

## **National Labor Relations Board (NLRB) Shutdown/Emergency Furlough Frequently Asked Questions and Answers**

The following questions and answers pertain to a shutdown/emergency furlough. Per the Office of Personnel Management (OPM), a [shutdown furlough](#) (also called an emergency furlough) occurs when there is a lapse in appropriations, and can occur at the beginning of a fiscal year, if no funds have 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/emergency furlough.

### **1. 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 for other non-disciplinary reasons. For most employees, there are two basic categories of furloughs, each involving different procedures. A furlough of 30 calendar days or less is covered under adverse action procedures. A furlough of more than 30 calendar days is covered under reduction in force procedures. Furloughs for Senior Executive Service members are covered under 5 CFR Part 359, Subpart H. The Merit Systems Protection Board (MSPB) has special procedures for furloughing Administrative Law Judges, 5 CFR 1201 137-141.

### **2. Q. Who cannot be furloughed or should be exempted from a furlough?**

**A.** Individuals appointed by the President, with or without Senate confirmation, are not subject to furlough. In this Agency, Board Members and the General Counsel cannot be furloughed. Additionally, the Agency will exempt a limited number of positions, called *excepted* positions, from a furlough to protect the safety of human life and property or ensure the orderly suspension of agency operations.

The Agency may also call in an additional number of employees to handle matters arising during the furlough period which require immediate attention. These employees will assume *excepted* status.

**NOTE:** Presidential appointees who are not covered by the leave system in 5 U.S.C. chapter 63 are not subject to furlough, but are also barred from receiving pay during a lapse in appropriations. These Presidential appointees will be paid after the lapse in appropriations has ended.

**3. Q. For furloughs necessitated by some expiring authorizations, is the agency required to provide 30 calendar days advance written notice and an opportunity to respond prior to issuing a decision to furlough?**

A. No. The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring curtailment of activities.

**4. Q. In the event of some expiring authorizations, 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 furlough. When prior written notice is not given, then any reasonable notice (telephonic or oral) is permissible.

**5. Q. What procedural rights apply for employees for a furlough of 30 calendar days or less?**

A. For a furlough due to some expiring authorizations, the following rights may apply:

- No advance notice is required, but employees will receive a written notice documenting the decision to furlough as soon as practicable after the furlough ends.
- The employee may have appeal rights through the applicable Equal Employment Opportunity procedure, under a negotiated grievance procedure, or to the Merit Systems Protection Board depending on individual circumstances. These would be outlined in the written notice mentioned above.

**6. Q. Who are “excepted employees”?**

A. The term “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. Employees who are not exempted from the furlough are termed “nonexcepted employees”. Note: “excepted employees” is not to be confused with “employees in the excepted service.”

**7. Q. On the first workday after an expiring authorization, employees typically report for their normal work schedule and have up to four hours to conduct orderly furlough activities. What activities are included under the concept of orderly shutdown?**

A. The Office of Personnel Management (OPM) recommends that agencies make an effort to determine, on a case-by-case basis, the amount of time each nonexcepted employee works on the day a furlough begins. Most employees should be able to complete any tasks associated with the shutdown process in half a workday. No employee should work more than a full day to complete shutdown tasks. Below are examples of potential shutdown activities:

- Taking measures to secure files (computer or hard copy)
- Making contacts outside of the agency that are necessary to communicate our status
- Canceling meetings, hearings, and other previously arranged agency business
- Documenting the status of projects so that they can be resumed, transferred, or

otherwise appropriately handled when NLRB's ultimate funding situation is determined

- Performing activities essential to support continued operation of those NLRB functions being continued pursuant to emergency exception determinations. Activities must involve the safety of human life or the protection of property.

**8. Q. Typically, employees are required to report for work on the day on which a furlough begins. How will the number of work hours and the number of furlough hours for each nonexcepted employee be determined?**

A. A determination regarding the amount of time each nonexcepted employee works on the day a furlough begins will be made on a case-by-case basis but will not normally be more than four hours. If an employee is on approved leave on the day the furlough takes effect, both excepted and nonexcepted employees should be charged the appropriate type of leave for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. Once the furlough begins, excepted employees are required to be at work. The remaining period of time in a nonexcepted employee's regularly scheduled tour of duty (after taking into account part-time work schedules, uncommon tours of duty, or previously approved flexible or compressed work schedules) would be considered furlough time, even if the nonexcepted employee had previously been scheduled to take paid leave later in the day. If an employee's services are required for excepted activities, the furlough may be terminated.

