



Lapse of Appropriation Human Resource Furlough Questions and Answers

The answers to these questions generally apply to a situation where the Agency implements a shutdown or emergency furlough due to a temporary lapse in appropriations. These questions and answers augment those provided in the Office of Personnel Management's (OPM) Guidance and Information on Furloughs, which can be found at:

<http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>

GENERAL ADMINISTRATION

1. What is a furlough?

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. Under what authority is a furlough taken?

There are three legal authorities under which a furlough can be taken. Furloughs of 30 calendar days or less are covered under adverse action procedures found in Subpart D of 5 CFR 752. Furloughs of more than 30 calendar days are covered under reduction in force procedures found in Subpart B of 5 CFR 351. Furloughs for Senior Executive Service (SES) members are covered Subpart H of 5 CFR Part 359. Furloughs may also be taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d) (2) and in accordance with 5 CFR 359.806 (a) for SES Career appointees.

3. What happens to time limited appointments that expired during a furlough?

Furloughs do not extend the time limits for temporary (5 CFR 316.401(c)) and term (5 CFR 316.301(a)) appointments. If you intend to extend the time limited appointment, it may be

extended prior to the furlough or, the individual may be reappointed after the furlough in accordance with 5 CFR 316.401(c) or 5 CFR 316.302(b) (7).

4. How come some employees continue working when the agency implements a furlough.

Under guidance provided the Office of Management and Budget and the Office of Personnel Management, when an agency implements a furlough due to a temporary lapse in appropriations an agency may be required to maintain some level of operations in order to carry out activities required by law and activities to protect safety of human life or protection of property. These essential activities are referred to as excepted activities and require personnel to carry out the business of the agency.

5. Will I receive advance written notice of a furlough?

Not necessarily. While an employee must ultimately receive a written notice of decision to furlough, it is not required that written notice be given before the furlough starts. OPM does say prior written notice is "preferable," but when it is not possible, then any reasonable notice - such as a phone call or verbal communications - is allowed.

6. Who is excepted from a furlough?

In the context of a shutdown furlough, "excepted employees" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

An excepted employee is not the same as an "**emergency employee**," which refers to those employees who must report for work in emergency situations, such as 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.

7. Can I take another job while furloughed?

Even while on furlough, you are still a government employee and must still abide by standards of ethical conduct and other rules regarding outside employment. 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.

8. Are Presidential appointees subject to a furlough?

Appointees are NOT subject to furlough by virtue of their status per 5 U.S.C. 6301 (2)(x) or (xi) and 5 CFR 630.211. There is an exception - Former career Senior Executive Service appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Presidential appointees, certain IPA assignments, and employees on reimbursable details to other agencies are excluded from furlough action.

9. If I am on a detail or assigned outside my agency, am I subject to a furlough?

Employees on a reimbursable detail from the agency would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, the employee would be subject to furlough. Federal employees assigned to non-federal organizations who are on leave without pay from their federal positions may continue working.

LEAVE

10. If an employee who received a furlough notice had previously scheduled annual or sick leave, what happens to the scheduled leave?

Upon furlough, all scheduled leave is canceled (annual leave, sick leave, military leave, court leave or other). Absences during the furlough may not be charged to leave. 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 lapse in appropriations, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

11. May employees who were designated as excepted from the furlough be granted paid leave?

No. If an excepted employee is unavailable to be at work and perform the duties determined by the employing agency to be allowable activities, then the employee must be furloughed.

12. If an employee who would be furloughed is on approved leave without pay (LWOP) must the LWOP be terminated and the employee furloughed?

No. The status of employees in LWOP is not disturbed unless there is indication that the employee may return from the LWOP during the furlough.

PAY

13. Will I receive back pay for the period of time I am subject to a furlough ?

Congress would have to pass legislation granting federal employees the pay they missed while they were furloughed. This is what has happened in the past, but there is no guarantee it will happen again.

14. Can I volunteer to work unpaid during a furlough?

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

15. Are contractors located on site also required to not report to work? Or are they allowed to continue their tasks, albeit, without government oversight or monitoring?

Contractors should not "volunteer" their services to an agency during a shutdown if they want to be paid for those services. If, for example, an agency were to suggest to a contractor that they continue working during a shutdown and "we'll figure out how to pay you later," the contractor is at risk of not being able to recover compensation for those services. Agencies may not displace the services of furloughed federal workers by using "volunteer" contractors.

Contractors should also keep in mind that they may not be able to access their work sites if there are no federal employees present to open the building. These are generalities, and details will vary by agency and contract. The best rule of thumb is to discuss these issues with the appropriate agency contracting officer if a shutdown appears to be imminent.

16. How an employee is treated who performs National Guard or Reserve duty while furloughed? Is it a dual compensation situation?

It is not a dual compensation situation because furloughed employees are not in a pay status. They will be compensated by the military and continued to be carried in a LWOP-US status.

BENEFITS

Federal Employees Health Benefits (FEHB)

17. To what extent does non-pay status affect Federal Employee Health Benefits (FEHB) coverage?

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.

18. What happens if I want to cancel my Federal Employee Health Benefits coverage while in a non-pay status in order to avoid the expense?

