

EXECUTIVE ORDER NO. 09- 05

WHEREAS, the widespread impact of the collapse of the financial market and a global economic recession have caused constantly decreasing revenue projections by the Council on Revenues that have forced the State of Hawaii to make drastic and unprecedented revenue and expenditure adjustments to close major budget shortfalls of unprecedented proportions; and

WHEREAS, despite such adjustments, there still remains a major budget shortfall through the fiscal biennium July 1, 2009 through June 30, 2011;

NOW, THEREFORE, I, Linda Lingle, Governor of Hawaii, pursuant to my executive authority under Articles V and VII of the Constitution of the State of Hawaii, the provisions of Chapters 37 and 89C, Hawaii Revised Statutes, and all other applicable authority, do hereby order the furlough of Executive Branch employees who are exempt from civil service and excluded from collective bargaining, except those identified in #9 and #10 below, of three days per month, commencing September 16, 2009 and continuing through June 30, 2011, in accordance with the following terms and conditions:

1. "Furlough" means the placement of an employee temporarily and involuntarily in a non-pay and non-duty status by the Employer because of lack of work or funds, or other non-disciplinary reasons.
2. Furloughed employees' pay will be automatically adjusted each pay period to account for the directed furlough day(s), with the pay of full-time employees, except those identified in #9 and #10 below, adjusted by the equivalent of one and one-half days per pay period.
3. Full-time employee pay will be automatically adjusted by eight (8) hours for each furlough day or by one furlough day, whichever is applicable. All other employee pay will be automatically adjusted by using the employee's full-time equivalent (FTE) in computing the number of hours per furlough day (e.g. .5 FTE, .75 FTE, etc.)

4. Subject to the approval of their department head or designee, furloughed employees will have flexibility to designate by request their furlough days and may accumulate furlough days and take them in combined periods.
5. If an employee does not take the required number of furlough days during a particular month because of operational reasons, as determined by that employee's department head or designee, that shall not affect that employee's furlough pay adjustment in that month, and such employee shall take such (untaken) furlough day(s) within the same fiscal year, without any additional pay adjustment when such day or days are taken.
6. Employees who work other than a normal eight hour workday (e.g., 4 day/10-hour alternative workweek) shall be required to use vacation, compensatory time off, or work to make up the difference between the eight-hour furlough day and the actual hours the employee was scheduled to work. However, the department head or designee has the discretion to allow employees to take their entire alternative workday (e.g., ten (10) hours) as a furlough day, provided that the number of furlough hours per month for full-time employees, except those identified in Executive Order 09-04 and #10 below, remains at twenty-four (24) hours.
7. Employees shall not be permitted to substitute vacation, sick, compensatory time-off, or any paid leave for the furlough day(s).
8. This Executive Order does not assure continued employment during the furlough period specified herein. Employees who are exempt from civil service and excluded from collective bargaining are "at-will" employees whose appointments may be extended pursuant to applicable policies.
9. This Executive Order does not apply to employees of:
 - 1) the Department of Education/ Board of Education, including employees of public charter schools and the Hawaii State Public Library System;
 - 2) the University of Hawaii and the Research Corporation of the University of Hawaii;
 - 3) the Hawaii Health Systems Corporation;
 - 4) those employees covered by Executive Order 09-04;
 - 5) certain part-time intermittent employees (e.g. Aloha Stadium part-time intermittent exempt employees); and

6) Exempt Excluded employees whom I may determine and designate that should not be furloughed, should have furloughs of less than three days, or should not be furloughed during certain periods.

10. Notwithstanding the foregoing, the number of furlough days for employees identified in this #10 shall be two days per month, commencing September 16, 2009 and continuing through June 30, 2011. Employees covered by this #10 are those employees who are exempt from civil service and excluded from collective bargaining:

(a) identified as position numbers 103133, 100680, 100694, 102616, 102258, 100545, 100954, 100955, 100953, 102462, 101981, 100978, 100980, 100979, 100353, 100354, 100366, 100449, 100450, 100451, 108002, 104167, 118036, 102005, 101611, 100690 and 106012;

and

(b) whose incumbents' annual salaries have been reduced as a consequence of salary adjustments imposed by Act 85, Session Laws of Hawaii 2009.

The pay of employees being furloughed two days per month, will be automatically adjusted each pay period to account for the directed furlough day(s), with the pay of full-time employees adjusted by the equivalent of one day per pay period. Employees who work other than a normal eight hour workday (e.g., 4 day/10-hour alternative workweek) shall be required to use vacation, compensatory time off, or work to make up the difference between the eight-hour furlough day and the actual hours the employee was scheduled to work. However, the department head has the discretion to allow employees to take their entire alternative workday (e.g., ten (10) hours) as a furlough day, provided that the number of furlough hours per month for full-time employees remains at sixteen (16) hours.

Employees who are exempt from civil service and excluded from collective bargaining that do not satisfy both (a) and (b) above shall be subject to three furlough days per month.

IT IS FURTHER ORDERED that the furloughs ordered herein shall not cause or be deemed to cause:

1. A break of continued service in a furloughed employee's employment;
2. A decrease in the Employer's contribution to the Hawaii employer-union health benefits trust fund;
3. A change in the amount of vacation or sick leave earned by furloughed employees; or
4. A decrease in the furloughed employee's length of service for purposes of the employee's pension, retirement, and deferred compensation plans.

IT IS FURTHER ORDERED that this Executive Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of Hawaii or its agencies, departments, entities, officers, employees, or any other person; and


IT IS FURTHER ORDERED that these provisions are subject to amendment by Executive Order.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 31st day of
August, 2009.


LINDA LINGLE
Governor of Hawaii

 SEAL

APPROVED AS TO FORM:


MARK J. BENNETT
Attorney General