

FURLOUGH APPEALS: FREQUENTLY ASKED QUESTIONS

- Q. I have just received notice that I am being furloughed from my civil service position. Do I have a right to appeal?
- A. If you are a regular status civil service employee, you have a right to appeal your furlough to the State Civil Service Commission. If you submit your appeal within the required time period, a hearing will be held. At that time representatives of the agency that furloughed you would be required to defend the decision to furlough you by showing that their action was based either on a lack of work or a lack of funds.
- If you are a probationary status civil service employee and receive notice of your furlough, you may appeal your furlough to the Commission, but you must present a claim of discrimination in order to be granted a hearing by the Commission. The discrimination claim must relate to unequal treatment based on one or more of the following: political affiliation, religious opinion, labor union affiliation, race, national origin, sex, age, disability, mistake-of-fact by the agency, illegal procedure followed to implement furlough, or some other basis that is not related to job performance.
- Q. If my position is covered by a collective bargaining agreement, can I file a grievance?
- A. If you are in a bargaining unit position, you should be able to file a grievance to challenge your furlough. You will need to contact a union representative to discuss the specific requirements of filing a union grievance. However, generally most contracts prohibit an employee from pursuing both a union grievance and a civil service appeal to challenge the same personnel action. Typically, an attempt to do both will result in the dismissal of your grievance. Therefore, you should carefully consider which option is right for you before filing a civil service appeal.
- Q. What is the time limit to file my appeal?
- A. Appeals must be postmarked or received at the State Civil Service Commission's offices within twenty (20) calendar days of the date you received your furlough notice, or the date you became aware that discrimination in the furlough process has occurred. If the appeal is mailed to the Commission, the federal post office postmark will be used to determine the official date of submission of your appeal.
- Q. How do I file my appeal?
- A. You will need to complete and submit a Civil Service Commission Appeal Request Form (Form SCSC 4112). A copy of this form should be provided to you with your notice of furlough. If you did not receive a copy of this form with your furlough notice, you may obtain a copy from your Human Resources office; from the Commission's offices in Harrisburg, Philadelphia, or Pittsburgh; or from the Civil Service Commission's website (go to www.scsc.state.pa.us and then click on the Legal Services link on the left side of the screen). The appeal form must be signed by you and must be filled out carefully and completely or the appeal may be delayed or denied by the Commission. If you are a regular status civil service employee, you need only complete the front of the appeal form. If you are a probationary status civil service employee, you must complete the front and back of the appeal form.

Q. What will happen when I file an appeal?

A. If you are a regular status civil service employee and have submitted your appeal request within the twenty-day time period, the Commission will grant your request for a hearing. You and the agency that furloughed you will be notified by United Parcel Service of the date, time and place of your hearing. Hearings are held in the Commission's Harrisburg, Philadelphia, and Pittsburgh offices. The hearing will be scheduled as soon as possible.

If you are a probationary status civil service employee, the Commission will grant your request for a hearing only if you have presented an acceptable claim of discrimination. If you are a probationary employee whose appeal request has been denied, you will receive prompt notice of the denial from the Commission and be given an opportunity to ask for reconsideration.

Q. Will I need an attorney?

A. Commission Rules provide that you may represent yourself at an appeal hearing. The agency that furloughed you, however, must be represented by an attorney. It may be advantageous for you to have an attorney, but it is certainly not required. You are responsible for securing your own attorney. Many county bar associations have a lawyer referral service. The lawyer referral service can assist you in identifying an appropriate attorney, but you are entirely responsible for negotiating and paying the attorney's fees.

Q. What is a civil service hearing?

A civil service hearing follows procedure similar to, but not quite as formal as, a regular court room proceeding. The hearings are open to the public. Witnesses are sworn in, evidence is introduced, and both sides have an opportunity to cross-examine witnesses. Presiding over the hearing will be any one or all of the Civil Service Commissioners, or a Hearing Officer. Statements of witnesses will not be accepted as evidence. If you want a witness to testify, the witness must be at the hearing. If you need a subpoena to require a witness to attend the hearing, the Commission will issue a subpoena for you to serve on the witness.

