

**GOVERNMENT SHUTDOWN  
HUMAN RESOURCES DIVISION  
FREQUENTLY ASKED QUESTIONS**

**EXCEPTED/NON-EXCEPTED STATUS**

**Q. Who is excepted and non-excepted in the District offices?**

All employees, both administrative and operational, in the district offices are excepted. AF employees in district offices are “excepted with funding.”

**Q. Can those deemed excepted “opt out” and choose to be furloughed?**

No. Employees deemed excepted are so designated due to the work they perform. Excepted employees are expected to report to work and may not voluntarily choose to be non-excepted. Excepted employees may be absent (see question on leave, below) but such absences are subject to supervisory approval and will result in furlough status during the absence.

**Q. Are US Marshals subject to the furlough?**

Yes. Although the Q&A from DOJ does not specify this, the US Marshal position is subject to the Leave Act and therefore, although Presidentially appointed, is also subject to furlough. Marshals should code their time on and after 10/1 as furlough but because they are designated as excepted, they should also record the hours worked in the remarks section. That way when we amend the time cards, there is a record of what was worked. Although their time is coded as furloughed, US Marshals are not actually in furlough status unless they have to be absent from work.

**FURLOUGH NOTICES**

**Q. Will the USMS be issuing furlough notices?**

Yes. Furlough decision notices will go out during or immediately after the furlough. All non-excepted employees and any excepted employees who had non-work days during the lapse in appropriations must receive a notice. The notices are issued by the head of each office.

**PAY AND IMPACT ON EMPLOYEES**

**Q. When will excepted employees be paid?**

Employees who are excepted, and are reporting for work this week, will be paid for the time spent at work notwithstanding the government shutdown status. Those employees who perform work during the shutdown will be paid eventually, but not as they normally would be paid. The payment for the work performed beginning on October 1, 2013, the first day of the shutdown, will not occur until there is an appropriation or continuing resolution in place. So, for the pay currently being processed for Pay Period 19 (September 22, 2013 through October 5, 2013) employees will only receive pay at this time for work performed between September 22 and September 30. The remainder will be paid once an

appropriation or continuing resolution is in place. Similarly, for work performed beginning next week until an appropriation or continuing resolution is in place, pay for that work will be delayed until a resolution occurs and payroll can be processed.

**Q. May a supervisor provide an employee a letter on agency letterhead stating that because of the Government shutdown the employee will not be paid on time for the employee to provide to landlords, mortgage holders, creditors, etc.?**

Yes. The ethics regulations do not prohibit providing factual information on government letterhead to demonstrate an employee's federal employment and the financial results to the employee based on the Government shutdown. Supervisors should avoid, however, advocating for any special treatment of the employee. Recommended language for the letter is as follows:

Dear Sir or Madam:

\_\_\_\_\_ is currently a federal employee with the United States Marshals Service, and is in an excepted position notwithstanding the current Government shutdown situation. As an excepted employee, he/she is currently reporting for work but is not currently being paid. He/she will eventually be paid for the work performed. However, he/she will not be paid for work performed beginning on October 1, 2013, until Congress passes a budget or a continuing resolution. At this time, we cannot predict when that will be. When the employee is paid for the work in this excepted status, he/she will continue to earn his/her usual rate of pay.

**Q. When an employee's pay is insufficient to permit all deductions to be made because furlough time off occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?**

The USMS will follow the guidance at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477> to determine the order of precedence for applying deductions from the pay of employees when gross pay is insufficient to cover all authorized deductions.

### **COLUMBUS DAY HOLIDAY**

**Q. How do we treat the Columbus Day holiday if we are still in a lapse of appropriations?**

If your office is normally closed on a holiday – which most are because the courts are – then employees will not work. That includes excepted employees. If staff would normally be scheduled on that day – such as the Comm Center employees at HQ – then they would work. You do not schedule excepted staff to work, just because they are excepted. That does mean, however, that there is a chance they will not get paid for that day depending on what action Congress takes. For those who work on a holiday, they will be paid according to the normal rules governing pay for work on a holiday, when there is a budget passed.

HRD will provide separate guidance on coding time cards for the holiday.

