



Massachusetts National Guard

Shutdown Furlough

Questions and Answers

Updated 30 September 2013

Overview

The enclosed questions and answers regarding shutdown furloughs (also called emergency furloughs) were prepared by the Massachusetts National Guard Human Resources Office based on guidance received from The U.S. Office of Personnel Management (OPM) and the National Guard Bureau, Technician Personnel Management Division (NGB-J1-TN). A shutdown furlough occurs when there is a lapse in annual appropriations. Shutdown furloughs can occur at the beginning of a fiscal year if funds have not been appropriated for that year, or upon expiration of a continuing resolution if a new continuing resolution or appropriations law is not passed.

In a shutdown furlough, an affected agency would have to shut down any activities funded by annual appropriations that are not excepted by law. Typically, an agency will have very little to no lead time to plan and implement a shutdown furlough.

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General

1. What is a furlough?

A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. What is a shutdown furlough and why is a shutdown furlough necessary?

A. In the event that funds are not available through an appropriations law or continuing resolution, a “shutdown” furlough occurs. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities which are not excepted pursuant to the Antideficiency Act.

Excepted Employees

1. Who are “excepted” employees?

A. In the context of shutdown furloughs, the term “excepted” is used to refer to employees who are funded through annual appropriations who are nonetheless excepted from the furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations. Excepted employees include employees who are performing emergency work involving the safety of human life or the protection of property, or performing certain other types of excepted work. Agency legal counsels, working with senior agency managers, are determining which employees are designated to be handling “excepted” and “non-excepted” functions. See <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough> for copies of DOJ issuances, which provide guidance on the application of these criteria.

2. Who are “exempt” employees?

A. Employees are “exempt” from furlough if they are not affected by a lapse in appropriations. This includes employees who are not funded by annually appropriated funds. Employees performing those functions will generally continue to be governed by the normal pay, leave, and other civil service rules.

3. What about employees who are neither “excepted” nor “exempt”?

A. Employees who are funded through annual appropriations but are not designated as excepted are barred from working during a shutdown, except to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. These employees will be furloughed.

4. How will employees be notified whether they have been designated to be handling “excepted” functions or not?

A. Each supervisor must identify excepted employees, confirm status with the Human Resources Officer, and notify employees of the decision.

Working during Furlough

1. May an employee volunteer to do his or her job on a nonpay basis during a shutdown furlough?
 - A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an employee. (See 31 U.S.C. 1342.)
2. What happens to employees scheduled for training during a shutdown furlough?
 - A. Employees who are neither excepted nor exempt and are scheduled for training during a shutdown furlough must be placed in a furlough status and ordered to not attend, or to return as soon as possible.
3. If an employee who is funded through a lapsed appropriation is on a temporary duty assignment away from the employee's normal duty station, and the employee is notified to return, can the employee elect to delay the return? If the employee decides to delay the return, and as a result incurs additional travel costs, who is liable for those additional travel costs?
 - A. Employees who are notified to return home should do so as soon as practicable. When an employee returns promptly, the travel expenses that the employee incurs in the return are properly-incurred obligations of the agency (as part of the agency's orderly-shutdown activities) and the agency will reimburse these travel costs after appropriations are enacted and are available for that purpose. If, however, an employee elects not to return promptly and, as a result of this decision, the employee incurs additional travel expenses, those additional travel expenses are not obligations of the agency, and will not be reimbursed. While the employee will be personally liable for the additional travel expenses, the agency will continue to incur the obligation for those travel costs that would have been incurred if the employee had returned promptly, and the agency will reimburse such "prompt return" travel costs after appropriations are enacted and are available for that purpose. Finally, in the case of those employees who are notified by their agency that they are to remain on travel, because the continuation of their travel is in direct support of an excepted agency activity, their travel expenses are properly-incurred obligations of the agency (as part of the agency carrying out an excepted activity), and the agency will reimburse the travel costs after appropriations are enacted and are available for that purpose.
4. May employees take other jobs while on furlough?
 - A. While on furlough, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct (the standards), at 5 CFR part 2635). In addition, there are specific statutes which prohibit certain outside activities, and agency-specific supplemental rules that require prior approval for, and sometimes prohibit, outside employment. Any questions regarding outside employment should be directed to MAJ Seale at 339-202-3109.