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

A. The usual criteria for approval of outside employment requests apply when employees are on furlough. If it appears that a furlough may be necessary due to a lapse in appropriations, we will issue an Office of Human Resources memorandum as part of the shutdown package to remind employees of the relevant requirements and outline the specific procedures to be followed when seeking authorization for outside employment during a furlough. The Agency will designate an excepted employee to receive and promptly act upon requests for outside employment made during the furlough period. If such request occurs during a government shutdown, the request must be made from the employee's personal email account.

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

A. No. The NLRB is not authorized to accept the voluntary services of an individual under 31 U.S.C. 1342.

**EXCEPTED EMPLOYEES**

**11. Q. Are excepted employees volunteering their services or are they compelled to come to work? What happens if an excepted employee chooses not to come to work?**

A. In the event of a furlough, excepted employees may be compelled to come to work and the government will incur an obligation to pay them when authorized. Excepted employees are not volunteers. An excepted employee who refuses to come to work will be placed in an absent without leave (AWOL) status and may be subject to disciplinary action.

**12. Q. Will nonexcepted employees receive back pay for the time they are furloughed?**

A. Yes. After the lapse in appropriations has ended, employees who were furloughed as the result of the lapse will receive retroactive pay for those furlough periods. (See 31 U.S.C. 1341(c)(2).) Retroactive pay will be provided on the earliest date possible after the lapse ends, regardless of scheduled pay dates. (See 31 U.S.C. 1341(c)(2).) If retroactive pay cannot be provided by the normal pay date for the given pay period, it will be provided as soon as possible thereafter. Retroactive pay is provided at the employee's "standard rate of pay."

**NOTE:** Retroactive pay may be zero if an employee was scheduled (before the lapse took effect) to be in a nonpay status during the period when the lapse was in effect.

**13. Q. What happens to employees that have pre-approved leave on February 2<sup>nd</sup> or later?**

A. In a shutdown / emergency furlough, all paid leave during the furlough is canceled. Paid leave creates an unauthorized debt to the government. All paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

**14. Q. If employees are excepted and required to work during the shutdown, will they get paid?**

A. Excepted employees will not be paid during the lapse in funding, but they are entitled to be paid retroactively after an appropriation is enacted.

**15. Q. Will an excepted employee be allowed to work part-time? Overtime?**

A. Yes. Excepted employees may work part-time and overtime, if approved. They will be expected to perform work in accordance with management direction.

**16. Q. What issues are associated with an "emergency" call-back of a nonexcepted?**

A. Employees may be called back to work if there are excepted duties for them to perform, such as to enforce decisions or appear in court in cases that could not be delayed. When those duties are exhausted, they will be placed in furlough status again.

**17. Q. How will the Agency decide which employees will be called in to work?**

A. Nonexcepted employees may not work during the shutdown. The Chairman and the General Counsel will ultimately decide who should be called in and how best to meet any emergencies arising during the furlough period. The Agency will bargain to the extent required and permitted by law. If nonexcepted employees are called to work, they will become *excepted* employees until they complete their excepted assignment, per our shutdown plan to be approved by OMB.

**18. Q. What is the guidance/coverage for issues like benefits and workers' compensation for excepted employees?**

A. Benefits issues are extensively covered in separate questions and answers in this document. Regarding workers' compensation for excepted employees, if someone is working and performing official duties, the person is covered for workers' compensation.

**PAY AND DEDUCTIONS FROM PAY**

**19. Q. If a furlough begins, will employees receive a paycheck for the last pay period worked prior to the furlough?**

A. Under the current Office of Management and Budget (OMB) guidance, employees will receive a paycheck for the period of January 26 – 30, 2026.

