

Special Instructions for Agencies Affected by a Possible Lapse in Appropriations Starting on December 22, 2018

In the event an agency and its employees are affected by a lapse in appropriations commencing on Saturday, December 22, 2018, the following special instructions apply. This supplements (and should be read with) general guidance—issued by the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) (<https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf>)—on administering an agency shutdown of operations due to a lapse in appropriations. It highlights certain matters of particular relevance to the specific scenario at hand. (Note: Lapse-affected employees include “furloughed employees” and “excepted employees.” “Excepted employees” may perform activities legally permitted as an exception to the general bar on performing work during a lapse in appropriations work, but may not be paid for that work until after the lapse is over.)

Payroll Implications:

- **Saturday, December 22**, is the last day of the **December 9-22** biweekly pay period. Timekeeping for that period would normally be finalized no later than December 24-26. Paychecks for that pay period should be issued at the normal time (generally, in the December 28 to January 3 time range).
- As necessary, agencies and payroll providers may finalize the processing of paychecks for the **December 9-22** biweekly pay period as an orderly shutdown activity. Assuming the lapse is in effect during the time that timekeeping is being finalized, the paychecks may not include pay for any work performed on Saturday, **December 22**. Agencies should document that work as well as any other later work performed during the lapse.
- Lapse-affected employees may not receive any pay for work (i.e., orderly shutdown activities or other excepted work) performed during the lapse until after the lapse has ended.
- If the lapse in appropriations continues during the **December 23-January 5** biweekly pay period, any excepted work performed during the lapse should be documented. No pay may be provided for excepted work during the December 23-January 5 pay period until the lapse in appropriations has ended. The treatment of the pay of employees during furlough periods will be determined by Congress in legislation enacted in connection with the restoration of appropriations.

Leave:

- All scheduled paid leave and other paid time off (including paid holiday time off) are cancelled for lapse-affected employees during a lapse in appropriations.
- Many employees are scheduled to take use-or-lose annual leave in late December and early January (before the end of the leave year on January 5, 2019, for those on the standard biweekly payroll cycle). As noted above, all leave is cancelled for lapse-affected employees during a lapse in appropriations. In general, if the cancellation of

annual leave due to a lapse causes an employee's annual leave balance to exceed the applicable annual carry-over limit at the end of the leave year, such cancelled leave may be restored to the employee's credit following agency procedures, since the lapse is considered an exigency of the public business. However, leave that had previously been restored may not be restored even if scheduled use of the previously restored leave is cancelled due to the lapse.

- Intermittent unpaid absences are permitted for excepted employees (e.g., on days the employee was previously scheduled to take leave or be in holiday time off status during the workweek beginning on December 23). Excepted employees must be furloughed when excused from duty, if the absence cannot be accommodated with other work schedule flexibilities.

Holidays:

- During a lapse in appropriations, holiday paid time off is cancelled for lapse-affected employees.
- Employees furloughed on a holiday (e.g., December 25) will not be paid for the holiday unless authorized by subsequent legislation.
- Holidays remain in force for the purpose of determining entitlement to holiday premium pay for excepted work performed on a holiday. Thus, if the lapse is in effect on a holiday (e.g., the December 25 Christmas holiday), an excepted employee who is required to perform work on the holiday during the employee's regular hours may earn holiday premium pay; however, payment cannot be made until after the lapse is over. Excepted employees who are not otherwise scheduled to work on a holiday are not required to work. If an excepted employee does not work on a holiday, the employee must be placed in a furlough status for the holiday.

Orderly Shutdown:

- Agencies should provide clear instructions to non-excepted employees (i.e., those who must be furloughed after performing orderly shutdown activities) regarding when they are expected to report to work to perform any necessary orderly shutdown activities.
- With respect to the issuance of furlough notices, agencies should follow OPM's general guidance, including the sample furlough notices for excepted employees who are furloughed on a holiday or for intermittent unpaid absences. Since it is the Christmas holiday season and the end of the leave year, many employees will be away from the office on an extended basis, complicating efforts to provide furlough notices. Agencies should do their best to provide notices as soon as possible given individual circumstances.
- As a general rule, agencies may allow an employee whose work is not otherwise excepted to perform up to 4 hours of **orderly shutdown activities**, as necessary, which may include time required to receive a furlough notice (in person, electronically, or