Pay

1. Will excepted employees be paid for performing work during a shutdown furlough? If so, when will excepted employees receive such payments?
 - A. Agencies will incur obligations to pay for services performed by excepted employees during a lapse in appropriations, and those employees will be paid when Congress passes and the President signs a new appropriation or continuing resolution.

2. Will employees who are furloughed get paid?
 - A. Congress will determine whether furloughed employees receive pay for the furlough period.

3. Will employees receive a paycheck for hours worked prior to a lapse in appropriations?
 - A. Under Office of Management and Budget (OMB) guidance issued in 1980 (below), employees will receive this paycheck. Although the payroll for the last pay period before the lapse will be processed potentially during a period of furlough, the minimum number of payroll staff necessary for this process will be excepted from furlough for the minimum time required to issue the checks, including checks for the last pay period before the lapse. This guidance can be found in OMB's August 28, 1980, Bulletin No. 80-14, Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations, paragraph 3.b.(1) (Appropriations and funds). OMB has reviewed and concurs in this answer.

4. When an employee's pay is insufficient to permit all deductions to be made because a shutdown furlough occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?
 - A. Agencies will follow the guidance on the order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions found at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477>.

5. May an excepted employee be permitted to earn premium pay (e.g. overtime pay, Sunday premium pay, night pay, availability pay) during the furlough period?
 - A. Yes. Excepted employees who meet the conditions for overtime pay, Sunday premium pay, night pay, availability pay and other premium payments will be entitled to payment in accordance with applicable rules, subject to any relevant payment limitations. Premium pay may be earned but cannot be paid until Congress passes and the President signs a new appropriation or continuing resolution.

Within-Grade Increases

1. May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage System employees during a shutdown furlough?
 - A. It depends on how long the shutdown furlough lasts. Within-grade (WGI) for General Schedule (GS) and Federal Wage System employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status may affect the timing of such increases. Nonpay time, excluding nonpay for military service, will delay the effective date of WGI if the employee exceeds the allowable nonpay time during the period between increases (see the table below). The effective date of a WGI is the beginning of the pay period after the completed waiting period; therefore, for example: 3 weeks of nonpay for a GS employee at step 1 will actually delay the effective date of the WGI to step 2 by 2 weeks. A step 1 GS employee is allowed 2 nonpaid workweeks during the waiting period, so the 3rd week pushes the pay date to the beginning of the next pay period, which also becomes the beginning of the 52 week waiting period to step 3.

Pay Plan	Steps	Waiting Period	Allowable Nonpay
GS	1-2,2-3,3-4	52 weeks	2 workweeks
GS	4-5,5-6,6-7	104 weeks	4 workweeks
GS	7-8,8-9,9-10	156 weeks	6 workweeks
WG/WL/WS	1-2	26 weeks	1 workweek

WG/WL/WS	2-3	78 weeks	3 workweeks
WG/WL/WS	3-4,4-5	104 weeks	4 workweeks

Leave and Other Time Off

1. May an employee not excepted from the furlough take previously approved paid time off (e.g. annual, sick, court, military leave, or leave for bone marrow/organ donor leave, or compensatory time off, including religious compensatory time off) during a shutdown furlough?

A. No. All paid time off during a shutdown furlough period must be canceled because the requirement to furlough supersedes leave and other paid time off rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid time off creates a debt to the Government that is not authorized by the Act. Therefore, agencies are instructed that during a shutdown furlough, all paid time off must be canceled.

2. May an excepted employee take previously approved paid time off, or be granted new requests for paid time off during a shutdown furlough?

A. No. When an excepted employee is not working or not performing excepted activities in compliance with the Antideficiency Act, he or she cannot be in a pay status. Excepted employees must be either performing excepted activities or furloughed during any absence from work. The furlough must be documented by a furlough notice. If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered to be absent without leave (AWOL) and will be subject to any consequences that a result.

3. If an employee is scheduled to take approved unpaid leave during a shutdown furlough, should the agency provide the employee with a furlough notice?

A. It depends. If the employee is not expected to work during the furlough period (e.g. a 1-year period of leave without pay to accompany a military spouse overseas), then agencies are not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from unpaid leave to Federal service during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return), unless the employee is expected to be at work performing an excepted activity.