**Q. Will employees affected by a lapse in appropriations be paid for a holiday that occurs during the lapse?**

A. Lapse-affected employees—whether excepted or furloughed—will not receive pay for a holiday that occurs during a lapse in appropriations until after the lapse had ended. After the lapse has ended, an employee affected by the lapse will, except as otherwise provided below, receive his or her regular holiday pay for a holiday (or an “in lieu of” holiday, if applicable) and, if applicable, an excepted employee will receive holiday premium pay for work performed during his or her normal hours of duty on the holiday, and overtime pay for work in excess of the normal hours of duty on the holiday.

**Q. Will an “excepted” employee who does not work on a holiday that occurs during a lapse in appropriations be paid for the holiday?**

A. Yes, after the lapse has ended. (See 31 U.S.C. 1341(c)(2).) An “excepted” employee who does not work on a holiday that occurs during a lapse will be placed in a furlough status for the holiday and will receive retroactive pay for the holiday as soon as possible after the lapse ends. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee Due to a Lapse in Appropriations.)

**20. Q. If an employee's pay is insufficient to permit all deductions to be made, what is the order of precedence that deductions will be made from any salary check that the person may receive?**

A. In general terms, the following deductions are taken from the employee's pay in this order: 1) retirement; 2) social security tax; 3) Medicare tax; 4) federal income tax; 5) health insurance under FEHB; 6) life insurance under FEGLI; 7) state tax; 8) local tax; 9) debts owed to the federal government; 10) court-ordered debts; 11) optional benefits such as FEDVIP, FLTCIP, FSA, TSP; 12) other voluntary deductions such as the Combined Federal Campaign; and 13) Internal Revenue Service (IRS) paper levies.

**21. Q. Can an employee take a Thrift Savings Plan (TSP) loan while I'm furloughed?**

**A.** A lapse in appropriations does not prevent TSP participants from requesting a new TSP loan. The established eligibility requirements continue to apply. TSP participants can go to [TSP.gov/tsp-loans](https://www.tsp.gov/tsp-loans) or [read the TSP Loans booklet](#) for more information about eligibility requirements.

**SERVICE CREDIT FOR VARIOUS PURPOSES**

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

**A.** No, both means 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.

**23. Q. To what extent does nonpay status affect civil service benefits and programs?**

**A.** Nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) is credited as follows for:

- **Permanent (career) tenure** - the first 30 calendar days of each nonpay period is creditable service.
- **Qualification requirements** - there is no requirement to extend qualifying periods by the amount of nonpay status. However, the additional time may be required to meet training requirements or ability to perform.
- **Time-in-grade requirements** - nonpay status is creditable service.
- **Retirement purposes** - an aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411). The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.
- **Health benefits** - enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than four consecutive months in a pay status (Title 5 USC, Chapter 89). The agency contribution continues while employees are in a nonpay status. The agency is also responsible for advancing from salary the employee share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.
- **Life insurance** - coverage continues for 12 consecutive months in a nonpay status without cost to the employees or to the agency (Title 5 USC, Chapter 87). The nonpay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.
- **Within-grade increases (FG Pay Plan Only)** - an aggregate of 2 workweeks (or 80 hours for a full-time employee) nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4; 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 (FW Pay Plan), an aggregate of one workweek nonpay 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.

- **Annual and sick leave** - when a full-time employee accumulates 80 hours of leave without pay, the amount of annual and sick leave that may be accrued in that pay period is reduced by the amount of leave the employee would normally earn during the pay period. When a part-time employee is in a nonpay status, he or she will accrue less annual leave and sick leave because part-time employees earn leave on a pro-rata basis based on hours in a pay status. For purposes of computing accrual rates for annual leave, creditable service for time in a nonpay status is limited to an aggregate of 6 months in a calendar year (5 U.S.C. 8332(f)).
- **Thrift Savings Plan (TSP)** - The following link from the TSP provides information and resources. [Thrift Savings Plan](#).
- **Military duty or workers' compensation** - nonpay 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 AND INSURANCE

**24.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 employee to be in a nonpay status for more than 6 months during the calendar year.

