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EXECUTIVE ORDER

Declaring Insufficient Revenues Available for Expenditures and Ordering Mandatory Furloughs for Certain State Employees

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, and in particular section 2 of Article IV of the Colorado Constitution and section 24-2-102(4) of the Colorado Revised Statutes, I, Bill Ritter, Jr., Governor of the State of Colorado, hereby issue this Executive Order declaring that there are insufficient revenues available for expenditures and ordering mandatory furloughs for certain state employees.

I. Authority

Section 2 of article IV of the Colorado Constitution vests in the Governor the “executive power of the state.” The authority and responsibility vested in the Governor under this provision includes the “executive authority to allocate staff and resources” and to closely supervise appropriations made by the General Assembly. *General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006); *see also Anderson v. Lamm*, 579 P.2d 620, 623-24 (Colo. 1978). Ordering mandatory furloughs to reduce personal services expenditures in order to meet a revenue shortfall is squarely within the Governor’s authority under this provision of the Constitution. Indeed, the authority of the Governor to order mandatory furloughs under this provision of the Constitution was confirmed in a formal opinion issued by the Attorney General on July 16, 2009. *See* Attorney General Opinion No. 09-05.

In addition, section 24-2-102(4) of the Colorado Revised Statutes provides that “[i]f, during any fiscal period, there are not sufficient revenues available for expenditure during such period to carry on the functions of the state government and to support its agencies and institutions and such fact is made to appear to the governor, in the exercise of his discretion, by executive order, he may suspend or discontinue, in whole or in part, the functions or services of any department, board, bureau, or agency of the state government” This statutory authority to order a partial shutdown of government services provides an additional and independent basis for the Governor to order mandatory furloughs of state employees in the current budgetary environment. The duration of a partial shutdown ordered pursuant to C.R.S. § 24-2-102(4), however, is limited to three months. *See* C.R.S. § 24-2-102(4).

II. Background and Purpose

The nation is in the midst of the worst economic downturn since the Great Depression. Although Colorado is better off economically than most states, it is not immune from this downturn in the national economy. The slowing economy has resulted in increased unemployment and declining consumer spending, which, in turn, have adversely impacted State revenues. Based on the most recent revenue forecasts released on June 22, 2009, the State must close a budget gap of \$384 million in fiscal year 2009-10. The impact of the revenue shortfall on the State's personal services expenditures is compounded by the fact that in the 2009 Long Bill (Senate Bill 09-259), the General Assembly cut all personal services lines with twenty or more full-time equivalents ("FTEs") by 1.82%. Therefore, in light of falling revenues and the personal services cut and in order to keep the State's budget in balance, my administration is undertaking aggressive budget cutting measures in the current fiscal year, and those budget cutting measures include reducing the State's personal services expenditures.

One of the tools available to manage a portion of the revenue shortfall is to order mandatory furloughs of most state employees. Therefore, four mandatory furlough days will be ordered in order to meet a portion of the revenue shortfall in fiscal year 2009-10. I understand that these furloughs will be a hardship for many state employees and their families, as well as those who rely on the services that those employees provide. But these difficult economic times demand this sacrifice from all of us. State employees must share in the sacrifice that has been a part of the everyday lives of families and businesses across this State since the economic downturn began nearly a year ago. The decision to order furloughs is just one among many tough choices that we will be making over the coming year to ensure that we balance the State's budget in a fair and responsible manner.

Staff in the Governor's Office worked in partnership with Colorado WINS and the Association of Colorado State Patrol Professionals ("ACSPP"), the two employee organizations representing state employees, and the State Personnel Director to decide how to implement the mandatory furloughs required by the Executive Order. To the greatest extent practical, the mandatory furlough days will be spread throughout the fiscal year and will be adjacent to existing state holidays. The four mandatory furlough days will be as follows:

- Tuesday, September 8, 2009 (the day following Labor Day);
- Friday, October 9, 2009 (day before the Columbus Day weekend);
- Friday, November 27, 2009 (the day following Thanksgiving); and
- Thursday, December 31, 2009 (New Year's Eve).

Because section 24-2-102(4) of the Colorado Revised Statutes provides an independent basis for ordering these furloughs and that provision only authorizes this Order to be in effect for three months, this Order is limited to the September and October 2009 furlough

days; the other furlough days listed above will be the subject of a subsequent Executive Order that will be issued later this year.

There are state employees who will be exempt from the mandatory furlough requirement. In crafting the exemptions, we endeavored to balance fairness and equity with the need to ensure that essential round-the-clock services and services in high-demand because of the economic downturn are not disrupted. A description of the positions that will be exempted from mandatory furloughs is set forth in the Directives section below. In addition, the State constitution vests management of the Judicial and Legislative branches in the heads of those branches, and State law vests management of the State's institutions of higher education in the leaders of those institutions. Therefore, employees of those branches and at higher education institutions will be exempt from the furloughs ordered by this Executive Order. Moreover, in deference to the other statewide elected officials, the departments of Law, State, and Treasury are exempted from this Executive Order. At this time, it is anticipated that those branches, institutions, and departments will meet the budget cuts required by the revenue shortfall utilizing appropriate budget-cutting measures.

In addition, some offices cannot be entirely shut down on a designated mandatory furlough day without imposing a substantial hardship on or adversely impacting the health or safety of the citizens of the State or because doing so would substantially impair the ability of the office to meet its legal obligations. Because of these limitations, I am granting each Executive Director the flexibility to determine whether it is necessary and in the best interest of the State to permit certain employees subject to mandatory furlough to take their furlough days on days other than those designated above. Although this exemption will be sparingly invoked, such flexibility is necessary to ensure that the State continues to meet its obligations during the furloughs. Those employees occupying positions that cannot be furloughed on the designated furlough days will take their furlough days on alternative dates determined by the Executive Director of the respective employee's department.

As indicated at the outset of this section, these mandatory furlough days are being ordered to meet a portion of the revenue shortfall projected for this fiscal year. While we will continue to employ all of the tools at our disposal to find additional personal services savings, including but not limited to vacancy savings and voluntary furloughs, separations, and retirements, additional mandatory furlough days beyond the four identified in this Executive Order remain a very real possibility. We will continue to work with the executive directors of departments, the State Personnel Director, other elected officials, certified employee organizations, and frontline employees who have first-hand knowledge of the needs of Colorado's citizens to identify ways to cut the budget that have the smallest possible reduction in state services and that minimize the negative impacts on those who rely on those services most. But the fact remains that the size of the projected budget shortfall in the current fiscal year will require real sacrifice on the part of everyone. As a result, there may be the need to order additional mandatory furlough days during the first half of 2010.

III. Directives

- A. I hereby find that during fiscal year 2009-10 there are not sufficient revenues available for expenditure to carry on the functions of the state government and to support its agencies and institutions such that mandatory furloughs of certain state employees are necessary.
- B. I hereby order that state employees in departments and offices subject to this Executive Order, subject to the exemptions and conditions set forth below, shall take two mandatory furlough days without pay during the effective period of this Executive Order.
- C. For full time employees, each mandatory furlough day required by this Executive Order shall be for an eight-hour work day; for part-time employees, the mandatory furlough day required by this Executive Order shall be proportionately adjusted (e.g., a half-time employee must take four hours of unpaid furlough time, a three-quarters-time employee must take six hours of unpaid furlough time).
- D. To the extent practical, all employees subject to mandatory furlough under this Executive Order shall be furloughed on Tuesday, September 8, 2009 and Friday, October 9, 2009. Because certain offices and divisions of State government are not able to entirely shut down on a designated day without imposing a substantial hardship on the citizens of the State or because doing so would substantially impair the ability of a department, division, or office to meet its legal obligations, I hereby grant each Executive Director of an affected department the authority to determine, in the exercise of his or her discretion, that it is necessary and in the best interest of the State to permit certain employees subject to mandatory furlough under this order to take such furlough day on a day other than September 8, 2009 and/or October 9, 2009. Upon such a determination, those employees occupying positions that cannot be furloughed on one or more of the designated furlough days or who would not normally work on such day or days, shall take alternative mandatory unpaid furlough days between August 1, 2009 and October 31, 2009, on days determined by the Executive Director of the employee's department; however, Executive Directors may not require an employee to take more than one mandatory furlough day during any calendar month or during any single pay period.
- E. Subject to the exemptions set forth below, the mandatory furlough ordered in this Executive Order shall apply to all state employees in all offices in the Governor's Office, the Lieutenant Governor's Office, and all employees in the following departments: Department of Agriculture;

Department of Corrections; Department of Education; Department of Higher Education; Department of Health Care Policy and Financing; Department of Human Services; Department of Labor and Employment; Department of Local Affairs; Department of Military and Veterans Affairs; Department of Natural Resources; Department of Personnel and Administration; Department of Public Health and Environment; Department of Public Safety; Department of Regulatory Agencies; Department of Revenue; and Department of Transportation.

