# Frequently Asked Questions Regarding the 20-08 Directive on Furloughs and General Wage Increases

This information is intended to help HR leaders within state organizations navigate questions related to Governor Inslee’s Directive dated June 17th. We hope this resource helps you as you move to swiftly implement the required furloughs in your workplace. This guidance applies to Washington State Executive and Small-Cabinet Agencies, in order to attain a projected savings of $54 million. Higher education employers, separately elected officials and boards and commissions are strongly urged to follow this guidance in order to swiftly mitigate the impending budget shortfall. If these organizations adopt similar measures, the state would save another estimated $91 million.

Please note: We will follow up with additional communication to answer questions and concerns raised by employees and agencies. If you have a question that you believe should be added to this list, please email us at layoff@ofm.wa.gov.

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1. Will furlough days be pre-determined (certain dates or days of the week), or can the employer or employee choose a certain day in the week? This will be left to agency discretion so long as it results in the employee taking at least 8 hours of furlough in one week. Selection of which day an employee takes their furlough should be decided by balancing business and operational needs and the needs and interests of the impacted employee, similar to the way agencies currently make decisions about pre-approved leave use. Agencies are strongly recommended to work with employees whenever possible before deciding their furlough days, but an employee must have their work hours for the week reduced between 10-50%.
2. Do all affected employees have to be furloughed at the same time, or can they be spread over different days? Affected employees do not need to be furloughed on the same day. They can be spread out to accommodate operational needs and the interests of affected employees so long as eight hours of furlough are taken during that week.
3. If an employee with an alternate schedule is furloughed for one day per week, must they revert to a five-day eight-hour per day schedule, or can an employer offer scheduling flexibility for employees?

The expectation under the directive is that full time employees reduce their weekly schedule by at least 8 hours. The decision of whether to change an alternate schedule back to a standard five-eight schedule can be made by each employer, with input from the employee(s) impacted. Employees who have an alternative schedule and want to limit their furlough time to 8 hours during a week with a furlough, the simplest solution is to request a schedule change. There is no requirement under the directive to revert employees to a standard schedule, as long as the eight hour furlough is taken by all eligible employees within that week. If the employer changes the schedule of a represented employee to effectuate a furlough and not as a result of an employee request, any notice provisions in the CBA must be followed. *Typically* an employer-initiated temporary schedule change requires 3-days’ notice.

1. Do we need to give up flex schedules through the end of the year? Agencies have the discretion to work with their employees currently approved for flexible and alternative schedules. See question #3.
2. Do overtime exempt employees become overtime eligible during the week that their hours are reduced (during partial week furloughs)? Yes. During weeks when overtime exempt employees’ hours are reduced (partial week furloughs), overtime exempt employees become overtime eligible for that workweek. However, the objective is to save money, so employees are strongly discouraged from working overtime. Overtime eligible employees are required to track their time, either through positive or negative time reporting practices. Employers will need to decide how to ensure that time tracking for typically overtime exempt employees, and employees with flexible schedules, will occur during the reduced hour weeks. The Governor’s directive calls for at least one day of furlough per week from June 28th through July 25th – employees with flexible schedules or alternate schedules will still be required to take a full day equivalent furlough day, which in most cases is eight (8) hours. If employers are furloughing employees in solid week blocks, it is best to begin the furlough at the beginning of the week and in full week increments to avoid the necessity of treating the employee as overtime eligible during those workweeks.
3. Can an employee still receive unemployment benefits through the SharedWork program if they take LWOP (not related to the furloughs)? No. When an employee takes leave without pay unrelated to the furloughs, an employee is considered unavailable to work all scheduled hours with their employer. If the employee is unable to work all scheduled hours with their employer, they would not qualify for unemployment insurance benefits. Paid leave counts as work under ESD’s criteria for unemployment eligibility. Unpaid leave (LWOP) does not. Please note the distinction between general LWOP and voluntary furloughs taken as part of the shared work program.
4. Can furloughs be broken up within the week, for example take furlough leave in the afternoons but work mornings? As long as the furlough hours in a week add up to eight, employers have the discretion to decide whether to allow employees to break up their furlough day into two half-days, or even by taking a furlough in two-hour increments spread over four days. The hours that are taken as part of the furlough must be reported using the correct leave code to maintain eligibility for the SharedWork program and to accurately track cost savings. See #12.
5. Can an employee take the furlough days required through November up front all in a row and be done with it? No. The directive requires that at least one furlough day per week be taken between June 28th and July 25th. Beyond that, although combining some anticipated furlough days may be feasible from an operational perspective for an employer, the SharedWork program provides benefits only to employees that experience a 10-50% reduction in hours in a particular week. Part of the assumed cost savings of the furlough directive comes from the SharedWork program; allowing employees to combine all their furlough days may reduce the savings attained from the furloughs by making them ineligible for the SharedWork program.

