Guidelines for Implementing the Governor's Executive Order No. 11
Establishing and Implementing a Flexible Furlough Program for the 2008-09 Fiscal Year

Attached herewith are (1) the Governor's Executive Order No. 11 for Establishing and Implementing a Flexible Furlough Program for the 2008-09 Fiscal Year and (2) questions and answers issued by the Office of State Budget and Management to facilitate implementation of the Flexible Furlough Program. These attachments will serve as guidelines and apply to all employees exempt from the State Personnel Act who are employed at the University of North Carolina and its constituent institutions and whose salaries are paid in whole or in part from moneys appropriated by the 2008 Appropriations Act.

In accordance with the Executive Order, the part of the annualized base salaries of all covered employees paid from moneys appropriated by the 2008 Appropriations Act will be reduced by 0.5% (1/2%) over the remainder of this fiscal year; and in return, all full-time employees whose salaries are reduced shall receive 10 hours of flexible furlough leave to be taken between June 1 and December 31, 2009, and all employees employed less than full-time whose salaries are reduced shall receive flexible furlough leave for a pro-rated number of hours. (Note: On May 15, 2009, the Office of the Governor granted the University authority, upon consent from the employing entity, to (1) allow employees to begin using flexible furlough leave effective May 15, 2009, and/or (2) allow a university that has not designated Memorial Day as an employee holiday to use Memorial Day as a flexible leave day.)

1. Covered Employees

Employees Exempt from the State Personnel Act defined by University policy 300.2.1, Senior Academic and Administrative Officers defined by University policy 300.1.1., and faculty are covered under this Order, with the exception of those employees specifically identified as not covered.

2. Student Workers/Employees/Payments Not Covered

The following student workers/employees/payments are not covered under this Order:

- Student workers including work aid and work study; graduate/teaching/research assistants; postdoctoral fellows/trainees who do not pay FICA; and others in student status.
- Employees whose salaries will fall below the federal minimum wage threshold if the reduction is implemented.
- Employees holding H-1B visas whose salaries will fall below the mandated federal "prevailing wage" rate if the reduction is implemented.
- Employees on military leave with pay and receiving military differential pay during the months of May and June 2009.
- Employees who do not receive pay in May and June 2009.
- Leave payouts upon separation of employment.
- Law enforcement officer supplements.
- Benefit payments received under the State's Short-Term Disability Income Plan during the months of May and June 2009.
- Severance payments received during the months of May and June 2009.
- Workers' Compensation payments received during the months of May and June 2009.

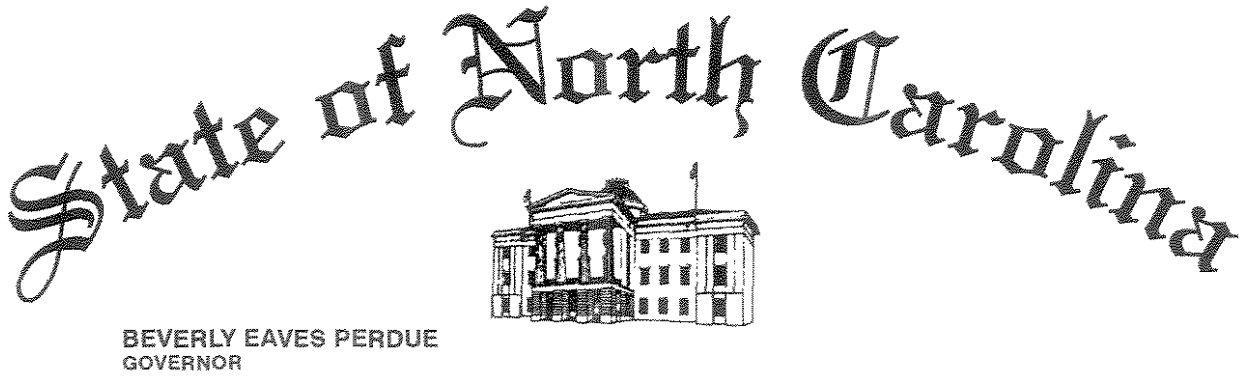
3. Continuation of Retirement Contributions

In accordance with legislation ratified by the North Carolina General Assembly on May 14, 2009, a University employee subject to the Flexible Furlough Program shall not suffer any diminution of retirement average final compensation under the N.C. Teachers' and State Employees' Retirement System. The University shall pay both the employee and employer contributions to the Retirement Systems Division or to the appropriate Optional Retirement Program carrier on behalf of the University employee as to the amount that compensation was reduced.

