



# Federal Aviation Administration

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## Memorandum

Date: January 14, 2019

To: ATO Managers

From: ATO Office of Technical Labor and Employee Development

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Subject: ATO Manager Guidance: Approved FMLA Absences During Shutdown

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During a lapse in appropriations, an employee must either be working (i.e., excepted from furlough) or in a non-pay status. Accounting for absences for FMLA-qualifying conditions can vary, based on the circumstances of when the absence began and whether paid leave was approved.

Agencies are not required to issue a furlough notice to employees who have approved unpaid leave (LWOP) and are not expected to be at work during the furlough period (e.g., if the employee requested and was approved for 12 weeks LWOP under FMLA for birth of a child). In this scenario, the employee remains in their LWOP status. If, however, the employee is scheduled to return during the furlough period, and is non-excepted, the employee would be provided with a furlough notice, effective with their scheduled date of return. An employee on FMLA-LWOP during a shutdown furlough may not later substitute paid time off for the days of LWOP.

If an employee is scheduled to take paid time off (e.g. SL-FMLA, AL-FMLA) during a shutdown furlough (either continuously or intermittently), the paid leave must be cancelled and the employee must be furloughed for any period during which the paid time off was scheduled. Thus, any days of scheduled paid time off are documented as furlough days and any previously scheduled days of unpaid leave under FMLA continue to be documented as LWOP.

During a lapse in appropriations, an excepted employee may face circumstances that would normally qualify him or her for unpaid leave under the Family Medical Leave Act (FMLA) that was not previously scheduled. Under these circumstances, the Agency must allow absence and place the excepted employee in a furlough status consistent with his or her rights under the FMLA.

During the lapse of appropriations, no LWOP or furlough days are counted against an employee's 12-week FMLA leave entitlement. Time cards shall be coded consistent with Time and Attendance guidance, using Furlough or LWOP codes as described above.