

**FURLOUGH
Questions & Answers
January 2018**

GENERAL

• **Q. What is a FURLOUGH?**

A. A furlough is the placing of an employee in a temporary non-duty, non-pay status due to lack of work or funds, or other non-disciplinary reasons.

• **Q. What is a SHUTDOWN?**

A. An emergency closure (resulting in the furlough of employees) caused by a lapse in appropriations or other unforeseeable circumstances.

FURLOUGHS CAUSED BY LAPSED APPROPRIATIONS (SHUTDOWN)

• **Q. Would all employees be furloughed if a government shutdown occurred?**

A. No. The governing laws allow for certain categories of employees to continue working; generally, these employees are either directly or indirectly involved in the “protection of life or property.” For this purpose, the term “excepted” or “emergency” are interchangeably used to describe employees who would work during a government shutdown.

• **Q. How would the government ensure that a shutdown occurred in an orderly manner?**

A. There are employees specifically designated as those involved in “orderly shutdown” activities – they would be responsible for making the arrangements to shutdown non-emergency operations. Their duties might include: securing facilities, powering down equipment, leaving appropriate voicemail messages, etc. After their duties were completed, employees involved in orderly shutdown would either go into a furlough status (if designated non-essential) or continue working (if designated essential). The amount of time devoted to orderly shutdown cannot exceed four (4) hours without prior approval.

• **Q. How will employees know if they are designated “non-excepted” or “excepted”?**

A. Employees will be notified in advance of any government shutdown what their status would be. To resolve any uncertainty, employees should verify their status with their immediate supervisors in advance of an anticipated government shutdown.

- **Q. For furloughs necessitated by lapsed appropriations (shutdown), is an agency required to provide 30 calendar days' advance written notice and an opportunity to respond prior to issuing a decision to furlough?**

A. No. OPM's regulations provide for emergency furlough without the necessity for advance written notice proposing the action.

- **Q. In the event of lapsed appropriations, 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 an emergency furlough (shutdown). When prior written notice is not feasible, reasonable notice (telephonic or oral) is permissible.

- **Q. What about lump-sum annual leave payments to employees separating during a furlough?**

A. If an employee separates during lapse of appropriations, the lump-sum annual leave payment would be delayed until enactment of an appropriation that would allow the obligation of funds for this purpose. In the event of a lapse of appropriations, agencies are allowed to employ staff to perform activities necessary for the orderly suspension of non-excepted activities. As explained above this includes the processing of personnel payroll for the periods prior to the lapse in appropriations. A minimum number of payroll staff necessary for this process will be exempt from furlough for the minimum time required to issue checks, including checks for lump-sum annual leave payments paid from funds obligated before the lapse in appropriations.

EMPLOYEE COVERAGE AND PROCEDURAL REQUIREMENTS

- **Q. What procedures apply to probationers, employees under temporary limited appointments in the competitive service, employees who are non-preference eligible employees in the excepted service with less than 2 years of continuous service, and similar categories of employees?**

A. There are no mandated procedures; however, agencies should ensure that all procedures required by negotiated labor agreements or internal personnel policies are followed. More specific information regarding applicable negotiated agreements or internal personnel procedures can be obtained from your servicing human resources offices.

- **Q. What about SES appointees?**

A. SES career and non-career appointees may be furloughed.

- **Q. Would employees who are detailed or assigned outside the agency during part, or the entire period, of furlough be subject to furlough?**

A. Generally, details during a lapse in appropriations will be suspended with the employee returning to their home agency and potentially being furloughed depending upon the agency's determination as to whether the employee performs a function that is excepted from furlough. Where managerial discretion exists, your organization will make its decisions known in advance of any furlough period.

Federal employees assigned to non-Federal organizations, who are on leave without pay from their Federal positions (or who have separated from Federal service with re-employment rights), may continue working for the non-Federal organization.

- **Q. How is a furlough handled for employees on flexible or compressed work schedules under alternative work schedules (AWS) programs?**

A. For an employee on a flexible work schedule with no daily work requirement, the furlough will be expressed in terms of the number of hours of the required furlough, rather than in terms of the number of days or specific dates or times. If a furlough is expressed in terms of the number of days, for a full-time employee under a flexible work schedule, the length of a furlough day is the number of hours the employee is scheduled to work in order to fulfill the basic work requirement during the biweekly pay period, divided by the number of days that comprise the employee's biweekly tour of duty.