**25. 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.

**26. Q. What happens if an employee terminates his or her Federal Employee Health Benefit (FEHB) coverage while in a nonpay status to avoid the expense?**

A. Employees who terminate FEHB coverage to avoid payment of premiums while in a nonpay or reduced pay status do not have to wait for an FEHB open season to re-enroll. Termination of FEHB coverage will not affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

**27. Q. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) Program 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.

## IMPACT ON OTHER BENEFITS PROGRAMS

### **28. Q. To what extent does nonpay status affect Flexible Spending Account (FSA) coverage?**

**A.** Deductions will cease for periods of nonpay status where there are insufficient funds to cover the Flexible Spending Account (FSA) premium(s). If the employee is in a nonpay status and has not prepaid the FSA allotment, their FSA account will be frozen, and the employee will not be eligible for reimbursement of any health care expenses incurred during that period until he/she returns to a pay status and allotments are successfully restarted. However, if the employee has a Dependent Care Flexible Spending Account (DCFSA), dependent care expenses incurred during the period in a nonpay status which meet IRS guidelines for eligible expenses (i.e., the employee must incur the expenses in order to allow the employee and his/her spouse to work or attend school) may be reimbursed up to the FSA account balance. When the employee returns to a pay status, allotments will be recalculated based on the number of pay dates remaining in the benefit period. If the employee prepays his/her premiums by accelerating allotments prior to being placed in a nonpay status, allowable health care expenses incurred during the period in a nonpay status will be eligible for reimbursement. The following link provides resources and information. [FSAFEDS](#)

### **29. Q. Does nonpay status affect Federal Long Term Care Insurance coverage?**

**A.** Deductions cease when the employee is placed in a nonpay status and there are insufficient funds to cover the premium(s). For employees to continue coverage, the employee must make payments while in a nonpay status. The following link provides resources and information. [Federal Long Term Care Insurance](#)

### **30. Q. To what extent does nonpay status affect Federal Employees Dental and Vision Insurance Plan (FEDVIP) coverage?**

**A.** Deductions cease when the employee is placed in a nonpay status and there are insufficient funds to cover the premium(s). To continue FEDVIP coverage, the employee must make payments while in a nonpay status.

### **31. Q. During a shutdown, will I still be able to obtain assistance from the Employee Assistance Program (EAP)?**

**A.** Yes. The Employee Assistance Program is aware of the uncertainty and stress that can be caused by a government shutdown. We would like to remind all employees that we care; so therefore, counselors from the EAP will remain available to provide support to all NLRB employees and their families. Employees may contact the program 24 hours a day, 365 days a year at 1-800-222-0364. The following link provides resources and information. [Employee Assistance Program.](#)



## REQUESTS FOR LEAVE DURING FURLOUGH

**32. Q. If employees request paid leave—i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation—after receiving a furlough notice, must the requests be denied for those days that coincide with the dates of furlough? If the manager or agency has already approved requests for these categories of paid 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. In a furlough, all paid leave during a furlough is canceled because the necessity to furlough supersedes leave rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a furlough, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

**Q. Will the advanced scheduling of annual leave requirement in 5 CFR 630.308(a) for annual leave restoration purposes be waived/suspended in the event of a shutdown furlough?**

**A.** No. In order for forfeited annual leave to be considered for restoration under 5 U.S.C. 6304(d)(1), it must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year, in accordance with 5 CFR 630.308(a). An agency may consider restoring annual leave that was forfeited due to an exigency of the public business or sickness of the employee **only** if the annual leave was scheduled in writing before the start of the **third biweekly pay period prior to the end of the leave year**. OPM maintains a listing of pertinent leave year dates on our website that can be found [here](#).

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

**A.** Employee who is not *excepted* may not work during the furlough period, even to accrue religious compensatory time. However, an excepted employee may work additional hours for religious purposes if the employee is performing excepted activities, though the employee may not use those hours until after the lapse in appropriations is over.