**Q. Must excepted employees who do not work during the Columbus Day holiday receive a furlough notice?**

Yes. An “excepted” employee who does not perform work on a holiday must be placed in a furlough status for the holiday and must be provided written notice of the agency’s decision to furlough. This is because during a lapse of appropriations all affected employees must be (1) at work performing excepted activities or (2) furloughed. This applies with respect to any period of time that is part of an affected employee’s regularly scheduled administrative workweek, including a holiday.

**Q. How do the “in lieu of” holiday rules apply during a shutdown furlough?**

When a shutdown furlough is not in effect, all full-time employees, including those on flexible or compressed work schedules, are entitled to an “in lieu of” holiday when a holiday falls on a nonworkday. OPM guidance on “in lieu of” holidays can be found here <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/holidays-work-schedules-and-pay/>

During a shutdown furlough, generally—

- The “in lieu of” holiday rules do not apply to furloughed employees (i.e., employees do not receive an “in lieu of” holiday if they are in a furlough status on a holiday).
- When scheduling holidays for “excepted” employees, the normal “in lieu of” holiday rules apply. But, only to excepted employees who are work on the holiday. Excepted employees who are not scheduled to work are furloughed and therefore the “in lieu of” holiday does not apply.
- Employees whose positions are funded by external/other sources are considered excepted with funding and are therefore exempt from the furlough. Their time is coded as usual and the “in lieu of” holiday rules apply.

**LEAP**

**Q. How do we record LEAP time worked on the time cards?**

No actual time is recorded for time worked after 10/1. All hours worked, including LEAP time should be documented in the remarks line on the time card. Many have noted that there is limited space to record time in the remarks section. If you encounter that problem, record your hours manually and maintain that record for time card reconstruction when the budget is passed. Offices may wish to establish their own manual recording procedure.

**Q. Criminal Investigators must complete their LEAP recertification by October 31<sup>st</sup>. Will the shutdown affect this requirement?**

USMS policy requires that by October 31<sup>st</sup> of each year, each Criminal Investigator and the USM or Assistant Director to whom he or she reports shall recertify in writing on the Recertification form that the Criminal Investigator met the required daily average of two unscheduled duty hours (to include available and worked hours) for the period since the last certification. If the shutdown continues beyond October 11<sup>th</sup>, the date for completing this requirement will be extended. Please watch for information from HRD.

## **ABSENCES AND LEAVE**

### **Q. What happens when an excepted employee needs to be absent from work during the shutdown?**

There is no paid leave of any kind – annual, sick, home, military, etc. – during a furlough. Excepted employees may be absent, but if they are, that time is designated as non-excepted and may not be compensated at the end of the lapse, depending on the decisions Congress makes. The remarks section of the time card, or the manual tracking of time in each office, should reflect the type of leave being taken and should Congress approve retroactive pay, the amended time cards will reflect the actual leave taken.

### **Q. Can an excepted employee who is absent return to work during the lapse in appropriations?**

Yes. If the employee remains in an excepted position, he/she may return to work at the end of the approved absence. District/office management should coordinate their return, prior to their departure.

### **Q. I have use or lose leave. Will I be able to restore it if I lose it?**

Employees in this situation should make every effort to reschedule “use-or-lose” annual leave for use before the end of the current leave year. However, if this is not possible due to a lapse in appropriations, the USMS may use discretionary authority to restore any lost annual leave by determining that the employee was prevented from using his or her leave because of an exigency of the public business—namely, the need to furlough employees because of the lapse in appropriations.

### **Q. Will employees accrue annual or sick leave while on furlough?**

If an employee is furloughed (i.e., placed in nonpay status) for part of a biweekly pay period, the employee’s leave accrual will generally not be affected for that pay period. However, the accumulation of nonpay status hours during a leave year can affect the accrual of annual leave and sick leave over a period of time (see 5 CFR 630.208.) For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status from the beginning of the leave year (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period in which that 80-hour accumulation is reached. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached. At the end of the leave year, any accumulation of nonpay status hours of less than 80 hours is zeroed out so that the accumulation of nonpay status hours for the next leave year starts at zero. For part-time employees, the rule blocking accrual of leave based on the accumulation of nonpay status hours (5 CFR 630.208) does not apply. Instead, leave accrual for part-time employees is prorated based on hours in a pay status in each pay period; thus, time in nonpay status reduces leave accrual in each pay period containing such time (5 CFR 630.303 and 5 U.S.C. 6307).