For an employee on a compressed work schedule, a furlough is scheduled for the days and times during which employees otherwise would be scheduled to work under the compressed work schedule. The length of a furlough day under a compressed work schedule is the same as the length of the employee's compressed workday; e.g., the length of a furlough day under a 4/10 compressed work schedule is 10 hours.

- **Q. How is a furlough handled for part-time employees?**

A. Furloughs of part-time employees will be computed based on their work schedule and be proportionately equivalent to furlough days scheduled for full-time employees.

- **Q. What about employees who work on a seasonal or intermittent basis?**

A. Seasonal employees are recalled to duty at identified periods of the year in accordance with pre-established conditions. Intermittent employees are non-full-time employees without a regularly scheduled tour of duty. Neither group would be called for work during the period in which furloughs are scheduled.

EMPLOYMENT DURING FURLOUGH

- **Q. May employees take other jobs while on furlough?**

A. Yes. However, the Executive Branch standards of ethical conduct, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes which prohibit certain outside activities. Agencies also may have varying supplemental rules regarding the requirement for prior approval of outside employment, and some prohibit certain types of employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult the Office of General Counsel to learn if there are any DOC-specific supplemental rules governing Commerce employees. Furloughed employees may, absent any agency restrictions, accept temporary appointments with other Federal agencies during furlough.

- **Q. What happens to employees' benefits (e.g., retirement, health benefits, life insurance, leave) if they received temporary appointment in another agency while furloughed?**

A. The leave, retirement, health benefits, and life insurance all should be handled as if the employees had been transferred.

- **Q. May an employee volunteer to do his or her job on a non-pay basis during a furlough period?**

A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual.

- **Q. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?**

A. No. The statute that permits employees to take compensatory time off for religious observances does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

SERVICE CREDIT FOR VARIOUS PURPOSES

- **Q. Is furlough or leave without pay (LWOP) a break in service?**

A. No, both merely place employees in a non-pay status.

- **Q. To what extent does non-pay status affect civil service benefits and programs?**

A. - For CAREER TENURE, the first 30 calendar days of each non-pay period is creditable service.

- For **COMPLETION OF PROBATION**, a total of 22 workdays in a non-pay status is creditable service.

- For **QUALIFICATION PURPOSES**, there is no requirement to extend qualifying periods by the amount of non-pay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.

- For **TIME-IN-GRADE** requirements, non-pay status is creditable service

- For **RETIREMENT** purposes, an aggregate non-pay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a non-pay status. When employees are in a non-pay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay. The exception would be an employee who had substantial time in a non-pay status earlier in the year if the furlough causes him or her to have a total of more than six months' time in a non-pay status during the calendar year.

- For **HEALTH BENEFITS**, the government contribution to the health benefits enrollment premium continues while employees are in a non-pay status. However, the employees must elect between continuing their coverage and agreeing to pay the premium or incur a debt; or terminating the health benefits enrollment.

If an employee chooses to continue the health benefits enrollment, payment of the employee's share of the premium may be made either on a current basis, or when the employee returns to work. If an employee chooses to terminate the enrollment and avoid indebtedness for the premium:

the termination is subject to the 31-day temporary extension of coverage;

- the employee and any covered family members may convert to a non-group contract; and

- the employee may re-enroll upon returning to work, without having to wait for an open season, or other enrollment event.

- For **LIFE INSURANCE**, coverage continues for 12 consecutive months in a non-pay status without cost to the employees. The non-pay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.

- For **WITHIN-GRADE INCREASES**, an aggregate of 2 workweeks non-pay status in a waiting period is creditable service for advancement to step 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10. For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek non-pay status is creditable service for

advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5.

- For **ANNUAL AND SICK LEAVE**, when an employee accumulates 80 hours of non-pay status, his or her annual and sick leave credit is reduced by an amount equal to the amount of leave the employee earns during that pay period. When computing annual leave accrual rates, creditable service is limited to a total of 6 months per calendar year in a non-pay status.

- For **REDUCTION IN FORCE**, an aggregate of 6 months' non-pay status in a year is creditable service.

- For **SEVERANCE PAY**, non-pay status time is fully creditable for the 12-month continuous employment period. However, for purposes of determining service creditable towards the computation of an employee's severance pay, no more than 6 months of non-pay status time per calendar year is creditable service.

- For **MILITARY DUTY** or **WORKERS' COMPENSATION**, non-pay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

RETIREMENT

• **Q.** When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?

