



U.S. Department of Justice

Justice Management Division

Human Resources

Washington, D.C. 20530

JAN 25 2019

MEMORANDUM FOR COMPONENT HUMAN RESOURCES OFFICERS

FROM: Mary A. Lamary
Director

A handwritten signature in blue ink, appearing to be "ML", written over the printed name of the Director.

SUBJECT: Guidance for the "Government Employee Fair Treatment Act of 2019"

The following provides Department of Justice implementing guidance for the "Government Employee Fair Treatment Act of 2019" (the "Act").

Section 1341(c)(3) of the Act establishes a new requirement, providing that excepted employees who are required to perform work during a lapse in appropriations "shall be entitled to use leave" under 5 U.S.C. chapter 63, if applicable (or under other applicable law if chapter 63 is not applicable). In addition, the use of such paid leave is subject to the normally applicable rules and Component policies, including leave request and approval procedures. The statutory language has no requirement that excepted employees must use leave, or that they can be automatically charged leave for absences. While excepted employees have the option to use their paid leave, they are not required to use leave to cover periods of authorized absence from work. In any event, there is no provision for compensation for paid leave until after the lapse ends.

On January 23, 2019, OPM issued the attached guidance on the new legislation, clarifying the option to use leave applies only to authorized absences. Authorized absence is determined by agency management (Components) as in the ordinary course. Components can authorize absence by first determining that an employee's request can be accommodated (for example, ensuring that any excepted work that must occur in the employee's absence can be performed by another excepted employee). Components then may place excepted employees in a furloughed status or approve their leave requests. When the Component has determined that furloughing an excepted employee is not appropriate or cannot be accommodated, the excepted employee may request leave. In making determinations regarding whether to grant requests for absence from duty that result in placement in furlough status, OPM encourages agencies to consider the same principles that guide the granting of various types of paid leave during normal periods of funded operations, while keeping in mind any special work or staffing requirements for excepted employees during the lapse in appropriations.

Because section 1341(c)(2) of the Act provides retroactive pay for furlough periods without charge to leave, Components should consider making it their default position to furlough excepted employees whose absence has been authorized. An employee who is furloughed as

the result of a lapse in appropriations will be paid for furlough periods that occurred during the lapse. After the lapse ends, retroactive pay will be provided at the employee's "standard rate of pay."

Employees who were directed to perform excepted work during a lapse in appropriations but failed to report for duty without approval can be considered to be in an unauthorized absence status. Components continue to have the authority to place such employees in absent without leave (AWOL) status for missed work hours, in accordance with agency policy and procedures. For such an employee, the "standard rate of pay" for AWOL hours is zero.

In summary, Components have the authority to authorize absences of excepted employees without charging use of leave by placing them in furlough status. They may also continue to rotate in furloughed employees to perform work during the authorized absence of other excepted employees. In those situations where Components have determined furlough is not appropriate, excepted employees may request leave. Finally, because there is no provision for compensation for furloughed or excepted employees until after the lapse ends, Components must document the status of all employees for proper record keeping and processing following the enactment of an appropriation.

Attachment