- F. The following is a general description of the state employees who are exempt from the mandatory furloughs:
1. Department of Corrections: designated correctional officers, food service employees, and clinical services personnel who are necessary to ensure the safe and continuous operation of state correctional institutions.
 2. Department of Education: designated employees working at the Colorado School for the Deaf and Blind who are necessary to ensure the safe continuous operation of the school and compliance with the Individuals with Disabilities Education Act and Americans with Disabilities Act.
 3. Department of Human Services: designated employees providing patient care, nursing care, mental health services, youth correction services, food and health services, and custodial services at 24-hour and residential facilities; designated employees working in 24-hour shift positions at 24-hour facilities; and employees performing Social Security Disability determinations.
 4. Department of Labor and Employment: designated employees involved in administering unemployment compensation and workforce programs.
 5. Department of Military and Veterans Affairs: designated air traffic controllers necessary to ensure continuous and safe operation of the Buckley Air Force Base and the Air Sovereignty Alert Mission of the 140th Wing, Air National Guard patrol officers who are necessary to provide security for the Greeley Air National Guard Station; and designated transportation maintenance personnel necessary to provide equipment and road maintenance for the safe and continuous operation of Buckley Airfield.
 6. Department of Public Health and Environment: designated laboratory employees necessary to ensure continuous operation

and prompt turnaround in laboratories that test for environmental contamination, communicable disease, inherited metabolic diseases in newborns, and drug and alcohol use; designated employees who perform testing and certification of evidential blood alcohol testing equipment; and home healthcare and health facility inspectors necessary to ensure that the State inspects facilities with the frequency required under federal law.

7. Department of Public Safety: Colorado State Patrol (CSP) officers with the rank of Sergeant and below; designated security officers within the CSP Capitol and Executive Security unit; CSP Communications Officers and Communications Supervisors; designated Colorado Bureau of Investigation (CBI) Identification Unit Data Specialists and Fingerprint Examiners; designated CBI Network Operation Center staff necessary to ensure the continuous operation of the Colorado Crime Information Center network.
 8. Department of Revenue: designated lottery employees and support personnel who are necessary to administer lottery drawings in compliance with state law; designated port of entry employees who are necessary to ensure the continuous and safe operations of the ports of entry; and designated Communications Center employees who are necessary to provide support to law enforcement verifying identification documents and vehicle registrations.
 9. Elected officials whose salaries, pursuant to the State constitution, cannot be adjusted during their terms in office. *See Colo. Const. art. IV, § 19.*
- G. No later than July 31, 2009, the Executive Director of each department subject to this Executive Order, in consultation with and subject to the approval of the Office of State Planning and Budgeting (“OSPB”), shall designate the specific positions that fall within the scope of the exemptions set forth in paragraph F above. Executive Directors of departments subject to this Executive Order, in consultation with and subject to the approval of OSPB, may modify the list of positions exempt from the furloughs from time-to-time in order to adapt to changes in the workforce, including but not limited to reassignments, separations, and new hires; however, in order for any modification to be effective for a particular furlough day it must be made no later than the last day of the month prior to the month in which the furlough day is to be taken.
- H. Employees who have responsibilities in the event of an emergency, including but not limited to employees in the Division of Emergency Management or in the Department of Public Health and Environment, may

be called to duty on a mandatory furlough day in the event that an emergency arises on such day. In such an event, the employee shall arrange with the Executive Director of his or her department to take an alternative mandatory furlough day.

- I. In implementing and administering the mandatory furloughs required by this Executive Order, departments and offices subject to this Executive Order shall abide by all applicable State and federal laws and regulations, including but not limited to the Fair Labor Standards Act.
- J. Decisions made in connection with implementing this Executive Order, including but not limited to determinations regarding which positions are and are not exempt from mandatory furlough and whether and when to require employees to take alternative furlough days, are not subject to review or appeal, except for claims of discrimination, whistleblower, or those claims expressly provided a right of appeal or hearing in the State Constitution or under State statute.
- K. The State Personnel Director is hereby ordered and authorized to issue technical guidance to departments with respect to implementing and administering the mandatory furloughs required by this Executive Order.

III. Duration

This Executive Order shall take effect on August 1, 2009 and remain in force until October 31, 2009, unless modified or rescinded by future Executive Order of the Governor.

GIVEN under my hand and the
Executive Seal of the State of
Colorado this twenty-second day of
July, 2009.

Bill Ritter, Jr.
Governor