otherwise as determined by an agency). Unless the agency directs otherwise, employees are expected to perform any necessary orderly shutdown activities (including receipt of a furlough notice) on the **first workday the employee was scheduled to work** after the lapse commences. Employees generally should not be allowed to perform orderly shutdown work (up to 4 hours) on a day off (e.g., weekend day for employees with a Monday-Friday schedule, an Alternative Work Schedule (AWS) day off, or a holiday). Also, an agency generally should not direct an employee to perform orderly shutdown work on a day on which the employee had been scheduled to be on leave.

- OMB's general guidance addresses orderly shutdown activities. OMB expects agencies to minimize orderly shutdown activities. Individual employees may perform some preparatory orderly shutdown activities immediately prior to the lapse as a precaution in anticipation of a possible lapse. If an agency is aware that an employee will be absent on Friday, December 21 (due to scheduled leave or an AWS day off), the agency may direct the employee to perform precautionary orderly shutdown activities on the employee's preceding workday.
- If an employee was scheduled to be on leave on the workdays immediately after the lapse commences, the employee is not required to report to duty to perform orderly shutdown activities on a scheduled leave day, even though the leave has been cancelled. An agency may allow such an employee to perform required orderly shutdown activities (if any, including receipt of a furlough notice) on the first workday on which the employee had been scheduled to return to duty. Furloughed employees may not, however, perform any non-excepted agency work prior to conducting orderly shutdown. For example, if an employee was scheduled to return to work on Thursday, December 27, an agency could require the employee to report to duty to perform any necessary orderly shutdown activities on that day. (Note: The employee may have performed shutdown activities prior to going on extended leave, which would limit the need to perform orderly shutdown activities after commencement of the lapse. Additionally, agencies should make every effort to ensure that employees who will not be conducting orderly shutdown for several days following the commencement of the lapse are aware of their furlough status during that period.)
- If the employee described in the previous paragraph has a Flexible Work Schedule and a scheduled AWS day off on Wednesday, December 26, the employee could be allowed to move the AWS day off to Friday, December 28, so that the employee performs any required orderly shutdown activity on that Wednesday.
- If an agency directs an employee to perform orderly shutdown activities on a holiday or the employee's AWS day off, any hours performing orderly shutdown activities would count as hours in applying applicable premium pay rules (e.g., for holiday premium pay or overtime pay). (Whether the agency will be obligated to provide pay at an overtime rate for those hours after the lapse has ended will depend on whether Congress, in conjunction with the legislation restoring appropriations, provides retroactive pay for hours during which employees were furloughed. If pay is provided for furlough hours, those hours would count as hours of work in applying overtime rules.)

Excepted Employees:

- A lapse-affected employee is allowed to perform work only to perform orderly shutdown activities or other work that has been identified as excepted under guidance issued by OMB. Agencies must apply OMB guidance to determine which employees may perform excepted work activities—i.e., are “excepted employees.”
- If an excepted employee needs to be excused from duty, the employee must be furloughed. This means that an excepted employee must be furloughed if excused from duty on a holiday or regular workday. For example, if an excepted employee is excused from duty on Christmas, December 25, the employee must be placed in furlough status on that day. The sample furlough notices for excepted employees in OPM’s shutdown furlough guidance may be modified to so that a single notice can be provided to cover any holidays or other approved absence on a regular workday during the lapse in appropriations. Unless the employee’s agency specifically directs otherwise, excepted employees should generally report for duty on the next day on which they are scheduled to work.
- Under this unique timing of the lapse in appropriations, agencies should take into consideration an employee’s previously scheduled leave, AWS day off, or holiday(s) that takes place during the furlough period and allow the employee to be furloughed during the period the employee had been scheduled to take leave—unless the agency determines there is a need for the employee to report to work to perform excepted activities.
- If an agency directs an excepted employee to work on a holiday or the employee’s AWS day off, any hours performing work would count as hours in applying applicable premium pay rules (e.g., for holiday premium pay or overtime pay). Excepted employees will be paid for any earned overtime pay or holiday premium pay when Congress restores appropriations.