction in compensation while the other group is essentially untouched and in many cases, these employees will be working side-by-side on non-furlough days.

Furlough for Non-Exempt/Reduction in pay for Exempts

- One proposal the Committee explored last week was to furlough non-exempt employees and simply reduce the pay of exempt employees in a comparable amount.
- While this would certainly address the FLSA issues mentioned above, the limitations of the current pay plan could cause problems.
- Since classified employees must be paid within a particular pay range, and many of the State’s employees are at the beginning (i.e. Steps 4 or 5) of their pay range due to the lack of step movement, there is only a limited amount of reduction of pay possible with the current pay plan.
- In order to accommodate a reduction of pay for exempt employees in concert with a furlough of non-exempt employees, additional steps would have to be added to the beginning of each pay grade to allow employees to be “slid down” to accommodate the reduction in pay.
 - NOTE – An across the board reduction of the pay matrix would accomplish a reduction for all employees, exempt and non-exempt, which would alleviate the need for a furlough.
- Given the findings of the Hay Group and the recent work toward the new pay plans for State employees, this would be a significant step backward.
- This would also be a potential source of morale problems as a pay reduction would require employees to work the same hours and have the same duties, just for a lower rate that, in many cases, has already been found to be significantly below market.
- In the event of a combination approach where furloughs would be required of non-exempt employees and exempt employees would have their salaries reduced, this could also be a potential morale issue as exempt employees would be required to continue to work their same duties (likely exceeding 40 hours per week) while non-exempt employees would have their hours and duties reduced, all to the same monetary effect.

- Such an arrangement could also be problematic from an FLSA standpoint as it could result in exempt employees who are required to take on duties of their non-exempt coworkers could have their overall duties so altered that they would be considered non-exempt as well.
- For unclassified employees, a salary reduction would NOT require any modification to the system as they are not required to be paid on a pay range or step.

Branches of Government

- The regulations regarding furlough pertain to all classified employees in the Executive Branch, including Regents employees.
- With respect to the FLSA, the Executive and Judicial Branches are covered by the Federal FLSA rules as discussed above and are considered to be one employer by US DOL.
- However, given the differences between the Executive and Judicial Branches, we would not presume to speak for them with respect to furloughs for their employees.
- The Legislature is not covered by the FLSA, so could furlough employees without this concern.