After July 25th, agencies may consider allowing employees to combine their required furlough days (at least four, or one day per month for August, September, October and November), so long as combining the furlough days does not result in the employee being furloughed more than 50% of their scheduled hours within a work week.

1. Can an employee split the required furlough days over more than one pay period? Example: Taking four hours the first half of the month (pay period 1-15th) and four hours the second half of the month (pay period 16-end of the month). Yes, after July 25th. After July 25th, an employer can approve splitting the furloughs into 4-hour increments for full time staff, or the prorated equivalent for part time staff. A 4-hour reduction in work during a standard 40-hour week meets the 10% criteria for SharedWork program eligibility.
2. Will the notification requirements for temporary lay-off or reduction in hours apply to this statewide effort (for both rep and non-rep)? Yes. You must provide the employee with normally required notice in accordance with the CBA or civil service rules for represented and non-represented employees. There are no notice requirements for civil service exempt employees; however, we recommend that employees are notified within a reasonable timeframe. If you are providing 7 days’ notice to your other employee groups, please offer the same consideration to your civil service exempt employees. Even civil service exempt employees must be notified before the work week in which the employee is required to take the furlough. Notice letter templates are available on the OFM SHR website. See question #13.
3. Does State HR intend to bargain with the Union(s) on this? What might those agreements contain (i.e. timeline shortening for notices, furlough by position, et cetera)? Yes. OFM Labor Relations staff contacted all affected unions on June 17th, and some labor organizations negotiations are already occurring. Notice will go to all affected unions and they will have the opportunity to bargain the impacts. At this point we cannot speculate on the content of the agreements, but the goal is to reach agreement as soon as possible to allow agencies to complete their applications for the SharedWork program (which requires union agreement). ESD has agreed to accept a signed MOU as the union signature on the SharedWork application. OFM will provide these to ESD and the agencies.
4. Will there be a new leave code in HRMS for furlough use or do we just use LWOP? Yes, there will be a new leave code for HRMS. For furloughs that are part of the SharedWork program (which can include both mandated and voluntary, so long as they result in a 10-50% reduction in work hours in a given week), time and attendance processors should utilize leave code **9403** (LWOP Temp Layoff\ShrdWork). This code is currently under development and hopefully will be available in HRMS on June 24, 2020, with an effective date of June 21, 2020.

Any other furlough or temporary layoff absence that is not part of the SharedWork program should be coded in HRMS using **9396** (LWOP Temp Layoff\Agency Action). It is vital that agencies not use the SharedWork code for furloughs or other leaves that are not part of the SharedWork program.

## Will State HR be providing us with template letters for the furlough notices to staff? Yes. Template letters for represented, non-represented and civil service exempt staff are available on the HR Portal. We strongly urge agencies to send notice to all non-relief employees as soon as possible in order to meet the requirements for notice for a temporary lay-off/furlough.

1. Will ESD automatically register all agencies/institutions for SharedWork or do we need to apply individually? Each employer must apply for the SharedWork program. State HR has provided cabinet agencies with a list of all permanent employees, with the data available in HRMS that could help complete the SharedWork application. Other agencies such as higher education institutions, boards and commissions, and separately elected officials, can contact OFM for a list of their employees and associated files. After an employer’s SharedWork plan is approved, the employer continues to have the ability to add or remove employees to their approved SharedWork plan.
2. For those employees who want to volunteer for more hours of furlough than the one day per workweek, will they be eligible for Employment Security Department’s unemployment insurance through the SharedWork program for the whole time or only the one day per week? ESD makes the final decision on eligibility, but the SharedWork program is available to permanent employees who experience a reduction in their normal schedule of 10-50%. An employee may be eligible under the SharedWork program if they take one or two furlough days per week. Permanent project staff and seasonal employees during their season are also eligible for the SharedWork program.
3. Can we limit the number of hours/days an employee may voluntarily furlough (to avoid long-term unemployment)? Yes. In order to remain eligible for the SharedWork program, an employee can have their work hours reduced between 10-50%. Employers have discretion to approve or deny voluntary furlough requests, but it is important to recognize that there may be a loss of federal funds for that position if an employee’s reduction in hours does not match the 10-50% reduction required for the SharedWork program.
4. Do employers have any flexibility in when they impose the furloughs to accommodate their peak workloads (like agriculture inspectors, natural resource agencies, et cetera)?  If so, is there flexibility during the August to November period, or during the June to July period? The Governor’s directive requires affected employees in executive branch Cabinet agencies to take at least one furlough day per week between June 28 and July 25, 2020. These furloughs should not be combined or postponed. After July 25, agencies may exercise their discretion in scheduling the required furlough days. The directive requires at least one furlough day per month through the end of November of 2020, which amounts to four furlough days per eligible employee between August and November. See also #8 above.