Approved:

Erskine B. Bowles, President

Attachments



AMENDED AND REISSUED
EXECUTIVE ORDER NO. 11

ESTABLISHING AND IMPLEMENTING A FLEXIBLE FURLOUGH PLAN FOR THE 2008-09 FISCAL YEAR

WHEREAS, North Carolina's citizens and businesses are suffering from the effects of a significant national financial crisis; and

WHEREAS, this crisis has resulted in a large reduction in the revenues projected to be available to fund the State's Budget for the 2008-09 fiscal year; and

WHEREAS, in anticipation of the need to take actions to ensure that budget shortfalls would not cause expenditures to exceed revenues for the 2008-09 fiscal year, I adopted an Executive Order on my third day in office directing the Office of State Budget and Management (OSBM) to take various actions to ensure that the budget is balanced for this fiscal year; and

WHEREAS, the Department of Revenue has now calculated the revenues that will be available to the State for the remainder of this fiscal year from the taxes paid by citizens and businesses through April 15, 2009, and the Department of Revenue and OSBM have now determined that expenditures for the 2008-09 fiscal year will exceed revenues unless additional actions are taken; and

WHEREAS, it is my duty under the Constitution to ensure that the State's budget for the 2008-09 fiscal year is balanced; and

WHEREAS, the Constitution grants me the power to fulfill this duty by effecting necessary economies in state expenditures; and

WHEREAS, I must exercise this power in a manner that carefully balances the rights of citizens and businesses to government services and the interests of the State employees who provide those services; and

WHEREAS, I have determined that one of the actions I must take to balance the State's budget for this fiscal year is to implement a flexible furlough plan for all State employees; and

WHEREAS, language has been added to Section 1(b) of this Executive Order to clarify that the intent of Section 1(b) is to provide employees with 10 hours of flexible furlough leave.

NOW, THEREFORE, pursuant to the powers conferred on me by Article III, Section 5(3) of the North Carolina Constitution, this Executive Order is hereby amended and reissued, and **IT IS HEREBY ORDERED:**

1. The Office of State Budget and Management (OSBM) shall immediately implement a Flexible Furlough Plan. Except as provided in Section 2 of this Executive Order, this Plan will apply to all persons employed in the Executive, Judicial, and Legislative Branches of State Government and all employees of the public schools, community colleges, and universities whose salaries are paid in whole or in part from moneys appropriated by the 2008 Appropriations Act. Under this plan,

   (a) the part of the annualized base salaries of all covered employees paid from moneys appropriated by the 2008 Appropriations Act will be reduced by .5 percent (½%) over the remainder of this fiscal year; and

   (b) in return, all full-time employees whose salaries are reduced pursuant to subsection (a) shall receive 10 hours of flexible furlough leave to be taken at times to be designated by their employing agency between June 1 and December 31, 2009, and all employees employed less than full-time whose salaries are reduced pursuant to subsection (a) shall receive flexible furlough leave for a pro-rated number of hours.

2. This Plan does not apply to those State officers whose salaries are protected from reduction by Article III, Section 9 and Article IV, Section 21 of the Constitution, but I urge those officers to participate in this plan voluntarily. Further, I hereby direct OSBM to reduce my annual salary by .5 percent prior to the end of the fiscal year.

3. The State Board of Education, the State Board of Community Colleges, the Board of Governors of the University of North Carolina, and all agencies within the Executive Branch of State Government shall cooperate with OSBM in the implementation of the salary reduction part of this plan.

4. The Office of State Personnel will, as soon as practicable, develop guidelines to be used by agencies and institutions within the Executive Branch in designating the times employees will be furloughed. Likewise, the State Board of Education will adopt rules to be applied by local boards of education in designating the times public school employees will be furloughed; the State Board of Community Colleges will adopt rules to be applied by boards of trustees of community colleges in designating the times community college employees will be furloughed; and the Board of Governors of the University of North Carolina will adopt rules to be applied in designating the times EPA university employees will be furloughed. The guiding principle in adopting and implementing these rules will be avoidance of interruptions in services to citizens and businesses. I respectfully request that the Legislative and Judicial Branches of State Government also adopt rules designating the times their employees will be furloughed.

5. Finally, I urge the General Assembly immediately to enact legislation holding employees harmless for this salary reduction in the calculation of their retirement benefits, vacation, and sick leave, and in determining their eligibility for health insurance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-eighth day of April in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.

Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

by and through
Rodney Maddox
Chief Deputy Secretary

THE UNIVERSITY OF NORTH CAROLINA

FLEXIBLE FURLOUGH PROGRAM IMPLEMENTATION
OFFICE OF STATE BUDGET AND MANAGEMENT'S RESPONSES RECEIVED MAY-JUNE 2009

	QUESTION	RESPONSE
Administration	How are new hires during this period treated in terms of administering the Flexible Furlough?	An employee hired in May or June is totally subject to the rules regarding the Flexible Furlough. Employees who begin employment in May or June would have their pay reduced by 0.5% of their annualized base salary in their paychecks in May and/or June, regardless of what day in the month they start. Any balance of the 0.5% deduction not taken in May would be taken in the June paycheck. A full-time employee hired in May or June will also receive 10 hours of paid time off.
	There is no clarification about whether the transferring or receiving agency takes or shares the reduction for an employee who is transferring from one state agency/university to another.	The deduction is taken by the receiving agency. If the transfer occurs by May 1, the receiving agency deducts the entire 0.5%. If the transfer occurs June 1 or after, the transferring agency already made a deduction in May, so the receiving agency deducts the balance in June. For the June deduction, the transferring agency must factor in any deductions by the transferring agency to ensure that the employee's base pay is not reduced by more than 0.5% overall.
	Can individuals' salaries be reduced below the Federal minimum wage?	No.
	Will an employee's law enforcement supplement be impacted?	No.
	What about employees who have received Reduction in Force notification as of June 30?	Any employee in payroll status in May and/or June is included in the flexible furlough program. These employees are subject to the 0.5% annualized reduction. No deductions will be made from severance pay.
	How are "employment verification" requests responded to during May and June?	Use unreduced annual salary for this purpose; however, if current pay (in May or June) is specifically requested, explanation will need to be provided.

	QUESTION	RESPONSE
	Who will communicate the salary reduction of new hires that begin in May?	The university should communicate this--either HR or the manager.
	How should we handle employees leaving the payroll through retirement or resignation on May 15th, June 1, or June 15th?	Take 0.5% of annualized pay, regardless of departure date. If departure is in May, the 0.5% would all be deducted in the May paycheck.
Administration (cont.)	Could we get an exception to the June 1 start day for furlough use so that we could adjust our Holiday schedule to use the Memorial Day holiday as the 10 hour furlough period (releasing employees at 3:00 pm Friday, May 22nd, and using Monday May 25th)?	The Governor's Chief Legal Counsel has authorized the University to allow time off beginning May 15th rather than June 1st.
	Does the Flexible Furlough time off have to be taken in minimum increments?	The same increments should be used that the agency uses for leave.
	Can campuses manage the granting of furlough leave by closing the institution on a designated day?	We do not advise this because it removes the flexibility from the employee and supervisor to schedule time off.
Benefits	In light of this pay deduction, are employees eligible for Unemployment Insurance?	No.
	What happens if an employee is on LWOP during May and June?	Employees in LWOP status for the months of May and June will not have any deduction made, nor will they earn any Flexible Furlough time off. Employees who are in LWOP status for portions of either May or June will have the May portion of the 0.5% deduction taken from their May check and the remainder taken from their June check to the extent possible.
	Is military differential pay excluded?	Military differential pay is excluded from the Flexible Furlough program.

	QUESTION	RESPONSE
Benefits (cont.)	What about employees on paid FMLA?	If paid FMLA, then the 0.5% annualized amount will be deducted. If unpaid FMLA leave, then there will be nothing to deduct. Employees in FMLA status for portions of either May or June will have the May portion of the 0.5% deduction taken from their May check and the remainder taken from their June check to the extent possible.
	How is retirement impacted? If employee is "held harmless," who will pay the retirement system? How will an employee be "held harmless" if participating in the Optional Retirement Program as some university employees do?	The Governor's intent is that employees be "held harmless" from the retirement calculation perspective and has encouraged the General Assembly to pass legislation to accomplish this. In the interim, payroll systems should report to the Retirement System the adjusted actual pay an employee receives for each pay period and deduct the normal percentage for the employee's actual pay.
	How does the program apply to employees on Short-term Disability?	The salary reduction does not apply to employees on Short-term Disability while receiving the 60% benefit. If there is time during the pay period that the employee is not receiving the 60% benefit, then the full amount of the 0.5% reduction is taken for that period.
	Does the program apply to employees on Workers Compensation?	No.
Budget	How do I calculate the impact of the reduction in my pay (temporary, 9, 10, 11 month appointments, time-limited contract, part-time and full-time)?	Example: An employee's annual salary is $40,000 and is paid monthly. The amount of the annualized 0.5% is $200. The amount deducted in May and June is $100 each month. For an employee paid bi-weekly, there would be a $50 deduction for four bi-weekly paychecks, although May bi-weekly payroll deadlines may require that this be spread among three checks instead of four. If there is no pay in May or June, nothing can be deducted. If there is pay in May but not in June, the entire annualized 0.5% amount would be deducted from the May check. The calculation will still be based on an annualized 0.5% amount, regardless of whether full-time, part-time, etc.
	If this applies to all funding sources, is there any expectation that salary saving in trust funds would be contributed to the State's general fund?	No, the intent is that employees are treated as equitably as possible and will receive a proportional 0.5% temporary salary reduction, regardless of fund source.