**34. Q. How does the furlough affect employees on military leave?**

**A.** All paid leave during a furlough is canceled because the necessity to furlough supersedes leave rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation, unless authorized by law. Paid leave creates a debt to the Government that is not authorized. All paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

In addition, if an employee is on approved leave without pay (Absence – Uniformed Service) and there is no expectation that the employee will return to duty on the proposed

furlough days, it is not necessary to cancel the leave without pay, since neither work nor funds are involved.

**35. Q. May excepted employees take previously approved paid leave during a furlough? May excepted employees be granted new requests for paid leave during the furlough?**

**A.** No. When an employee is not at work and performing the duties determined by the employing agency to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, the manager will take one of the following actions:

- Cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or
- Furlough the employee for the period of the employee's absence from duty. If the employee's services are required for excepted activities, the employee's furlough will be terminated.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered AWOL and may be charged with insubordination.

**36. Q. Does leave 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. OPM considers any previously scheduled FMLA leave that occurs during a lapse in appropriations to be canceled—unless the employee is an excepted employee who elects to use leave under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any LWOP that was previously scheduled to be used under FMLA during a period when there is a lapse in appropriations will remain as LWOP, but the LWOP will not be considered FMLA leave and will not count against the FMLA 12-week limit. If an employee had previously scheduled to substitute qualifying paid leave for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled (see Questions F.1. and F.2.) and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). We anticipate that excepted employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends. The canceled FMLA unpaid leave periods (converted to regular LWOP) and the canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit.

**37. Q. If an employee is scheduled to take appropriate paid leave under FMLA during a shutdown furlough, should the employee be furloughed? Will the employee be paid for the periods scheduled to be in paid leave status by substituting paid leave under FMLA?**

**A.** During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including paid leave substituted for FMLA LWOP) during the furlough period must be automatically canceled. Thus, any periods of

scheduled paid leave or other paid time off must be documented as furlough periods.

For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will remain in LWOP status, but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.) For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting paid leave for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.)

**38. Q. How does a shutdown furlough affect an employee who is scheduled to take approved paid parental leave (PPL) in substitution for unpaid FMLA leave? Does PPL that is scheduled to be taken during a shutdown furlough period count toward the employee's limited entitlement to 12 weeks of FMLA leave and 12 weeks of PPL in an applicable 12-month period?**

**A.** In order to receive paid parental leave (PPL), an employee must invoke unpaid leave under the Family and Medical Leave Act (FMLA) for the birth of a child or placement of a child with the employee for adoption or foster care. PPL is a form of paid leave provided via substitution for FMLA unpaid leave. During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including PPL substituted for FMLA LWOP) during the furlough period must be automatically canceled. Thus, any absences on days of scheduled PPL, other paid leave, or other paid time off are documented as furlough days.

For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting PPL for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.) For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will remain in LWOP status but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.) If an employee had previously scheduled to substitute PPL for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled (see Questions F.1. and F.2.) and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3).

We anticipate that employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends. The canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit in a 12-month period.

**39. Q. In order to be eligible for FMLA leave (and to substitute paid parental leave (PPL) or other paid leave for FMLA unpaid leave), an employee must have 12 months of creditable Federal civilian service as specified in 5 U.S.C. 6381(1)(B). Does time spent in furlough status count towards this 12 months of required Federal service?**

**A.** In order to receive paid parental leave (PPL), an employee must invoke unpaid leave under the Family and Medical Leave Act (FMLA) for the birth of a child or placement of a child with the employee for adoption or foster care. PPL is a form of paid leave provided via substitution for FMLA unpaid leave.

During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including PPL substituted for FMLA LWOP) during the furlough period must be automatically canceled. Thus, any absences on days of scheduled PPL, other paid leave, or other paid time off are documented as furlough days.

For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting PPL for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.) For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will remain in LWOP status, but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.)

If an employee had previously scheduled to substitute PPL for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled (see Questions F.1. and F.2.) and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). We anticipate that employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends. The canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit in a 12-month period.

**40. Q. Under the title 5 paid parental leave (PPL) law, an employee who has substituted PPL for unpaid FMLA leave is required to work for the applicable employing agency (i.e., the agency employing the employee at the time paid parental leave concludes) for 12 weeks after the day on which use of PPL concludes. Does time spent in furlough status count towards the required 12 weeks of work?**

**A.** No. By definition, a furlough period is a period on non-duty status. It does not count as a period of work meeting the 12-week work obligation. See the definition of “work” in the PPL regulations at 5 CFR 630.1705(b)(2).