Exception criteria for implementation of the furloughs are forthcoming, but are expected to be very narrowly applied in order to attain the required cost savings the furloughs are designed to deliver. While more guidance may be coming soon, reduced work hours will mean reductions in services and work production. Awareness of this reality should be communicated to employees explicitly, so that they are aware that they are not expected to accomplish in 32 hours what normally would require 40 hours to accomplish.

1. How do I know which of my agency’s positions is a “relief” position? Your agency should have reported any positions designated as requiring relief or backfill as part of their data cleaning earlier this spring to prepare for collective bargaining. Typically, only positions in work units requiring 24/7 coverage, like positions in prisons and hospitals, are considered relief positions. In essence, a relief position is a position for which a replacement worker (the relief) must be brought in as coverage if the incumbent employee calls in sick. It cannot be left vacant due to statutory or regulatory staffing requirements.
2. If an employee was recently hired and has not worked at least 680 hours for their employer, will they still be eligible to receive the $600 per week additional CARES Act benefit when they take the furloughs? If an employee has worked for the state for less than 680 hours, but was previously employed elsewhere—even in another state—they may still be eligible for the CARES Act benefit. The application for unemployment benefits asks the employee about work in other states, previous federal employment and recent military service, any of which could combine with Washington wages to achieve the 680 hours.
3. Will the furlough hours count as hours worked for retirement credit calculations? No. However, as long as an employee in PERS2 or PERS3 receives compensation for at least 90 hours in a month, they will still earn a full retirement credit for the month. Employees in PERS1 receiving compensation for at least 70 hours in a month will still earn a full retirement credit for the month. See below for more detailed information:

PERS 2 and 3: An employee must receive compensation for 90 hours in a month, in a retirement eligible position, to receive one full month of retirement service credit. An employee must receive compensation for 70 hours to receive a half month’s service credit and if they receive compensation for less than 70 hours but more than zero hours they will receive a quarter month’s credit.

PERS 1: An employee must receive compensation for 70 hours in a month, in a retirement eligible position, to receive one full month of retirement service credit. If they receive compensation for less than 70 hours but more than zero hours they will receive a quarter month’s credit.

There are some state employees who are covered by other retirement plans. For additional questions about the impact of furloughs on these plans, visit the Department of Retirement Systems’ website: https://www.drs.wa.gov/coronavirus/ or for specific questions call (360) 664-7000 or (800) 547-6657. See also : <https://www.drs.wa.gov/publications/member/multisystem/furloughs/>

1. How do the furloughs apply to employees using their accrued leave or protected leave entitlements? Is there any impact to employees that are using their 80 hours of expanded COVID leave? Employees using leave will be impacted by furloughs just as those who are working, unless they are in relief positions or meet a narrow criteria for exemption. Previously approved leave scheduled during the time an employee is furloughed should be rescinded.

Employees utilizing protected leave (including but not limited to EPSL or EFML), or those utilizing protections under Proclamation 20-46 regarding high-risk individuals, may not be targeted for layoff or reduced hours. If an employer applies documentable, neutral criteria in identifying employees for layoff or reduced hours that is not based on the employee’s use of protected leave, and application of the criteria includes those on protected leave as well as those not on protected leave, this is permissible. If application of the criteria would only impact or would disproportionately impact those on protected leaves, or if there is any other doubt, agencies should seek legal advice before proceeding.

1. We are at fiscal close; is the OFM deadline for closeout going to be pushed further out to accommodate for our fiscal staff’s furlough time? There is no plan to extend fiscal closeout deadlines at this time. If the furloughs make it difficult for your agency to meet fiscal close, please contact your assigned OFM Budget Assistant or Accounting Consultant. <https://www.ofm.wa.gov/accounting/about-statewide-accounting/find-your-ofm-accounting-consultant>
2. For agencies participating in the SharedWork program, will the employee benefits include both their percentage of weekly benefit amount for the furlough *and* the CARES funding of $600, *a percentage* of the $600, or *none* of it? The CARES Act federal funding is available through July 25, 2020. The intent of the first round of furloughs starting June 28th is that SharedWork benefits for agencies and CARES Act funding for employees will both be available. The $600 available through the CARES Act is a flat dollar amount and is not adjusted in relation to other unemployment benefits.
3. Are temporary employees subject to furloughs? Yes. While temporary employees may not be eligible for the SharedWork program, they will still be subject to the required furloughs.

1. Should permanent part-time employees be furloughed? Yes, their furloughs should be proportional, based on the amount of time they are normally scheduled to work. For example, if they are scheduled to work thirty hours in a workweek, they should be furloughed at least 6 hours.