	QUESTION	RESPONSE
	How would the pay reduction work for an employee funded 75% state and 25% federal?	The flexible furlough program applies to all base salaries regardless of funding source. For split-funded positions, the entire annualized deduction would not exceed 0.5%, but proportional deductions would come from each funding source.
	Please provide better explanation of annualized. We believe this action will reduce the annual salary of all employees by 0.5%; however, there could be other interpretations. What about employees paid on grants or contracts?	The Flexible Furlough Program reduces all state and federally-funded paychecks in May and June 2009 by an annualized amount equivalent to 0.5%. This annualized amount is based on fiscal year from July 1, 2008-June 30, 2009. Grant and contract employees are subject as well, unless there is a specific contractual obligation that prevents it. In most cases with contract positions, annualized salary equals the amount of base compensation paid during FY08-09. The agency/campus should make 0.5% deductions in May and June. If there is no pay for the contracted employee in May and June, there is no deduction to make. If there is pay in May but not in June, the entire annualized 0.5% amount would be deducted from the May check. For temporary/contractual/hourly employees receiving a W-2, the 0.5% reduction in pay is based on the employee's payments received during fiscal year 2008-09. For the reduction in the May payment, 0.5% is deducted from the annualized salary (based on the payments from July 2008 to date). For June, the payment will be reduced by 0.5% of any pay not included in the May reduction calculation.
Faculty/EPA Non-faculty Employees	We would like a statement that summer school pay that is in addition to a faculty member's base rate of pay is not included.	Base pay calculations should include all compensation received during May and June 2009. The calculation also should include July and August 2008 payments. However, supplemental pay paid for self-supporting summer courses (where costs are 100% supported from student tuition and fees) would not be included as part of the furlough program.
	Does this affect summer school faculty? What about summer school faculty on loan?	They should be affected as well if receiving pay in May and June. Faculty who only teach summer school and receive pay in May/June 2009 are subject to the reduction. In addition, if they received any other pay in the 2008-09 fiscal year (including summer school pay last summer), this should also be included in the calculation.

	QUESTION	RESPONSE
Faculty/EPA Non-faculty Employees (cont.)	Are contracts completed by April 30, 2009 impacted? How about contracts ending after April 30th?	Contracts completed by April 30 are not impacted unless the employee receives pay within May or June. For contracts ending after April 30, individuals paid hourly via a contract should be treated similarly to temporaries. Annualized salary for contractual employees is defined as the total amount of base compensation paid during July 1, 2008-June 30, 2009 (the same definition applies to temporary and hourly employees). The 0.5% deduction in pay is based on the amount paid to the employee during FY 08-09. For the deduction in the May paycheck, 0.5% is deducted from the annualized salary (based on the payments from July 2008 to date). For June, the payment will be reduced by 0.5% of any pay not included in the May deduction calculation. Unless the contract specifically prohibits the contractor's salary being part of such a reduction, the agency should make 0.5% deductions to annualized salary in May and June. The flexible furlough applies to contractual employees receiving W-2s; contractors receiving 1099's are not impacted by this directive.
	Some employees such as "adjunct faculty" have contracts that end May 15, but receive their last paycheck in April. How is the 0.5% deduction to occur?	As these employees are not receiving pay in May or June, there is no opportunity to have their pay deducted.
	How do you calculate an annual salary for someone receiving one time pay or for an adjunct who teaches one semester?	Annualized salary for a contractual employee is defined as the actual base compensation paid during FY08-09.
	What about pay during EPA timely notice period?	If the employee is receiving pay in May and June, these payments will be affected.
	Adjunct faculty – their contracts end on May 15 but many receive their last paycheck in April so they will not be on the payroll for May and June. Are they just lucky and don't have the 1/2 % reduction? How would we recoup the ½%?	If they are not paid in May and June, there will be no reduction.