Unlike other types of non-pay status, employees in a non-pay status due to a lapse of appropriations (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.

19. Will an employee continue to be covered under the FEHB program if the agency is unable to make its premium payments on time?

Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Federal Employees Group Life Insurance (FEGLI)

20. To what extent does non-pay status affect Federal Employees Group Live Insurance coverage?

Life insurance coverage continues for 12 consecutive months while in a non-pay status without cost to the employee or the agency. Neither the employee nor the agency incurs a debt during this period of nonpay

Thrift Savings Plan (TSP)

21. To what extent does non-pay status affect Thrift Savings Plan (TSP) coverage?

Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Thrift Savings Plan (TSP) premium(s). Employees cannot contribute to their TSP account while on furlough. Employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation. The fact sheet can be found at:

<https://www.tsp.gov/PDF/formspubs/oc95-4.pdf>

22. Can I obtain a loan from my TSP account while in a non-pay status?

Employees may not normally obtain a loan from their TSP account while on furlough. However, the Thrift Savings Plan Executive Director has determined that for the October 2013 shutdown, loans can be taken by furloughed employees. You can obtain information about this at <https://www.tsp.gov/PDF/formspubs/oc11-5.pdf>.

For employees with existing TSP Loans, the Internal Revenue Service (IRS) allows your TSP loan payments to be suspended for up to one year of the non-pay period if proper documentation is provided. Interest will accrue while payments are suspended. Employees can make direct payments on their loan from their personal funds while on furlough. For more information on TSP Loans, employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation.

Flexible Spending Account (FSA)

23. To what extent does non-pay status affect Flexible Spending Account (FSA) coverage?

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. Visit the website, www.fsafeds.com for more information.

Long Term Care (LTC)

24. To what extent does non-pay status affect Long Term Care (LTC) coverage?

Deductions cease when the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue Long Term Care (LTC) coverage, the employee must make payments while in a non-pay status.

Federal Employees Dental and Vision Insurance Plan (FEDVIP)

25. To what extent does non-pay status affect Federal Employees Dental and Vision Insurance Plan (FEDVIP) coverage?

Deductions cease when the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue FEDVIP coverage, the employee must make payments while in a non-pay status.
<http://www.opm.gov/healthcare-insurance/dental-vision/>

Retirement Coverage

26. To what extent does non-pay status affect retirement coverage?

Retirement coverage continues for up to 6 months for periods of where federal employees are normally in a non-pay status per calendar year.

UNEMPLOYMENT COMPENSATION (UC)

27. If I am furloughed am I eligible to receive unemployment compensation benefits. Is the UC claim based on the state where you live, or where you work?

It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. 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>.) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office.

28. Are Human Resources Offices required to provide furloughed Federal employees with an SF-8, Notice to Federal Employee about Unemployment Compensation Insurance? (UC)

Federal agencies are required to provide employees with an SF-8 if they will be in a non-duty status for seven or more days.

29. Is information available as to what the states require before processing a claim for unemployment because of a furlough?

Yes. The list below gives Web sites or instructions for each state when filing an initial claim for unemployment; different procedures often apply when filing claims for additional benefits. You should also note that Kentucky has a Web site – at <http://www.oet.ky.gov/des/ui/staterefguide.asp> - that lists state Web sites, plus telephone numbers, for about 40 states.

Alabama – <http://dir.alabama.gov/uc/Claims/default.aspx>

Alaska – http://www.labor.state.ak.us/esd_unemployment_insurance/biff-splash.htm

Arizona – <https://www.azdes.gov/esa/pdf/UIB-1015APAMNA.pdf>

Arkansas –

http://www.accessarkansas.org/esd/WorkersUnempBenefits/pdf/PDF501_BLANK.pdf

California – <https://eapply4ui.edd.ca.gov/>

Colorado –

<https://www.coworkforce.com/ucontinuedclaims/default.asp?ci=0&ps=0&er=0&li=e>

Connecticut – <https://iic.ctdol.state.ct.us/>

Delaware – file through personal application only. Information is at http://www.delawareworks.com/Unemployment/forms/ui_guide-ver0307.pdf

District of Columbia – <https://does.dcnetworks.org/InitialClaims/>

Florida – <https://www2.myflorida.com/apps/uc/fluid/>

Georgia – http://www.dol.state.ga.us/js/unemployment_benefits_individuals.htm

Hawaii – file by phone only, by calling 808 643-5555. Information is at http://hawaii.gov/labor/ui/pdf/STEP-BY-STEPS/claimant_process.pdf

Idaho – <http://cl.idaho.gov/IW/UIClaim/Main.asp?strMenu=FILECLAIM>

Illinois – <http://www.ides.state.il.us/individual/certify/default.asp>

Indiana – <https://uplink.in.gov/CSS>

Iowa – <http://www.iowaworkforce.org/ui/file1.htm#1>

Kansas – <https://www.uibenefits.dol.ks.gov/default.asp>

Kentucky – <http://www.kewes.ky.gov/>

Louisiana – <https://laors.laworks.net/laclaims/website/>

Maine – <https://portalxw.bisoex.state.me.us/mics/>

Maryland – electronic filing not permitted if employee worked for the Federal government in the past 18 months. File by phone at 410 949-0022 in the Baltimore area, or 1 800 827-4839 outside the Baltimore area. Information is at <http://www.dllr.state.md.us/employment/ui/index.html>

