

Friday, January 18, 2019



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

MEMORANDUM FOR: HEADS OF AGENCIES AND DEPARTMENTS

From: U.S. Office of Personnel Management

Subject: Answers to Frequently Asked Funding Lapse Questions

Employee Coverage

1. May agencies “except” staff to process payroll or to support time and attendance tracking for “excepted” or furloughed staff?

Yes, to the extent necessary, including on an intermittent or part-time basis. In addition, agencies may permit staff who already are excepted to do this work on an intermittent basis.

2. If a career GS-15 is acting in a political appointee position, should the employee be exempt or excepted?

It would depend on the situation and what work the employee is performing. The determination should be made in consultation with the agency’s legal counsel and, as necessary, the Office of Management and Budget (OMB).

Procedures

1. Shutdown furloughs are covered by OPM regulations under 5 CFR 752 or 5 CFR 359, subpart H, as applicable. When a shutdown furlough goes beyond 30 days, how should agencies deliver the second furlough notice? Are employees authorized or required to conduct shutdown activities upon receipt of the second furlough notice?

When a shutdown furlough goes beyond 30 days, agencies must treat it as a second shutdown furlough and issue another furlough notice, as a continuation of the first furlough, under 5 CFR 752 adverse action procedures (if applicable) for most employees or 5 CFR 359, subpart H (if applicable) for the Senior Executive Service (SES). A written notice to furlough must be provided to each employee as soon as possible after the beginning of the second shutdown furlough.

Delivery of the decision notice may be accomplished via the employee’s work email, but only to the extent that employees have been notified to periodically log into or view their work email remotely for purposes of receiving furlough updates. Otherwise, to the extent possible, agencies

should consider delivery of the decision notice to an employee's personal email, if available. See question P.2a. in **OPM's Guidance for Shutdown Furloughs** for providing electronic notice of a furlough action. If an agency does not receive a requested acknowledgement of receipt of an email notification, or if the agency does not have the employee's personal email address, an alternative an agency could consider is to deliver a paper copy of the decision notification to the employee at his or her home address by postal mail. Agencies should consult their respective legal counsel to determine the agency's preferred method of mailing. In addition, obligations for mailing or for employee salaries to conduct the notifications are permitted as an excepted activity under the orderly shutdown justification. Agencies should consult their legal counsel with further questions.

Employees are not authorized or required to conduct orderly shutdown activities (unless there is some new contingency that would require it, for example, a Justice attorney needs to request a new enlargement of time to make a filing in a Federal court) since this is a continuation of a furlough based on the same lapse in appropriations and these activities were generally completed initially upon receipt of the first furlough notice. If a furloughed employee becomes aware of a new contingency that has arisen because of the length of the lapse, the employee should contact his or her supervisor or another excepted colleague for guidance on how to proceed.

Note: Reductions in force (RIF) furlough regulations and SES competitive furlough requirements are **not** applicable to emergency shutdown furloughs because the ultimate duration of an emergency shutdown furlough is unknown at the outset and is dependent entirely on Congressional action, rather than agency action. The RIF furlough regulations and SES competitive furlough requirements are only applicable to planned, foreseeable, money-saving furloughs that, at the outset, are planned to exceed 30 days.

2. If an excepted employee fails to report to work when required to support excepted activities, he or she will be considered absent without leave (AWOL). How should the AWOL be documented?

If an employee is excepted from furlough, and therefore required to work during the shutdown yet has failed to do so, he or she would be considered AWOL during the period of any such unauthorized absence. The employee's unauthorized absence should be coded in payroll as AWOL. Agencies may elect to provide the employee a written notification about his or her AWOL status at the time of the AWOL but this can vary by agency. The agency may use its discretion, based on the facts and circumstances of the employee's situation, to apply appropriate consequences based on the AWOL status.

When an excepted employee is unable to work based on a legitimate impediment, an agency or supervisor retains the right to place them in a furlough status. Please see Question F.2a in **OPM's Guidance for Shutdown Furloughs** for additional information on intermittent unpaid absences.

Transit Benefits

1. If my agency is funded with annual appropriations and is shutdown but I am identified as an Excepted employee and required to work, will I get reimbursed for my out-of-pocket transit benefit expenses for home to work to home once an appropriation is received?