4. If an employee is scheduled to take unpaid leave under the Family and Medical Leave Act (FMLA) during a shutdown furlough, should the agency provide the employee with a furlough notice?

A. It depends. If the employee is not expected to work during the furlough period (e.g. an employee who has just given birth and has requested 12 weeks of unpaid leave (leave without pay (LWOP)) under the FMLA), the agency is not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from LWOP to Federal service during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return), unless the employee is expected to be at work performing an excepted activity. An employee on LWOP under FMLA during a shutdown furlough may not later substitute paid time off for the days of LWOP.

5. Does LWOP under FMLA that is scheduled to be taken during a shutdown furlough period count toward the employee's 12-week FMLA leave entitlement?

A. No.

6. If an employee is scheduled to take paid leave or other paid time off under FMLA during a shutdown furlough, should the employee be furloughed?
- A. Yes. If an employee is scheduled to take paid time off under FMLA during a shutdown furlough, either continuously or intermittently, the paid time off must be canceled and the employee must be furloughed for any period during which paid time off was scheduled. Thus, any days of scheduled paid time off are documented as furlough days. Any previously scheduled days of unpaid leave under FMLA will continue to be documented as LWOP. Days associated with a shutdown furlough period will not be counted against an employee's 12-week FMLA leave entitlement.
7. Are employees who are not excepted from the furlough allowed to take paid leave or other paid time off during periods when other employees are performing work necessary for an orderly suspension of agency operations?
- A. No. All paid leave or other paid time off is cancelled during a period when a lapse in appropriations is in effect. There is no authority to obligate funds for paid time off during a lapse in appropriations. Employees who are not excepted from the furlough are allowed to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. Being on paid leave is not an activity necessary to execute an orderly suspension of agency operations. Agencies should determine on a case-by-case basis whether it is necessary to require employees who had been scheduled to take paid time off to report to duty to perform orderly suspension activities.
8. May an excepted employee be permitted to earn compensatory time off and credit hours (under flexible work schedules) during the shutdown period?
- A. Yes. With agency approval, excepted employees may earn compensatory time off and/or credit hours subject to requirements found in 5 U.S.C. 5543 and 6120–6133; 5 CFR 550.114, 551.531, and part 610, subpart D; or other applicable authority. Each agency is responsible for approving the number of hours an excepted employee can work related to the performance of excepted activities. Employees will not be permitted to use earned compensatory time off or credit hours during the shutdown period.
9. If an employee has properly scheduled "use-or-lose" annual leave prior to the end of the leave year, but is unable to use some or all of the scheduled leave because of the furlough, does the furlough constitute an "exigency of the public business" that would permit an agency to restore the leave after the beginning of the new leave year?
- A. The need to furlough employees because of a lapse of appropriations does constitute an exigency of the public business, and agency heads (or their designees) are encouraged to use their discretionary authority to restore any lost annual leave. However, employees in this situation should make every effort to reschedule "use-or-lose" annual leave for use before the end of the current leave year.
10. If an employee has properly scheduled use of "restored annual leave" that is due to expire at the end of the leave year (because it is the end of the 2-year restoration period) but that leave is canceled and lost due to lapse of appropriations, may the employing agency restore that leave again?
- A. No, unless Congress enacts legislation providing otherwise. There is nothing in existing law or regulation that allows restored annual leave to be restored a second time. In fact, the Comptroller General has determined that unused restored annual leave may not be restored after expiration of the 2-year period. (See B-188993, December 12, 1977.)

Holidays

1. Will employees get paid for a holiday that occurs during a shutdown furlough?
 - A. No. An employee (including excepted employees) who does not work on a holiday will not receive pay for a holiday that occurs during a shutdown furlough.
2. Can excepted employees be required to perform work on a holiday that occurs during a shutdown furlough?
 - A. Yes. Each agency is responsible for determining which excepted activities must be performed on a holiday in order to carry out functions related to such excepted activities. If an excepted employee refuses to report for work on a holiday after being ordered to do so, he or she can be considered absent without leave (AWOL) and will be subject to any consequences that result.
3. What pay entitlements will accrue to an excepted employee who performs work on a holiday during a shutdown furlough?
 - A. The Federal Government will be obligated to pay an excepted employee who performs work on a holiday according to the normal rules governing pay for work on a holiday. For example, under 5 U.S.C. 5546(b), a covered employee would receive his or her rate of basic pay, plus holiday premium pay at a rate equal to the employee's rate of basic pay. In addition, if such an employee performs officially ordered or approved overtime work on a holiday (i.e., work in excess of his or her basic non-overtime work requirement for that day), the employee would receive overtime pay (or compensatory time off) for that work. Of course, an employee cannot receive payment for working on a holiday until an appropriations act or a continuing resolution is enacted.