A. Generally, there will be no effect on the high-3 average unless the furlough causes the employees to be in a non-pay status for more than 6 months during the calendar year.

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

A. Yes.

• **Q.** What happens to retirement and insurance in a **DISCONTINUOUS** furlough?

A. As explained above, retirement credit is not affected as long as an employee does not exceed 6 months of non-pay status in a calendar year. Retirement deductions are taken on the basic pay the employee earns during the pay period.

Federal Employees Health Benefits (FEHB) premiums are deducted from an employee's pay. If the employee's pay is insufficient to cover the FEHB premium, he or she must elect

between continuing the coverage and agreeing to pay the premium or incur a debt; or terminate the enrollment.

Federal Employees Group Life Insurance coverage continues, and contributions made by the employee and the employee's agency continue if the employee's salary in each pay period is sufficient to cover deductions. If the employee's salary is insufficient to cover his or her withholding, the employee's coverage will continue for up to 12 months without cost to the employee or the employee's agency.

- **Q. What happens if employees terminated FEHB coverage while in a non-pay status in order to avoid the expense?**

A. Employees may re-enroll upon returning to work, without having to wait for an open season, or other enrollment event. A termination is not considered a break in the continuous coverage necessary for continuing health insurance into retirement. However, the period during which the termination is in effect does not count toward satisfying the required 5 years of continuous coverage.

THRIFT SAVINGS PLAN CONTRIBUTIONS

- **Q. What affect does a shutdown furlough have on my TSP account?**

A. See <http://www.tsp.gov> for latest information on impact of furlough on your TSP account.

HOLIDAYS

- **Q. May employees be furloughed on a holiday?**

A. Employees may be furloughed for periods of time that include holidays.

- **Q. If employees are furloughed on the last workday before a holiday or the first workday after a holiday (but not on both days), will they be paid for the holiday?**

A. Yes. The general rule is that employees are entitled to pay for a holiday so long as they are in a pay status on either the workday preceding a holiday or the workday following a holiday. Employees are paid for the holiday based on the presumption that, but for the holiday, the employee would have worked.

- **Q. If employees are furloughed on the last workday before a holiday AND the first workday after a holiday, will they be paid for the holiday?**

A. No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the employee is not entitled to pay for the holiday because there

is no longer a presumption that, but for the holiday, the employee would have worked on that day.

REQUESTS FOR LEAVE DURING FURLOUGH

- **Q. If employees request annual, sick, court, military leave, or leave for bone marrow or organ donation after receiving a notice proposing specific days of furlough, can the requests be denied for those days that coincide with the dates of furlough? If an agency has approved requests for these categories of leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?**

A. The answer to both questions is yes. If employees have been granted leave for a day subsequently designated as a furlough day, that leave is automatically canceled because the necessity to furlough supersedes leave rights.

- **Q. If an employee properly schedules “use-or-lose” annual leave before the start of the third biweekly pay period prior to the end of the leave year, but is unable to use some or all of the scheduled leave because of a furlough, does the furlough constitute an “exigency of the public business” that permits an agency to restore the leave after the beginning of the new leave year?**

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. However, if this is not possible, agency heads (or their designees) may exercise their discretionary authority to determine that an employee was prevented from using his or her leave because of an exigency of the public business – namely, the need to furlough employees because of lack of work or funds.

- **Q. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during furlough days, do the furlough days’ count towards the 12-week entitlement to FMLA leave?**

A. No. An employee cannot take leave (either paid or unpaid) under the FMLA on days that coincide with the dates of furlough. Therefore, the furlough days cannot be counted towards the 12-week entitlement to FMLA leave.

LEAVE WITHOUT PAY (LWOP)

- **Q. If employees are on approved LWOP, can the LWOP be terminated and the employees furloughed?**

A. Yes. The LWOP can be terminated, but if there is no expectation that the employees may return to duty on the proposed furlough days, it is unnecessary to cancel the LWOP, since there is no work or funds involved. However, if the employees may potentially return

to duty during the approved LWOP, the agency may propose to furlough on the days of approved LWOP and cancel the LWOP.

LEAVE IN LIEU OF FURLOUGH

- **Q. May agencies allow employees to use annual or sick leave in place of furlough?**

A. Annual or sick leave is not appropriate if the furlough is for lack for funds because the employees would be in a pay status, contrary to the intent of furlough.

