

Furlough Questions and Answers

The answers to these questions generally apply to a situation where the Agency implements a 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/furlough/furlough.asp>

GENERAL ADMINISTRATION

1. What is a furlough?

Although not often used by agencies, **furlough** is a measure managers often discuss as a remedy or budget shortfalls, emergencies, or lack of work. Rather than permanently separating employees from an agency workforce, this personnel action places employees in temporary non-duty and non-pay status.

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 protections 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 about a furlough, it is not required that a notice be given before the furlough starts. OPM does say prior written notice is “preferable,” but when it is not possible, then a reasonable notice – such a phone call or verbal communications – is allowed.

6. Who is excepted from a furlough?

"Excepted employees" refers to employees who are excepted from the 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.

The term “emergency employee” is used to designate 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.

How is time on a furlough documented?

An SF-50, “Notification of Personnel Action,” must be prepared for each individual subject to furlough. A furlough of 30 calendar days or less is processed using Nature of Action 472 and Legal Authority Code VAJ (5 U.S.C. 75). A return-to-duty SF-50 will also be necessary (Chapters 15 and 16 of The Guide to Processing Personnel Actions (GPPA).

7. Can I take another job while furloughed?

Even while on furlough, you are still a government employee and must still abide by outside employment rules. According to the “code of ethics” an employee shall not engage in outside employment or any other outside activity that conflicts with his official duties.

8. Are Presidential appointees subject to a furlough?

With limited exception (discussed below), Presidential appointees who have been confirmed by the Senate (PAS Officials) are not subject to furlough. The salaries of PAS Officials are obligations that are incurred by the year, without consideration of hours of duty.

Former career Senior Executive Service appointees who have taken non-career 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.

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 reimbursable continued. If reimbursement were reduced or eliminated, the employee would be subject to furlough. Agencies may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. 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, 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 the employee must be furloughed. An agency may subsequently terminate the furlough if the employee's services are still required for excepted activities following the absence.

[- The term "excepted employee" refers to employees who are excepted from a furlough by law because they are (a) performing emergency work involving the safety of human life or the protection of property, (b) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough. Excepted employee is a separate category and should not be confused with "emergency employee", which is a designation for those employees who must report for work in emergency situations such as severe weather conditions, power failures, interruption of public transportation, and other situations in which a significant number of employees are prevented from reporting to work.]*

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.

13. Can an employee be authorized paid leave – i.e., annual, sick, court, military leave – after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough?

No leave is authorized and in a shutdown, all paid leave during a furlough is **canceled** because the necessity to furlough supersedes leave rights.

PAY

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

It's not guaranteed. 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.

15. 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.

16. 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 may not report for work if a determination is made that work must cease on a non-excepted contract. You may not suggest that the contractor continue to work, allow them to volunteer their services, or suggest that if they continue working they will be paid retroactively. For further information regarding contractor oversight, please refer to the PAM guidance.

17. How is an employee 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)

18. 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.

The Government contribution continues while employees are in a non-pay status. The employee can choose between paying the agency directly on a current basis while in a non-pay status or having the premiums accumulate and be withheld from his or her pay upon returning to duty.

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

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.

20. 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)

21. 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. The non-pay status may be continuous or it may be broken by a return to duty for periods of less than 4 consecutive months.

Thrift Savings Plan (TSP)

22. 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 <http://www.tsp.gov/forms/oc95-4w.pdf>.

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

A TSP participant may take a loan any time prior to separation and be considered for eligibility while furloughed. A short-term break in pay status would still allow participants to commence payment by payroll deduction within the required 60 days of the loan issue date. If a shutdown were to extend beyond 60 days, participants would still be responsible for making loan payments. For more information on TSP Loans, employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP participation, <http://www.tsp.gov/forms/oc95-4w.pdf>.

Flexible Spending Account (FSA)

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

Incurred eligible health care expenses will not be reimbursed until the employee returns to a pay status and the allotments are successfully restarted (in which case the allotments would be recalculated over the remaining pay periods to match the employee's annual 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. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount.

Long Term Care (LTC)

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

Deductions cease when in 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. Visit the LTC website, <https://www.ltcfeds.com/documents> for more information.

Federal Employees Dental and Vision Insurance Plan (FEDVIP)

26. 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). BENEFEDS will generate a bill to employees for premiums when no payment is received for two consecutive pay periods. In order for employees to continue FEDVIP coverage, the employee must make payments while in a non-pay status.

Visit the FEDVIP website, <http://www.opm.gov/insure/DentalVision> for more information.

Retirement Coverage

27. 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

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

UC claims are based on the state in which the work was performed (this does not include overseas employees).

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

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. State unemployment compensation requirements differ. Employees should submit their questions to the appropriate State office.

30. 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/uiclaim.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/>

***If any of the links are unavailable, please contact your servicing Human Resources Office.**

31. 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 SESA based on their UC law. Overpayment requirements apply to all employees for a particular state, regardless of their grade or salary.

32. 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

33. If an employee was in receipt of 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.

34. 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?

When employees are furloughed due to a lapse in appropriations, there is no legal authority to pay COP or any similar payment. However, lapsed appropriations do not abrogate the employee's entitlement to COP in any way. Therefore, although COP may be suspended during a furlough caused by lapsed appropriations, retroactive payment is mandatory once funding has been appropriated. Once the furlough begins, COP is placed in abeyance pending the resumption of funding. When funding is available any remaining COP entitlement must be paid on a retroactive basis. The Department of Labor recognizes that they cannot force an agency to make payments of salary to furloughed employees when the agency has no funds to legally do so. If Congress does not decide to pay furloughed employees for the days off, COP would still have to be paid retroactively under 5 U.S.C. 8118.

EMPLOYEE RELATIONS

35. 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. There are other reasons an employee may not be furloughed. The notice must include a statement of applicable appeal and grievance rights. You are reminded that adverse action coverage for excepted service employees was substantially expanded by the Civil Service

Due Process Amendments of 1990 (P.L. 101-376). If a copy of the Merit Systems Protection Board appeal form is not attached to the decision notice, the link and information about appeals should include information on how to obtain a copy of the form.

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

A furloughed employee may appeal the furlough to the Merit Systems Protection Board or under a negotiated grievance procedure (NGP) if applicable, but not both.