Benefits

1. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program during a shutdown furlough if the agency is unable to make its premium payments on time?
 - A. Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time. Since the employee will be in a non-pay status, the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.
2. What happens if an employee wants to terminate Federal Employee Health Benefits (FEHB) coverage while in a nonpay status in order to avoid the expense?
 - A. Unlike other types of non-pay status, employees in a non-pay status due to a shutdown furlough will not have the opportunity to terminate or cancel FEHB coverage. The employee will remain covered; the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.
3. If an employee submitted a new application or a change to his/her health insurance plan (e.g. because of a Qualifying Life Event) and the paperwork was not processed by the agency because of a shutdown furlough, how would the employee seek services or coverage?
 - A. New enrollments or changes in enrollment due to a Qualifying Life Event do not take effect until the employee has been back in pay status for any part of the prior pay period.
4. Would a lapse in appropriations alter the effective date of an FEHB Open Season enrollment if an enrollment request was fully processed by an agency and submitted to the health plan prior to the lapse?
 - A. No. The effective date would still be the first day of the first full pay period in January.

5. What happens if agency employees responsible for processing paper SF-2809 FEHB Open Season enrollment requests are furloughed?
- A. Agencies will have to determine whether those employees may continue to process the enrollment requests if a lapse in appropriations occurs. If agencies conclude that they cannot, pending enrollment requests will not be processed until those employees return to pay status.
6. What happens if an individual makes an FEHB Open Season enrollment change but the agency did not process the request before the furlough?
- A. The individual should continue to use the old health plan until he or she returns to pay status and the enrollment is processed to the new health plan.
7. If an enrollee required healthcare after making an FEHB Open Season enrollment change that was not processed before a furlough and received coverage under the old health plan, will the new health plan be responsible for the coverage received once the furlough is over?
- A. Yes.
8. If a furlough delays processing of FEHB Open Season enrollment changes, will the enrollment be retroactive?
- A. Yes. Per FEHB regulations, all Open Season enrollments and enrollment changes are effective on the first day of the first full pay period in January.
9. If an individual's health plan is terminating participation in the FEHB Program at the end of the current benefit year, and an Open Season enrollment change has not been processed, what should the individual do in January?
- A. If the individual needs services urgently, he or she should incur the expenses and file a claim with the new plan once the enrollment change has been processed.
10. How will someone know whether his or her FEHB enrollment request was fully processed and sent to the new health plan?
- A. If the individual receives an ID card, the enrollment in the new plan is effective. If an ID card is not received, contact the health plan to verify.
11. How will someone know if an electronic FEHB Open Season enrollment change was fully processed?
- A. If an ID card is received, the enrollment in the new plan is effective. If an ID card is not received, contact the health plan to verify.
12. What happens to an individual not currently covered under the FEHB who elected to enroll during Open Season if the enrollment has not been processed and will not be processed until after the furlough? Does this individual still have coverage with the elected plan? If so, when?
- A. Such an individual would have coverage beginning on the first day of the first full pay period in January. Expenses incurred will be reimbursed by the plan once the enrollment has been processed. We suggest that such individuals ensure they use the plan's providers to get the maximum benefits. For fee-for-service plans, check the health plan's website for a list of network providers.
13. What happens to an employee's Federal Employees' Group Life Insurance (FEGLI) Program coverage if furloughed?
- A. Coverage continues for 12 consecutive months in a nonpay status without cost to the employee or to the agency. Neither the employee nor the agency incurs a debt during this period of nonpay.