**41. Q. If an employee is scheduled to take approved Leave Without Pay (LWOP) during a shutdown/emergency furlough, should the employee continue to be charged LWOP during the period of furlough?**

A. Yes. Nonexcepted employees scheduled to take preapproved LWOP during a shutdown/emergency furlough will continue to be charged LWOP during the furlough period unless the agency cancels the approved LWOP prior to the beginning of the furlough period. If the approved LWOP was scheduled to end before the furlough ended, the employee must be placed on furlough for the remainder of the furlough period unless later designated as an excepted employee.

## **INJURY WHILE ON FURLOUGH OR LWOP**

**42. Q. Are employees who are injured while on furlough or Leave Without Pay (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.

**NOTE:** Any additional questions regarding Federal workers' compensation benefits should be directed to the [Division of Federal Employees', Longshore and Harbor Workers' Compensation](#), Office of Workers' Compensation Programs, U.S. Department of Labor

## **UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE)**

**43. 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. 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](#).") 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 (See Department of Labor's website at [Unemployment Benefits Finder | CareerOneStop](#)). States will require you to provide your Agency's Federal Identification Code when you file your application.

**44. Q. Can employees excepted from the furlough file an UCFE claim since they are not getting paid?**

A. No. Employees excepted from the furlough cannot file a UCFE claim, since they are not unemployed. In addition, to receive UCFE benefits, you must be able and available to accept work. Excepted employees would not meet this requirement since they are already working.

**45. Q. Is the UCFE claim based on the state where you live or where you work?**

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

**PAYMENTS UPON SEPARATION FROM FEDERAL SERVICE**

**46. Q. If there is a furlough, may employees who are separating receive a lump-sum payment for their unused annual leave?**

**A.** The obligation of funds for a lump-sum annual leave payment is triggered by an employee's separation from federal service. If an employee separates during a furlough, the lump-sum annual leave payment must be delayed until authorization would allow the obligation and payment of funds for this purpose.

**47. Q. How are separated employees' entitlements to severance pay affected by a 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 Federal Government. (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).

In the case of a furlough, accrued but unpaid severance pay represents an obligation to be paid from funds available before the furlough occurred. Just as payroll checks for work performed prior to a furlough can be processed as part of the orderly suspension of nonexcepted activities, severance pay checks covering days before the furlough may also be processed.

After a furlough begins, a separated employee continues to accrue entitlement to severance pay on a day-to-day basis. However, no funds may be authorized for severance payments for days during the furlough until an authorization is enacted. Once an authorization is in place, the employee will receive the severance pay he/she would have received had the furlough not occurred.

**LABOR MANAGEMENT RELATIONS**

**48. Q. What happens to employees who currently perform 100% union work?**

**A.** Employees on 100% official time are treated no differently than other employees. If they are not deemed excepted, they are subject to furlough.

**49. Q. Can union officials work on “official time” during a furlough?**

**A.** Unless they are exempted employees, union officials cannot work on official time during a furlough. Furloughed employees are prohibited from working on official time because official time is a paid status and agencies may not incur financial obligations during a furlough. Official time is not permitted for excepted employees because they are only permitted to work on activities that are authorized under the Antideficiency Act. Official time is used for union representational activities, which do not fall within any of the Antideficiency Act’s exceptions.

**TRAVEL AND TRAINING**

**50. Q. Will the Agency process all pending travel vouchers and training reimbursements before a shutdown starts?**

**A.** The Finance Branch will process all pending travel vouchers and training reimbursements prior to the start of a shutdown.

**51. Q. Will we be able to permit travel for excepted employees (i.e., inspectors making a site visit) and, if so, will that travel be reimbursed?**

**A.** Yes. Both OMB and the Justice Department have noted the ineffectiveness of permitting excepted employees to show up for work and not providing them with the necessary equipment and resources to do their jobs. Therefore, the NLRB may incur costs for travel and other expenses necessary for excepted employees to perform those functions. However, as part of the furlough, reimbursement for the travel expenses will not occur until after the NLRB authorization is passed. The traveler is responsible for payment of his/her travel charge card bill.