Q. What will happen at my hearing?

A. If you are a regular status civil service employee who has been furloughed, the agency that furloughed you will have the burden of proof at the hearing. This means the agency will be required to prove that your furlough is justified due to either a lack of work or a lack of funds. The agency will also be required to prove to the Commission that it followed all of the procedures required in order to properly implement a civil service furlough. As a regular status civil service employee, you will have no burden of proof at the hearing. You will however, be expected to respond to the agency's evidence if you dispute its accuracy. You may respond by presenting either documents or testimony of your own.

If you are a probationary status civil service employee who has been furloughed, it will be your responsibility to provide the Commission with evidence that proves your discrimination claim. After you have presented your evidence, the agency that furloughed you will have an opportunity to explain why your furlough is justified either due to a lack of work or a lack of funds. The Commission will then decide whether it believes you were discriminated against or you were properly furloughed.

- Q. What will happen after the hearing is over?
- A. After a hearing is complete, a transcript will be prepared and submitted to the Commission. Both parties at the hearing may also have an opportunity to present written statements (called legal Briefs) which will be due within a period of time that is established by the Commission after discussion at the conclusion of the hearing. After the hearing is over, if there are no Briefs, or after the last Brief is received, the record is closed. Following the close of the record, the Commission has ninety (90) calendar days to review the full record and issue a decision. A copy of the Commission's decision will be mailed to each of the parties and each of the attorneys involved in the hearing. A copy of the decision will also be posted on the Civil Service Commission's website (go to www.scsc.state.pa.us and then click on the Legal Services link on the left side of the screen).
- Q. If I change my mind after filing an appeal, can my appeal be withdrawn?
- A. Yes. You can withdraw your appeal anytime prior to a final decision by the Commission. However, if you withdraw your appeal, that will be a final decision and, barring extraordinary circumstances, the Commission will not allow you to resubmit your appeal.
- Q. If I win at my hearing, what will happen?
- A. The Commission will order that you be reinstated to the position that you had with the agency with backpay, benefits and restored seniority for all of the time that you were furloughed.
- Q. If I lose my appeal, what can I do?
- A. Every decision made by the Commission can be appealed to the Pennsylvania Commonwealth Court. That appeal must be filed within thirty (30) calendar days after the date our decision is mailed to you. In addition, you may also request that the Commission reconsider its decision. You must make the request to the Commission within fifteen (15) calendar days after the date our decision is mailed to you.
- Q. Is there a Management Directive or Manual that outlines furlough procedures and describes my re-employment rights after furlough?
- A. Yes, Manual 580.2 (M580.2). This link will take you to that document: http://www.portal.state.pa.us/portal/server.pt?open=512&objID=716&PageID=224629&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/cop_general_government_operations/oa/oa_portal/omd/p_and_p/manuals/items/m580_2.html. Be aware, however, that if your position is or was a position in a recognized collective bargaining unit, the applicable collective bargaining agreement (union contract) will take precedence over this Management Directive if there is a conflict between the two.
- Q. My furlough involves an issue arising from my "bumping" rights, either because I was improperly "bumped" from my job, or because I believe I had the right to "bump" someone else from theirs. Will the Commission decide this issue if I appeal?
- A. No, the Commission will not review that issue. The Civil Service Act and Rules make no mention whatsoever of "bumping." Such rights, if any exist, are exclusively a product of collective bargaining and are provided for only in the union contract. If the primary basis for your appeal involves an issue arising from

an alleged error in how "bumping" was used in your furlough, you should file a union grievance appeal, not a civil service appeal.

Q. If I have more questions, who can I contact?

A. You can contact the Legal Services Office at the State Civil Service Commission with any additional questions. You can contact us in two ways: 1) send an e-mail to the following address, ra-cs-legalsvcsganda@state.pa.us; or 2) call us at 717-783-1444 or 717-783-2924.