

Frequently Asked Questions – Furloughs and Government Shutdown from the Office of Personnel Management (OPM)

Q: 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.

Q: 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.

Q: Who are Excepted Employees?

A: In the context of shutdown furloughs, the term "excepted employees" 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 (1) performing emergency work involving the safety of human life or the protection of property, (2) performing minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities, or (3) 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.

Other employees are "exempt" from furlough because they are not affected by a lapse in appropriations. This includes employees who are not funded by annually appropriated funds. It also includes those Presidential appointees who are not subject to a Federal employee leave system-i.e., who are entitled to an annual salary without consideration of the hours of duty required and thus cannot be placed in nonduty/nonpay status. (NOTE: Non-career SES and Schedule C employees do not fall into this category.)

All other employees funded through annual appropriations are not able to work during a "shutdown" and will be furloughed.

Q: How will employees be notified whether they have been designated to be handling "excepted" or "non-excepted" functions?

A: Each Agency will communicate with its employees regarding the method and timing of notification of whether they have been designated as an excepted or non-excepted employee.

Q: Are all employees who qualify as "emergency employees" for the purpose of weather emergencies considered to be "excepted employees" for the purpose of a shutdown furlough?

A: Not necessarily. "Emergency employees" are those employees who must report for work in emergency situations-e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or which require agencies to close all or part of their

activities. Emergency employees are not automatically deemed excepted employees for purposes of shutdown furloughs. Each agency must determine which employees are excepted employees.

Questions regarding working during a furlough:

Q: May an employee volunteer to do his or her job on a non-pay 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.)

Q: 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 of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

Questions regarding pay:

Q: 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.

Q: Will employees who are furloughed get paid?

A: Congress will determine whether "non-excepted" employees receive pay for the furlough period.

Questions regarding leave:

Q: May an employee not excepted from the furlough take previously approved paid leave (e.g., annual, sick, court, military leave, or leave for bone marrow or organ donation) during a shutdown furlough?

A: No. All paid leave during a shutdown furlough period must be canceled because the requirement to furlough supersedes leave 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 leave creates a debt to the Government that is not authorized by the Act. Therefore, agencies are instructed that during a shutdown furlough, all paid leave must be canceled.

Q: May an excepted employee take previously approved paid leave or be granted new requests for paid leave 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 paid leave 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 in an absence without leave (AWOL) and will be subject to any consequences that may follow from being AWOL.

Questions regarding benefits:

Q: 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.

Q: What effect will a furlough have on other benefits that are paid for through payroll deductions?

A. The effect of a furlough on benefits that are paid for through payroll deductions varies. 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.

Questions regarding unemployment compensation:

Q: 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. Agencies or employees should submit questions to the appropriate State (or District of Columbia) office. In general, the law of 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>.)