**52. Q. What happens to nonexcepted employees who are away from their duty station when the furlough begins? Does the government pay to get them home? How much time do they have to return? Do they need to return home prior to the anticipated beginning of a furlough?**

**A.** If a furlough occurs while an employee is on temporary duty status, the employee is expected to complete their return home within 24 hours after the furlough, unless notified otherwise. Prior to the furlough, the employee may remain at the travel location until the official furlough announcement. Employees and managers must be fiscally prudent in rebooking return flights. If an employee has a refundable ticket, they must exchange that for their return trip. If an employee has a non-refundable ticket, they need to determine the cost of the change fees and rebooking of the new ticket when choosing a return flight. If there is a flight that costs \$400 more that leaves in two hours and one that costs \$150 more leaving in 5 hours, then the \$150 flight should be selected. Travel vouchers submitted and approved prior to the furlough will be processed before the furlough. The traveler is responsible for payment of his/her travel charge card bill.

**53. Q. Will we be able to use our transit subsidy during the furlough?**

**A.** No. In the event of a shutdown/emergency furlough, all Transit Program participants (other than the excepted personnel) should not use any transit benefits.

**COMMUNICATION**

**54. Q. Will Agency email accounts for each employee be available and usable by employees during a shutdown?**

**A.** Agency servers will remain operational during the shutdown. However, employees may not use their agency devices, including computers and Smartphones for any purpose, nor access from their personal devices agency accounts to check for alerts concerning their status, status of the agency, or for any other reason. The Antideficiency Act generally prohibits agencies from incurring financial obligations except as necessary to handle emergencies involving the safety of human life or the protection of property. The term *emergencies* does not include ongoing regular functions of government that can be suspended without an imminent threat to the safety of human life or the protection of property. Thus, employees are not authorized to work and cannot use the NLRB's equipment or systems to perform any work while they are furloughed. If a matter comes to an employee's attention that could present an imminent threat involving the safety of human life or the protection of property, the employee should contact an excepted employee. The names and contact information of excepted personnel will be provided to all NLRB employees.

**55. Q. How will the Agency communicate with its employees and members of the public during the furlough period?**

**A.** The Agency will make every effort to provide current and ongoing information about the status of operations to employees and members of the public. We will post notices on the Agency's public website, contact employees by personal phone or personal email, to the extent necessary and permissible, record phone messages for members of the public and our employees, provide a number for emergency inquiries from the public, broadcast email responses (out of office messages) to emails received from members of the public, and issue press releases, as appropriate. At the conclusion of the shutdown, the Agency will use existing telephone trees to inform NLRBU bargaining unit employees of the date and time they are to return to work, provided that no bargaining unit employees will be required to notify any other bargaining unit employee of the date and time they are to return to work. Employees should make every effort to provide updated personal contact information to local management. Management in each office should have an updated communications tree to contact employees to the extent necessary during the furlough period. When the Agency has reason to believe that a shutdown is likely to occur, management will ask all National Labor Relations Board Union (NLRBU) unit employees to update, if necessary, their telephone number information.

IT systems will remain operational during the shutdown. Helpdesk support will not be available. Employees will be allowed to retain agency-provided Smartphones but should keep them turned off.

Questions that need to be addressed during the shutdown may be directed to excepted personnel. The names and contact information of excepted personnel will be provided to all



NLRB employees. Employees should also keep abreast of any developments by checking regular media outlets, such as radio, television, and newspapers, on an ongoing basis.

**56. Q. Should I bring my Agency laptop home when my office shuts down?**

**A.** Unless specifically designated *excepted*, employees are prohibited from performing Agency work during a shutdown. Accordingly, employees should not bring their Agency laptops home during the shutdown. If employees decide to take their laptops home, it is with the understanding that they will not be using their laptop to perform work during the shutdown and will not be entitled to claim compensatory time or pay for work performed during that period, unless they have been called to perform excepted work.