	QUESTION	RESPONSE
	The memo indicates contractual employees are included…..does this refer to individuals like our faculty who are on contracts/appointments? Or does it refer to personal service agreements?	It refers to individuals on contracts/appointments. A contractual employee is anyone receiving a W-2, not a 1099. The annualized 0.5% reduction applies to these W-2 employees.
	Coaches are under contract that includes incentives and other compensation. What compensation is subject?	The base salary portion.
	Medical faculty practice employees earn money beyond base salary. What compensation is subject to this calculation?	The base salary portion.
	Can we legally reduce a faculty's salary when he/she has a contract that states an annual salary (that will now be reduced?)	Unless the contract specifically prohibits the contractor's salary being part of such a reduction, the agency/campus should make 0.5% deductions in May and June.
	For H1B visa holders, the response should say the reduction cannot take the employee below the prevailing wage rate.	For employees on H1B visas who were hired at the prevailing wage rate, no deduction will be taken from their pay check. For employees on H1B visas who were hired above the prevailing wage rate, the 0.5% deduction will be made from their May and June paychecks. The reduction cannot take the employee below the prevailing wage rate.
	Some faculty members are paid over a nine-month period and some over a twelve-month period. How will this be handled? Nine month employees have already received the majority of their pay. Do we reduce the final paycheck by 0.5% of the annual salary?	Yes. If there is no pay in May and June, there is nothing to deduct. The agency/campus should compute the annualized salary for the 12-month fiscal year period and make 0.5% deductions in May and June. If last paycheck is in May, the entire 0.5% deduction should be taken in May.
	How does this impact faculty since they are not in a leave earning capacity?	Faculty should receive the 10 hours' time off as well because they are subject to the 0.5% temporary salary reduction.
	We have faculty who are on Phased Retirement. Does this reduction in pay apply to these faculties?	Yes.

	QUESTION	RESPONSE
Leave	If an employee leaves state service in May or June, how are the leave payouts calculated?	The normal leave payouts (annual and bonus) are calculated as though the May and June Flexible Furlough deduction had not occurred. The normal hourly rate of pay prior to implementation of the Flexible Furlough program should be used.
	Do employees have to take the Flexible Furlough time off prior to taking other leave?	No, but employees should be encouraged to take the Flexible Furlough time off before using other leave as the opportunity to take this time off ends December 31, 2009.
Payroll	What date is used for the annualized salary?	May 1, 2009 is used for annualizing the salary unless a subsequent change occurs in May or June.
	Will the 0.5% decrease be a before tax or after tax deduction?	Before (the gross pay).
	What if someone also has a garnishment coming out of the check and the garnishment combined with the 1/2 % reduction exceeds the amount we can legally take from the check, what do we do?	The flexible furlough deduction is taken prior to any garnishment. The State would not deduct amounts that exceed legal limits. Every effort would be made to deduct the required 0.5% within legal constraints.
	Suppose the employee's check is not of a sufficient amount to take the deduction due to the employee being in an overpayment situation?	As much of the deduction as possible is taken.
Student/Temps	If you code postdocs (trainees, fellows, etc.) as students, then we assume they should be exempt from the reduction.	Postdocs who are treated as students and do not pay FICA are excluded.
	How does the Flexible Furlough program work with regard to interns, Workforce Investment Act (WIA) employees, intermittent employees, students, graduate assistants, and work study?	Individuals in these situations are not impacted by the Flexible Furlough program.
	Does this reduction affect Federal work study student payments?	No.

	QUESTION	RESPONSE
Student/Temps (cont.)	Will we be expected to cut hours for hourly employees to accomplish the pay cut?	For hourly employees, the reduction can be handled by: (1) annualizing the pay and reducing the hourly rate (preferred); or (2) if reducing the pay is not possible, by reducing the equivalent number of hours.
	Do temporary employees receive time off? We understand that an earlier draft specifically excluded temps from receiving time off.	Preference would be to manage temporary employee situation just as the agency/campus manages hourly employee situations by: (1) annualizing the pay and reducing the hourly rate (preferred); or (2) if reducing the pay is not possible, by reducing the equivalent number of hours.
	How does the Flexible Furlough program work with regard to temporary and hourly employees?	Annualized salary for temporary and hourly employees is defined as the total amount of base compensation paid during July 1, 2008-June 30, 2009. The 0.5% deduction in pay is based on the amount paid to the employee during FY 08-09. For the deduction in the May paycheck, 0.5% is deducted from the annualized salary (based on the payments from July 2008 to date). For June, the payment will be reduced by 0.5% of any pay not included in the May deduction calculation. Example: Temporary employee makes $5,000 July 1-April 30, so 0.5% = $25, which would be deducted in May. Employee then makes another $500 in May. So for June, it's another 0.5% = $2.50, so the total annualized deduction is $27.50 for FY 2008-09.

5/20/09