Furlough Processing and Request for Information Template

Thursday, 07 March 2013

UPDATE (3-7-13): The request for information template has been added to the end of this article. Every employee should exercise their right to request and receive information related to this proposed action in order to properly prepare an official response. This is especially important given the Agency's official response to their decision to increase the salaries of the patrol agents in charge. In that response, the Agency claims that those salaries are not associated with the sequester. What they do not explain is how they chose not to associate them with the sequester and instead opted to associate your pay instead.

The NBPC is developing talking points for those members who opt for an oral reply and a template for those who opt for a written. Since the Agency has failed to provide the necessary information, we will have to base our responses off of what we all know and the waste we all see on a regular basis. If the Agency finally provides the information that was requested by the Union two weeks ago, then we are confident the information will provide sufficient information to challenge the proposed actions.

If you are reading this, chances are you have either already received or will receive in the next few days a notice from Office of Border Patrol (OBP) to initiate an adverse action against you. The first thing you should know is that a furlough is in fact an adverse action. The Union is issuing this informational memorandum to provide our best advice on how to handle this situation. We hope that this guidance will help employees gain a better understanding of what furloughs are and the overall process involved.

Accordingly,
just like any other proposal of adverse action, pursuant to Article 32 F of the nationally negotiated Collective Bargaining Agreement (CBA), an employee against whom a furlough action is proposed is entitled to:

1. Be represented by the Union.

2. At least thirty (30) calendar days advance written notice. The specific reason(s) for the proposed furlough action must be set forth in the proposal notice. In this case, the specific reason(s) for the proposed furlough action is due to the agency’s discretionary decision to furlough all CBP employees, including management officials and supervisors, for up to fourteen (14) workdays, or 122 working hours, in order to realize a 5% reduction in the Salaries & Expenses appropriation for FY 2013 mandated by sequestration. Although management could have chosen a different course of action to realize the reductions mandated by sequestration, CBP voluntarily chose to

nonetheless utilize furlough actions against its employees.

3. A ten (10) calendar day response period, extended for good cause, to answer the notice orally and/or in writing, and to furnish affidavits and any other documentary evidence in support of the answer(s). Management cannot force employees to make a split-second or on-the-spot decision as to whether they will exercise their right to make an oral and/or written response. Even if your supervisor does ask you to make such a decision, employees have the right to change their minds at any point during the initial ten (10) calendar day response period and to make an oral and/or written response.

If an oral response is made, management has the duty to prepare at least a written summary of the oral response, as well as a subsequent opportunity for the employee to review the written summary and make any corrections thereto. In some locations, management typically utilizes a court reporter to make a verbatim transcript of the proceedings and oral responses made in connection with a proposed furlough action should be no different.

4. Upon request, a copy of the materials relating to the proposed furlough action, regardless of whether relied upon by the agency in proposing its furlough action. Within the proposal notice, CBP has provided a link via its secure intranet to an 84 page copy of OMB’s Report to Congress on Sequestration, as well as a copy of President Obama’s Order to Implement Sequestration. The Union has prepared an example or template for employees and/or Union Stewards to follow or to use to request additional materials.

5. A final written decision, and the specific reason(s) therefore, by an agency official other than the agency official who proposed the furlough action. The deciding official shall only consider the specific reason(s) set forth in the proposal notice, along with the answer(s) of the employee and his or her Union representative.

Upon receipt of the notice of proposed furlough from your supervisor, you should simply sign it, keeping at least one copy for yourself. Your signature does not imply or otherwise indicate your agreement with the proposed furlough action or the reason(s) therefore, and an employee retains the right to make an oral and/or written response, as well as all other subsequent appeal rights. If you received your notice and were asked if you wanted to provide an oral or written response, you are allowed to change your decision. Just notify your supervisor of your decision to change your initial response from oral to written or written to oral.

Once you receive a notice of proposed furlough action, all employees should promptly seek out and secure representation through their respective station Union representatives/stewards. If you are unsure of who your station Union representatives/stewards are, contact your Local Union

president and he or she will designated a Union representative/steward to represent you. All employees who wish to have the Union represent them throughout all stages of the furlough process must complete and sign a Form G-956, Designation of Union Representative. While your supervisor should be able to furnish you with a copy of this form, the Union has nonetheless made it available below.

We encourage all employees to exercise their right to make an oral and/or written response to the agency’s proposed furlough action against them and the Union can provide experienced representatives who will be there to represent and assist Union members every step of the way.

Once you receive a notice of proposed furlough action, you are entitled to paid on-duty time to review the proposal, to review the materials relied upon within the proposal notice itself, as well as reasonable amounts of on-duty time to consult with your Union representative regarding the proposed furlough action. Equally, employees are entitled to reasonable periods of on-duty time to research and prepare their oral and written responses, again with assistance and representation from their designated Union representative. Please check with your supervisor about arranging for duty time to conduct these sorts of activities and please be flexible. Employees need to be sensitive to management’s obligation to accomplish its mission, but at the same time, management needs to be sensitive to the employee’s right to respond to the proposed action, within the ten (10) calendar day window.

AFGE and the NBPC have posted a wide variety of informative and in-depth information about furloughs on their respective websites. Please check back frequently for updates related to furloughs, including updates on the on-going negotiations with the agency over all matters related to sequestration and furloughs.

Download an official copy of this notice

Form G956 Designation of Representative (Adobe Acrobat)

Form G956 Designation of Representative (Microsoft Word)

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