- **Q. May an employee voluntarily request LWOP for a holiday?**

A. No. A holiday is considered a “non-workday” for leave purposes. Therefore, an employee may not request or be granted LWOP for a holiday. However, if an employee is on LWOP on the last workday before a holiday and the first workday after a holiday, he or she is not entitled to pay for the holiday (See Holidays).

TEMPORARY DUTY OR TRAVEL STATUS

- **Q. What happens to non-excepted employees who are in a temporary duty or status at the time a furlough due to shutdown is invoked?**

A. Ideally, most non-excepted employees in either temporary duty or travel status could be recalled in anticipation of a government shutdown. Those who could practically be recalled at the outset of a government shutdown would be considered “orderly shutdown” employees and would terminate their government duties immediately upon return.

CONTINUATION OF PAY (COP)

- **Q. If employees are receiving COP due to job-related injuries, can the COP be terminated or interrupted by furlough?**

A. No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.

INJURY WHILE ON FURLOUGH

Q. If employees are injured while on furlough, are they eligible for workers' compensation?

A. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough are not in a duty status for this purpose.

UNEMPLOYMENT COMPENSATION

• **Q.** Are employees entitled to unemployment compensation while on furlough?

A. Employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. However, state unemployment compensation requirements differ. For example, many states required employees to wait until the second week of a furlough before benefits may be paid. Therefore, agencies or employees should submit their questions to the appropriate state office. Finally, the Department of Labor (DoL) has developed special procedures for federal employees that would expedite filing of their claims in the event of a shutdown. If DoL decides to implement such procedures, agencies will be notified.

• **Q.** If I am eligible for unemployment compensation, what will my benefit be?

A. Benefits are based on salary and state benefit levels, as well as on the application's workplace or duty station. According to the DoL, unemployment benefits are based on the rules of the STATE IN WHICH THE EMPLOYEE'S DUTY STATION IS LOCATED.

PERFORMANCE AWARDS AND WITHIN-GRADE INCREASES

• **Q.** If an agency intends to grant performance awards to employees, can the payment be delayed until after the furlough?

A. Yes.

• **Q.** Are agencies required to pay performance awards to any group of employees, including those in the SES?

A. No.

• **Q.** May agencies deny or delay within-grade or step increases for white-collar and blue-collar employees?

A. Within-grade and step increases for white-collar and blue-collar 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 period of non-pay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a General Schedule employee in steps 1, 2, or 3 of the grade who is furloughed for more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period.

FURLOUGH UNDER REDUCTION-IN-FORCE PROCEDURE (GENERAL)

- **Q. When is an agency required to use reduction-in-force (RIF) procedures to furlough employees?**

A. Agencies must follow RIF procedures when furloughing employees for 31 or more continuous calendar days, or for 23 or more discontinuous workdays. Furloughs for shorter periods are covered under Adverse Action procedures.

- **Q. Is there a maximum period an employee may be furloughed?**

A. Yes. An employee may be placed on a RIF furlough only when the agency plans to recall the employee to his or her position within 1 year. Therefore, the furlough may not exceed 1 year.

- **Q. If an agency needs to furlough employees for more than 30 calendar days (or 22 workdays), must the complete RIF procedures be followed?**

A. Yes. The complete RIF procedures must be followed, including a minimum 60 days' specific written notice of the RIF furlough action.

- **Q. What happens to temporary employees serving under appointments limited to 1 year or less in RIF furlough situations?**

A. An agency may not retain a temporary employee in pay status to furlough a competing employee in the same competitive level. Temporary employees may be either separated or furloughed in such situations, but they are not entitled to the protections of adverse actions or RIF procedures when this occurs.

Time spent in furlough status by temporary employees counts the same as time in a pay status toward their appointment's not-to-exceed date and the 2-year limit on their overall service.

ADDITIONAL INFORMATION FROM THE FOLLOWING URLs:

Employee Assistance Program: Assessment, counseling and referral services available for employees, including stress management and financial counseling: <https://foh.psc.gov/>

Comment [MD(1): Updated link from Kevin but notes a security risk.

Federal Employee Education and Assistance Fund: www.feea.org

Comment [MD(2)]: This link gets a DOC "Access to this Site is Blocked" note.

Federal Occupational Health: Programs, services and educational resources available to agencies: <https://foh.psc.gov>/<http://www.foh.hhs.gov>

Comment [MD(3)]: Updated link from Kevin but notes a security risk.

US Office of Personnel Management Human Capital: GUIDANCE AND INFORMATION ON FURLOUGHS: <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf>