



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Wednesday, January 24, 2018
CPM 2018-03

MEMORANDUM FOR: CHIEF HUMAN CAPITAL OFFICERS

FROM: KATHLEEN M. McGETTIGAN, ACTING DIRECTOR

Subject: Pay and Leave for Employees Affected by the Lapse in Appropriations
and Continued Pay Freeze for Certain Senior Political Officials

The President has signed legislation restoring appropriations through February 8, 2018, or the date of enactment of specified appropriations legislation. (See section 2001 of Division B of H.R. 195, enacted on January 22, 2018.) This memorandum provides guidance on the effect of this legislation on certain Federal employee pay and leave benefits.

Pay and Leave for Employees Affected by the Lapse in Appropriations

The legislation allowed all Federal civilian employees who had been affected by the lapse in appropriations that began on or about January 20, 2018, to return to duty. In addition, the legislation provides retroactive compensation for furloughed Federal employees covering the period of the lapse in appropriations. The purpose of this portion of the legislation is to make furloughed Federal employees whole by ensuring that they receive their “standard rate of compensation” for the entire period of the lapse in appropriations as soon as practicable after the lapse in appropriations ends.

The attached guidance has been prepared by the U.S. Office of Personnel Management (OPM) in consultation with the Office of Management and Budget (OMB). It is intended to assist agencies in administering pay and leave for employees affected by the lapse in appropriations. This includes employees who were furloughed and employees designated as “excepted” from the furlough pursuant to the applicable legal requirements—e.g., employees required to respond to emergencies involving the safety of human life or the protection of property or employees performing functions related to the orderly suspension of agency operations.

Continued Pay Freeze for Certain Senior Political Officials

Section 2001 amended the Continuing Appropriations Act, 2018, division D of Public Law 115-56. Under section 101(a) of that Act, the authority and conditions provided in FY 2017 appropriations laws continue to apply during the period specified in the Act, as amended. This language means that the freeze on the payable pay rates for the Vice President and certain senior political appointees at 2013 levels—as provided in section 738 of division E of the Consolidated Appropriations Act, 2017, Public Law 115-31, May 5, 2017—continues through February 8, 2018, or the date of enactment of new appropriations legislation. Future Congressional action will determine whether the pay freeze continues beyond February 8, 2018. OPM will issue separate guidance regarding whether this pay freeze will be continued or terminated. Until such time, the OPM guidance on the 2017 pay freeze for certain senior political officials is generally applicable in applying the pay freeze in 2018. (See OPM guidance memoranda CPM 2017-05 at <https://www.chcoc.gov/content/continued-pay-freeze-certain-senior-political-officials> and CPM 2018-02 at <https://www.chcoc.gov/content/continued-pay-freeze-certain-senior-political-officials-1>.)

Additional Information

For additional guidance, agency headquarters-level human resources offices may contact the OPM contacts listed in the attachment. Employees should contact their agency human resources offices for assistance.

Attachment (see below)

cc: Human Resources Directors

Attachment: 2018 Furlough and Pay and Leave Benefits

Pay

- An excepted employee who performed work during the lapse in appropriations may be paid for that work.
- For periods of time during which an employee was furloughed due to the lapse in appropriations that began on or about January 20, 2018, and ended on January 22, 2018, the employee must receive the same pay he or she would have received for an equivalent amount of work performed for the agency. Therefore—
 1. An employee is entitled to receive his or her rate of basic pay for the furlough time to the extent that he or she would have been in a basic pay status but for the lapse of appropriations;
 2. For the purpose of applying General Schedule waiting periods associated with within-grade increases, the furlough time during the lapse in appropriations is treated as time in pay status;
 3. A furloughed employee who, during the lapse in appropriations, had been regularly scheduled to perform overtime work or to perform work at night or during a period for which any other form of premium pay would otherwise be payable is entitled to receive overtime pay, night pay, or other premium pay as if the work had been performed;
 4. Allowances, differentials, and other payments otherwise payable on a regular basis (e.g., administratively uncontrollable overtime pay and law enforcement availability pay) must be paid as if the furloughed employee actually continued to work;
 5. All periods of time during which a furloughed employee would, but for the lapse in appropriations, have been in a pay status (including regularly scheduled overtime hours and standby duty) must be considered “hours of work” for pay administration purposes under the Fair Labor Standards Act; and
 6. For the furlough time during the lapse in appropriations, an employee may not be charged any form of paid leave (i.e., annual leave, sick leave, or other paid leave), compensatory time off in lieu of overtime, compensatory time off for travel, religious compensatory time off, or credit hours under a flexible work schedule.