If funds are unavailable to provide a transit benefit during a lapse in Government funding, once funding is available, you may be eligible to file an SF Form 1164 reimbursable claim through your agency Transit Benefit POC. Contact your agency POC for filing instructions.

2. What are the recommended procedures an agency should use to reimburse employee transit benefit claims not received during a lapse in Government funding?

Your agency may have an option to reimburse employees on an individual basis utilizing a Claim for Reimbursement for Expenditures on official business (Standard Form 1164).

- The Expenditures in block 6 of the SF Form 1164 should be itemized using Code C (Other expenses).
- Each agency will need to develop a process as receipts will not be available to submit with the voucher.

The SF Form 1164 will need to be completed and authorized per your agency's policies and procedures and submitted to your approving offices for processing.

3. What effect does withdrawing agency employees from the WMATA system have on employees' ability to access their February transit benefits?

WMATA can only suspend an entire agency, not individuals from their system. Withdrawing individuals versus an entire agency must be done at the agency and is a very time-consuming process as each individual record must be manually touched. Reversing the suspension process is just as time-consuming. Suspending benefits will result in them not being available on the first day employees are recalled back to work.

Unemployment Insurance Information

1. During an extended period of furlough, will States waive the requirement that a Federal employee must be actively searching for other employment in order to be eligible to receive unemployment benefits?

The administration of the unemployment insurance program is a Federal-State partnership. Federal law provides broad authority for the program, but each State administers its own unemployment insurance program, including Unemployment Compensation for Federal Employees (UCFE), according to its State law. States have the flexibility to establish certain eligibility provisions, including those related to work search. Each State has its own work search provisions, which may include waiver authority in some circumstances.

To date, Virginia, Maryland, and the District of Columbia have indicated that they will waive the requirement for Federal employees to look for work in order to receive unemployment compensation.

2. Where should an employee file a claim for unemployment benefits?

An employee should file a claim in the State where he or she had his or her last official duty station.

If a claimant's last official station was not within one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico or the Virgin Islands, the claimant's Federal civilian service and wages will be assigned to the State, as defined by 30 CFR 609.2(M), where he/she resides (including the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands) at the time he/she files his/her first claim, provided he/she is personally present in a State, when he/she files the first claim.

Per the U.S. Department of Labor, according to ET Handbook No. 391, *Unemployment Compensation for Federal Employees (UCFE) Instructions for State Agencies*, Chapter 5, page V-8, section 7(b).

3. If an employee doesn't have access to his or her most recent SF-50 during the furlough, will other forms of documentation be accepted in order to file an Unemployment Insurance claim?

Yes. States will accept other documentation, such as Leave and Earnings Statements and a W-2 form. Federal agencies do not report wages to States like other employers do. Therefore, documentation is necessary to establish the claim.

4. Are employees who are performing excepted work eligible for unemployment compensation?

If employees are performing excepted work on an intermittent basis, they may qualify for unemployment compensation. However, employees performing excepted work on a full-time basis are generally not eligible for unemployment compensation.

5. If retroactive pay is granted, how will employees go about repaying unemployment insurance benefits received?

Employees are expected to repay the unemployment insurance benefits as directed by the applicable State unemployment office.

6. If a furloughed employee has filed an unemployment claim and enters on duty at an agency that is not subject to a funding lapse, what obligations does the gaining (funded) agency have?

The impact is on the losing agency as the last employer, not the gaining agency. The employee receives a form each week during which he or she receives benefits that asks if the employee has worked. Once the employee responds yes, the benefits stop.

Miscellaneous

1. Is USAJOBS.gov operational, and can agencies continue to post vacancy announcements?

Yes, USAJOBS.gov is available and not impacted by the lapse in appropriations. Whether an agency may post a vacancy announcement will depend upon whether the agency or subunit requesting the posting is exempt from the furlough (i.e., separately funded) or, alternatively, whether your agency's determinations of what constitutes activity excepted from the furlough covers this action. You may wish to consult with the agency's General Counsel about whether pursuing this action qualifies as an activity excepted from the furlough at your agency.

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cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs and Human Resources Directors