Massachusetts – initial claim by phone or in person only. File by phone at 1 877 626-6800 from Massachusetts, 617 626-6800 outside Massachusetts. Information is at <http://www.mass.gov/?pageID=dlwdconstituent&L=2&L0=Home&L1=Claimants&sid=Edwd>

Michigan – <http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html>

Minnesota – <http://www.uimn.org/ui/webclaim.htm>

Mississippi – http://mdes.ms.gov/wps/PA_1_0_CH/docs/UnemploymentInsurance/UI-501.pdf - form must then be brought in person to a Mississippi Job Center

Missouri – <https://www.ui.dolir.mo.gov/som/>

Montana – <https://app.mt.gov/ui4u/index>

Nebraska – <https://uibenefits.nwd.ne.gov/BPSWeb/jsp/BPSClaimantWelcome.jsp>

Nevada – http://www.ui.nvdetr.org/UI_Agreement.html

New Hampshire – <https://claims.nhes.state.nh.us/weblogic/Welcome>

New Jersey – <https://wnjpin.state.nj.us/cont/index.html>

New Mexico – <http://www.dws.state.nm.us/>

New York – https://ui.labor.state.ny.us/UBC/home.do?FF_LOCALE=1

North Carolina – <https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp>

North Dakota – <https://secure.apps.state.nd.us/jsnd/uiiaclaims/login.htm>

Ohio – <http://unemployment.ohio.gov/>

Oklahoma – <https://unemployment.state.ok.us/instructions.asp?x=n>

Oregon – <https://ssl6.emp.state.or.us/ocs4/ic/begin.cfm?u=20071204A073631B24227692.2816&lang=E>

Pennsylvania – <https://www.paclaims.state.pa.us/UCEN/>

Puerto Rico – file by phone only, by calling 1-888-238-8889

Rhode Island – <https://uiclaims.state.ri.us/RI-ICS/Intro/index.aspx?AC=yes>

South Carolina – <http://www.sces.org/ui/claimant/index.htm>

South Dakota –

<https://www.state.sd.us/Applications/LD70UIbp/Secure/LD70initialClaims/MainICI.asp>

Tennessee – <https://www.tennesseeanytime.org/labor/uib/index.html>

Texas – <http://www.twc.state.tx.us/ui/uicclaim.html>

Utah – <http://jobs.utah.gov/ui/WebInitialCubs/Welcome.aspx>

Vermont – file by phone only, by calling 1-877-214-3330. Information is at

<http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx>

Virginia – <http://www.vec.virginia.gov/vecportal/seeker/jslogin.cfm>

Virgin Islands – file in person only. Contact information is listed at

<http://www.vidol.gov/OP/Contact.htm>

Washington – http://www.wa.gov/esd/ui/icapp/_starticappen.htm

West Virginia – <http://www.wvuc.org/>

Wisconsin – <https://ucclaim-wi.org/InternetInitialClaims/InfoBasicRequirements.asp>

Wyoming – <http://wyui.doe.state.wy.us/>

30. I heard that employees who are lower than a Grade 9 Step 5 would not be required to pay back UC benefits if they are later paid for the furlough period. Is this correct?

No. The decision on whether or not employees would have to pay back UC benefits would be decided by each state agency based on their UC law.

31. Can excepted employees file a UC claim, since they are not getting paid?

No. Excepted employees cannot file a UC claim, since they are not unemployed. In addition, in order to receive UC benefits, you must be able and available to accept work. Excepted employees would not meet this requirement since they are already working.

INJURY COMPENSATION

32. If an employee was in receipt of Federal Employee Compensation Act (FECA) wage-loss compensation and was then furloughed, what effect would the furlough have on his/her compensation?

None. FECA wage-loss compensation is not considered wages and, therefore, is not affected by a lack of funding at the employing agency.

33. If an employee sustains a traumatic injury at work and begins to receive Continuation Of Pay (COP) what happens to the COP when he is furloughed?

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.

EMPLOYEE RELATIONS

34. What information should be included in the notice of decision when no advance notice is issued?

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. The notice must include a statement of applicable appeal and grievance rights. If a copy of the Merit Systems Protection Board appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form.

35. What appeal rights do I have if I am furloughed?

Eligible employees may be able to appeal to the MSPB or through an applicable negotiated grievance procedure (NGP) if the employee is part of a bargaining unit and the applicable NGP covers furlough actions, but not both.

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

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 752, adverse action procedures; and 5 CFR part 359, subpart H for career appointees in the Senior Executive Service (except reemployed annuitants). Non career, limited term, and limited emergency appointees and reemployed annuitants holding career appointments are not covered by 5 CFR 359, subpart H and may be furloughed under agency designated procedures.

Shutdown furloughs lasting more than 30 calendar days (22 workdays) are also covered by OPM regulations under part 752, adverse action procedures, 5 CFR 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.

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