14. What happens to an employee's Flexible Spending Account (FSAFEDS) coverage if furloughed?
A. Payroll deductions will cease for any employee that does not receive pay. The employee remains enrolled in FSAFEDS, but eligible health care claims incurred during a non-pay status will not be reimbursed until the employee returns to a pay status and allotments are successfully restarted. The remaining allotments are recalculated over the remaining pay periods to match the participant's election amount.
Eligible dependent care expenses incurred during a non-pay status may be reimbursed up to whatever balance is in the employee's dependent care account—as long as the expense incurred during the non-pay status allows the employee (or spouse if married) to work, look for work or attend school full-time.
15. Will the effective date of my FSAFEDS enrollment be affected?
A. No.
16. What happens to an employee's Federal Long Term Care (FLTCIP) Program coverage if furloughed?
A. Payroll deductions will cease for any employee that does not receive pay. Coverage will continue so long as premiums are paid. If Long Term Care Partners do not receive payment for three consecutive pay periods, they will begin to directly bill the enrollee. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.
17. What happens to an employee's Federal Dental and Vision (FEDVIP) Program coverage if furloughed?
A. Payroll deductions will cease for any employee that does not receive pay. BENEFEDS will generate a bill to enrollees for premiums when no payment is received for two consecutive pay periods. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.
18. Will the effective date of my FEDVIP Open Season enrollment be affected?
A. No.
19. What is the effect of a shutdown furlough on Thrift Savings Plan (TSP) contributions, investments, and loans?
A. TSP contributions are based on wages per pay period. If you have elected a specific dollar amount to be withdrawn, it will be taken from available pay in order of precedence referred to in the pay section of this guidance. A contribution designated in percentage will be based on percentage of wages for that pay period. TSP loan applications cannot be made if the nonpay time is expected to last more than 30 days. Notify MSgt Lisa Smith at 339-202-3044 if you currently have a TSP loan, as she will need to notify TSP of your nonpay status. This notification will suspend loan payment for up to one year of nonpay time and prevent the balance of your loan from being declared a taxable distribution.

Employee Assistance

1. Are employees entitled to unemployment compensation while on furlough?
A. It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment

Compensation for Federal Employees” at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>). Agencies or employees should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor’s website provides links to individual State offices at <http://www.servicelocator.org/OWSLinks.asp>. The SF-8 Form required to apply for unemployment can be obtained from the HRO ERS MAKO page in the Unemployment section (<https://states.gkoportal.ng.mil/states/MA/hro/elr/Unemployment%20Forms/Forms/AllItems.aspx>)

2. What resources are available if a technician needs financial and/or emotional assistance during a government shutdown?

A. The Employee Assistance Program (EAP) is available to all Technicians. Employees in the Barnes/Westfield/Springfield are should contact the Northampton VA Medical Center in Leeds, Massachusetts at 413-584-4040 ext 3031. Employees outside Western Massachusetts should contact the Federal Occupational Health (FOH) at 800-222-0364, www.foh4you.com. Military One Source, 800-342-9647 or www.militaryonesource.mil, offers services to Military Technicians as well as AGR.

Service Credit for Various Purposes

1. Is furlough or leave without pay (LWOP) considered a break in service?

A. No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, extended furlough or LWOP may affect the calculation of creditable service for certain purposes.

2. To what extent does nonpay status affect Federal employee benefits and programs?

A. The effects of a nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on Federal employee benefits and programs vary based on current law and regulation. For additional information, see OPM’s fact sheet on the “Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs” at http://www.opm.gov/oca/leave/HTML/LWOP_eff.asp.

Federal Employees on Military Duty

1. Can employees who are taking military leave under 5 U.S.C. 6323 for days covered by a furlough continue to do so during a shutdown furlough?

A. No. As with other types of paid leave, paid military leave must be canceled for days covered by the furlough. For employees on active military duty, their status as Absent-Uniformed Service (formerly Leave Without Pay-Uniformed Service (LWOP-US)) is unchanged by periods of intermittent annual or military leave, per the guidance in Q&A 9 of the Frequently Asked Questions on Military Leave, at <http://www.opm.gov/oca/leave/HTML/MILQA.asp>.

2. Will employees continue to receive a reservist differential payment (5 U.S.C. 5538) while on active duty when they are furloughed from their Federal civilian employment?

A. No. The reservist differential payments are intended to make up the difference between the employee’s customary civil service compensation and his or her military pay, and they are made from the funds of the employing agency appropriated for the payment of employees’ salaries. Since funds are not available for employees’ salaries during a furlough, no funds may be obligated towards any type of payment for reservist differential. However, if subsequent legislation is passed reimbursing

employees their civilian pay for the period of the furlough, it will be necessary for the agency to calculate any reservist differential payments that may be owed.