Please see OPM’s fact sheet on the effect of extended non-pay status at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/effect-of-extended-leave-without-pay-lwop-or-other-nonpay-status-on-federal-benefits-and-programs/>.

## **OUTSIDE EMPLOYMENT**

**Q. May employees take other jobs during a period designated as furlough time off?**

Presidential appointees may not earn any outside compensation. Criminal Investigators (GS-1811) may work outside the USMS, with the further approval of OGC Ethics as to the particular outside employment, only on the days/hours while in a furlough (non-pay) status. All other USMS employees may work outside the USMS, with approval from management and in certain circumstances, the Ethics Officer.

Excepted employees who are working during the lapse in appropriations are NOT considered furloughed. Those working during the furlough because they were deemed excepted will be paid, therefore they are not in a furlough status. The coding on the time card does not establish the furlough status.

**GUARDS/DSOs**

**Q. Can District Security Officers (DSOs/Guards) be employed during the shutdown?**

Yes, but guards should be utilized as a last resort, as necessary to safely accomplish the mission while complying with policy. For example, in a one man sub-office, it may be necessary to hire a contract guard to ensure safe production of prisoners to court. However, where there are alternatives available which would utilize federal personnel rather than contract guards, those options should be utilized first.

It is critical to note that DSOs who worked on or after October 1<sup>st</sup> will not be paid for any time worked on or after October 1<sup>st</sup> until there is an appropriation or a continuing resolution in place.

**HEALTH/OWCP**

**Q. How does an administrative furlough affect the compensation of an employee who is receiving FECA benefits and is under medical orders to work part-time?**

When an employee is already out on total or partial wage loss benefits, FECA compensation continues at the usual rate. Claims for FECA compensation benefits submitted as a result of missing a partial day due to a furlough are not payable under the FECA.

**Q. How does an administrative furlough impact the compensation of an employee who is receiving FECA benefits and is required to work a modified light duty schedule?**

FECA compensation benefits are not payable for work days lost as a result of administrative furlough.

**Q. I have an OWCP claim and can't get through to Department of Labor (DOL). How do I get and/or provide information about my claim?**

Services provided by the DOL Division of Federal Employees' Compensation (DFEC) are limited in scope due to a suspension of Federal government services. DFEC staff will continue to process new claims and perform duties associated with the provision of benefits on existing claims. Customer service phone numbers remain available for automated self-help functions only. Automated information about claims is also available via the Claimant Query System. More information is available here: <https://owcp.dol.acs-inc.com/portal/main.do>

Evidence may be submitted for any active DFEC claim using the "upload document" feature in the Employees Compensation Operations & Management Portal: [www.ecomp.dol.gov](http://www.ecomp.dol.gov) or by sending via the mail to:

U.S. Department of Labor  
DFEC Central Mailroom  
PO Box 8300  
London, KY 40742-8300

Please be sure to include your DFEC claim number on all documents submitted via ECOMP or by mail.

**Q. How does a furlough affect Continuation of Pay (COP)?**

If an employee sustains a traumatic injury and is receiving COP before furlough days have been scheduled, COP should continue. However, if an employee sustains a traumatic injury and has already been scheduled for one or more furlough days, then there would be no COP entitlement for any day that the employee was not scheduled to work due to an administrative furlough.

**Q. Are schedule awards or medical benefits affected by an administrative furlough?**

No. Schedule award and medical benefits continue regardless. For information concerning the fact that an employee who is currently receiving FECA workers' compensation payments will continue to receive workers' compensation payments during a furlough, and for information concerning injuries which occur while on furlough or leave without pay, please click HERE: <http://www.dol.gov/owcp/dfec/FECA-benefits-furlough.htm>

**Q. Are health clinics open?**

At this time, Federal Occupational Health is remaining operational. Most clinics are open but we advise you to call ahead to verify if you do plan to utilize them.