



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Wednesday, January 9, 2019  
CPM 2019-02

**MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

**FROM:** MARGARET M. WEICHERT, ACTING DIRECTOR

**Subject:** Restoration of Annual Leave for Employees Affected by the Lapse in Appropriations

The U.S. Office of Personnel Management (OPM) has received multiple questions regarding whether properly scheduled “use-or-lose” annual leave that was unable to be used because of the current lapse in appropriations may be restored both to furloughed employees and employees who were excepted from the furlough and thus required to work.

During a lapse in appropriations, all paid leave or other paid time off is cancelled. Under 5 U.S.C. 6304(d)(1), annual leave in excess of an employee’s annual leave ceiling “shall be restored” (i.e., no agency discretion) if it is lost (forfeited) “because of . . . exigencies of the public business” when the leave was “scheduled in advance” (i.e., before the start of the third biweekly pay period prior to the end of the leave year, as required under 5 CFR 630.308(a)). Although, 5 CFR 630.305 provides that an agency head (or designee) is authorized to determine whether an exigency is of major importance, OPM and the Office of Management and Budget (OMB) had determined, in guidance issued prior to the lapse, that a lapse in appropriation qualifies as an exigency of the public business for purposes of annual leave restoration. Therefore, as long as the leave was properly scheduled in advance, agencies must restore any annual leave that was forfeited because of the lapse in appropriations—regardless of whether the affected employees were furloughed or excepted from the furlough.

For employees on the standard biweekly pay period cycle, the annual leave ceiling is applied on January 5, 2019, which was the end of the 2018 leave year. 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 no later than November 24, 2018, in accordance with 5 CFR 630.308(a). Employing agencies are responsible for determining whether an employee met the advance scheduling requirement, based on OPM regulations and agency policies and procedures. As allowed by those agency policies and procedures, the “in writing” requirement may be met in various ways, including electronic communications such as email, electronic calendar scheduling, or submissions to a time and attendance system.

We remind agencies, however, that any previously restored annual leave that was due to expire at the end of the 2018 leave year under 5 CFR 630.306 or 630.309, and was subsequently forfeited, may not be restored again—even if the forfeiture was due to the lapse in appropriations.

This memorandum further clarifies OPM's "Guidance for Shutdown Furloughs," September 2015, available online at <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf>, and OMB's "Special Instructions for Agencies Affected by a Lapse in Appropriations Starting on December 22, 2018" available online at <https://www.whitehouse.gov/wp-content/uploads/2018/12/Special-Instructions-for-a-Possible-December-22-Lapse.pdf>. [dead link]

### **Questions**

Agency headquarters-level human resources offices may contact OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov). Employees should contact their agency human resources offices for assistance.

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