3. Will there be an impact on an employee's General Schedule or Federal Wage System within-grade increase (WGI) waiting period due to an employee being in an Absent-Uniformed Service status during a shutdown furlough?

A. No. If the employee is in an Absent-Uniformed Service status, the furlough has no impact on an employee's General Schedule or Federal Wage System WGI waiting period. An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when the employee returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).

Retirement Services: Government Closure

1. If a shutdown furlough occurs during the 3 years of service prior to retirement, what effect will it have on an employee's high-3 average pay?

A. Unless the furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year, there will generally be no effect on the high-3 average pay

2. Are the retirement rules concerning the effect of a shutdown furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?

A. Yes.

3. What will happen to employees who would have retired during a shutdown furlough?

A. For employees who submitted some notice of their desire to retire on or before the requested retirement date, agencies should, when the lapse in appropriations ends, make the retirement effective as of the date requested. The retirement request may be informal, such as a letter requesting retirement, and can be either mailed or personally submitted to the agency. Any additional required paperwork, such as the formal retirement application form, may be completed when the agency reopens. No time spent by the retiree performing such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the agency.

4. If an employee is scheduled to retire before the end of the leave year with an annual leave balance above the maximum leave ceiling (e.g. 240, 360, or 720 hours, as applicable) and the furlough prevents the employee's retirement from getting processed until January, does the employee lose his or her annual leave above the maximum leave ceiling?

A. No. The employee's retirement would be retroactively applied to a date prior to the end of the leave year, and the employee would receive the full amount of accumulated and accrued annual leave in a lump-sum payment.

5. I recently retired from Federal service. Will my retirement application be delayed by a government shutdown?

A. Yes, you should anticipate a delay due to the different agencies involved in processing the retirement package who may not be operating during a government furlough.

6. I applied for disability benefits. Will my application still be processed?
 - A. Disability, reconsideration, and appeals employees at OPM will continue working on your case. If the application requires additional information from other agencies, expect delays during a government furlough.
7. Can I submit a Court Ordered Benefit during a government furlough?
 - A. Yes, OPM employees will continue working to process court ordered benefits. If the application requires additional information from other agencies, expect delays during a government furlough.

Payments upon Separation from Federal Service

1. If there is a shutdown furlough, how does this impact a separating employee's lump-sum payment for their unused annual leave?
 - A. In the event of a shutdown furlough, any payments incurred by the agency for an employee's lump-sum payment will be delayed until funds are available.
2. How are separated employees' entitlements to severance pay affected by a shutdown furlough?
 - A. Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the Government of the United States (severance pay is suspended or terminated when the individual is reemployed by the Federal Government). Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the Federal Government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g. 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a shutdown furlough, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as payroll checks for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of nonexcepted activities, severance pay checks covering days before the lapse may also be processed. No funds may be authorized for severance payments for days during the lapse until an appropriation is enacted.

Additional information on severance pay (including eligibility criteria and payment formulas) can be found at http://www.opm.gov/oca/pay/HTML/severance_pay.asp.

Continuation of Pay

1. How is Continuation of Pay (COP) under the Federal Employees' Compensation Act affected by a Government shutdown?
 - A. The Department of Labor's Office of Workers' Compensation Programs which administers the Federal Employees' Compensation Act (FECA) advises that, in the event of a Government shutdown, an employee who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the agency does not have monies available to pay the salary of that

employee. If the agency does not have monies to pay salary during the shutdown but the agency's budget is subsequently restored in such a way as to allow for retroactive payment of salary during the shutdown period, the employee should receive COP for any period of disability that occurs within the shutdown. In the event an agency is legally unable to pay COP to an employee because of a lapse in appropriations, the employee may file a claim for regular FECA wage loss compensation for that period.

Injury While on Furlough

1. Are employees who are injured while on furlough or LWOP eligible to receive workers compensation?

A. No. Workers compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Procedures

1. Should agencies process SF-50s, or equivalent, for furloughed employees at the outset of the shutdown?

A. No. When the furlough begins, agencies should not prepare an SF-50, "Notification of Personnel Action" (or a List Form of Notice for a group of employees who are to be furloughed on the same day or days each pay period). Further guidance regarding documentation will be communicated to agencies at the conclusion of the furlough.