NOTE: Employees should follow the guidance of their respective Shared Service Payroll Providers for the recording of time and attendance to ensure that all employees are paid at their standard rate of compensation. Employees may be required to code furlough time as regular duty to ensure that they are paid properly and promptly.

Leave Accrual for Furloughed Employee

An employee furloughed during the lapse in appropriations must now be considered to have been in a pay status to the extent that he or she would have been in a pay status but for the lapse in appropriations. As a result, agencies must adjust the employee’s leave account for proper recredit of any lost accrual of annual and sick leave due to being in a nonpay status. Since the

employee is retroactively placed in a pay status, annual and sick leave will accrue in accordance with the normal rules.

Preapproved Leave Without Pay (LWOP)

In the case of an employee who was on preapproved LWOP during the lapse in appropriations, absences from January 20, 2018, until the end of the lapse in appropriations, must continue to be charged to LWOP for the duration of the period of approved LWOP.

Family and Medical Leave Act (FMLA)

Under FMLA an employee is entitled to 12 weeks of unpaid leave during any 12-month period and may elect to substitute paid leave (including annual leave, sick leave, or any other form of paid time off), consistent with current laws and OPM's regulations. During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) at work performing excepted activities, or (2) furloughed. Agencies were instructed to cancel any paid leave (including FMLA paid leave) during the furlough period. Under the recent legislation, furloughed Federal employees are made whole by ensuring that they receive their "standard rate of compensation" for the entire period of the lapse in appropriations. For employees who were otherwise scheduled to be in nonpay status, the standard rate of compensation is zero. Accordingly, employees on FMLA leave during the furlough period, should be treated as follows:

- **FMLA LWOP Throughout Furlough Period.** An employee scheduled and preapproved to take LWOP under FMLA throughout the furlough period continues to be charged LWOP. The employee is not entitled to receive retroactive pay.
- **Scheduled Use of Both Unpaid and Paid FMLA Leave Intermittently.** For any days during the lapse in appropriations on which an employee was previously scheduled to be in LWOP status under FMLA, the employee will remain in that status. For any days during the lapse in appropriations on which the employee was scheduled to be in FMLA paid leave status, 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 cancelled due to the lapse in appropriations.
- **12-week Entitlement.** Since the legislation provided for retroactive application of the employee's "standard rate of compensation," the employee will continue to receive any previously invoked FMLA coverage during the furlough period and covered time (paid or unpaid) counts toward the 12-week entitlement.

Alternative Work Schedules (AWS)

Each agency should have a policy specifying when flexible work schedules must be established and when they may be changed. Normally, such schedules are established in advance of the pay period involved. Under such a policy, an AWS nonworkday cannot be changed after the pay period begins.

Documentation of Personnel Actions

- Prior to the lapse in appropriations, agencies were instructed not to prepare SF-50 documentation of the furlough and advised that further instructions on the appropriateness of preparing an SF-50 would be provided once appropriations had been signed. Accordingly, agencies do not have to process an SF-50 to document the shutdown furlough that began on or about January 20, 2018, nor should the furlough be recorded with any document designated for long-term filing in the Official Personnel Folder (and if SF-50s were processed in error documenting the furlough such SF-50s must be cancelled citing 001/Cancellation with legal authority ATM/5 U.S.C. 302).
- Agencies need not provide a furlough notice to an employee who did not receive a notice during the lapse in appropriations.

OPM Contacts

Employees should contact their human resources office for additional information. Human Resources may contact the following OPM offices:

- Pay and Leave: pay-leave-policy@opm.gov
- Labor Relations: awr@opm.gov
- Furlough of SES Appointees: sespolicy@opm.gov
- Documentation of Personnel Actions: persdoc@opm.gov
- Reduction in Force, Details, Outside Employment: employ@opm.gov