2. In the event of a shutdown furlough, can an employee be furloughed without first receiving a written notice of decision to furlough?

A. Yes. While an employee must ultimately receive a written notice of decision to furlough, it is not required that such written notice be given prior to effecting the emergency furlough or in person. Advance written notice (including through email) is preferable, but when prior written notice is not feasible, then any reasonable notice (e.g. telephonic, oral, personal email, or by mail promptly after the furlough) is permissible.

3. What information should be included in the notice of decision of a shutdown furlough when no advance notice is issued?

A. The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations. If some employees in a competitive level will not be furloughed because they are performing one of the excepted activities defined by OMB standards, OPM recommends a statement such as the following:

"If employees are being retained in your competitive level, they are required for orderly suspension of agency operations, or they are performing one of the excepted activities defined by law."

For members of the Senior Executive Service (SES), the written notice should provide the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; if the notice period is less than 30 calendar days, the reason for the shortened period, and, for a probationer, the effect (if any) on the duration of the probationary period.

All notices must include a statement of applicable appeal and grievance rights. If a copy of the MSPB appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form or how to electronically file an appeal with the MSPB. See “Sample Shutdown Furlough Decision Notice Due to Lapse of Appropriations.” This sample can be used for SES and non-SES employees.

4. In addition to statutory and regulatory procedural requirements, what other forms of communication should an agency consider when implementing a shutdown furlough?

A. Considering the uncertain and changing circumstances surrounding a shutdown furlough, agencies should make efforts to ensure that employees are provided with up-to-date and accurate information. If time permits before a furlough starts, this may be done through effective union-management communication, employee briefings, periodic bulletins, and newsletters. Once a furlough begins, agencies can also consider using 800 numbers and emails to home email accounts.

5. How does the length of a shutdown furlough affect the procedures that are used to implement the furlough of employees?

A. The length of a shutdown furlough does not affect the procedures that are used.

For most employees, shutdown furloughs lasting 30 calendar days or less (22 workdays) are covered by OPM regulations under 5 CFR part 752, adverse action procedures. Shutdown furloughs lasting 30 calendar days or less (22 workdays) for career appointees in the Senior Executive Service (except reemployed annuitants) are covered under 5 CFR part 359, subpart H. Noncareer, limited term, and limited emergency appointees and reemployed annuitants holding career appointments are not covered by 5 CFR part 359, subpart H, and they may be furloughed under agency designated procedures, which should include certain minimum features, e.g. whenever possible, a written notice at least 1 day before the furlough which states the reason for, duration of, and effective dates of the furlough.

Shutdown furloughs lasting more than 30 calendar days (22 workdays) are also covered by OPM regulations under 5 CFR part 752, adverse action procedures, 5 CFR part 359, subpart H, or agency designated procedures, as applicable. When the shutdown furlough goes beyond 30 days, agencies should treat it as a second shutdown furlough and issue another adverse action or furlough notice.

6. What happens to new employees who are scheduled to report to work for the first time during a shutdown furlough?

A. By law, individuals do not become Federal employees until they report for work and are sworn in. Agencies should consider delaying the enter-on-duty date for new employees who are scheduled during a shutdown furlough.

7. What happens to current Federal employees who are scheduled to transfer to a new agency during a shutdown furlough?
- A. Agencies should consider delaying the enter-on-duty date for employees who are scheduled to transfer to a new agency during a shutdown furlough. Such employees would remain on the rolls of their former agency until the new transfer effective date.
8. If a Government shutdown occurs, how will furloughed employees be informed when it is over?
- A. The HRO has set up a hotline at 339-202-3100 that will contain furlough updates. Employees are encouraged to call each day prior to their shift during the furlough for instructions on when to report back to work. Also suggested is monitoring OPM's website (www.opm.gov) and media outlets for notification that a continuing resolution or appropriation has been signed by the President.
9. When a Government shutdown ends, when are furloughed employees expected to return work?
- A. The agency will apply a rule of reason in requiring employees to return to work as soon as possible, taking into account the disruption in the lives and routines of furloughed employees that a shutdown causes; however, normal leave procedures would need to be applied otherwise removal action should be taken IAW Section 2-4, TPR 715, Abandonment of Position.