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## General

### Who are excepted employees?

In the context of shutdown furloughs, “excepted” employees are those individuals who continue to work, by law, during a nondiscretionary furlough because they are performing work that is allowed to continue during a lapse in appropriations and/or a lapse in authorization. The term “excepted employee” should not be confused with an employee in the excepted service.

Excepted employees include those who are:

1. Performing emergency activities involving imminent dangers to the safety of human life or the protection of property;
2. Involved in the orderly suspension of agency operations, but only for the limited period of time necessary for such orderly suspension; or
3. Performing other activities exempted from the furlough.

**Note:** Employees identified as excepted cannot perform nonexcepted functions (e.g., training) for funded organizations.

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### How does the government shutdown affect my pay?

If the shutdown occurs because of a lapse in appropriation, furloughed employees can expect to receive pay for hours worked, or accounted for by leave, for the pay period immediately preceding the official announcement of the furlough. If the furlough begins within the week, or on the last Saturday of the pay period, most employees will receive their regular paycheck for the pay period. Employees will receive payment for hours worked during the orderly shutdown once appropriations are in place.

Payment of **excepted employees** will not occur for work performed after the first day of the furlough, until subsequent appropriations are in place. Therefore, pay received for excepted employees on the scheduled payday during the first pay period of the furlough will only include pay for hours worked through the end of the pay period preceding the start of the furlough. Employees will receive retroactive pay for work performed on the first day following the official announcement of the furlough once appropriations are in place.

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### Can excepted employees telework or use other workplace flexibilities during the furlough?

Excepted employees are to accomplish the work activity in-person on a full-time basis. Managers may exercise FAA policy and/or Collective Bargaining Agreement (CBA) provisions that allow situational telework or other workplace flexibilities (see [FAA Telework Program policy WLB-12.3](#) and applicable CBAs).

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### Are any personnel actions processed for excepted employees during the period of a furlough?

The Office of Human Resource Management (AHR) will process personnel actions for retirement, death and other separations, as applicable.

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### What is the guidance/coverage for issues with workers’ compensation for excepted employees?

Excepted employees working and performing official duties are covered by workers' compensation.

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## Schedules/Hours Worked

### Will an excepted employee who is normally part time be allowed to continue working on a part-time schedule? Will excepted employees be required to work extra hours/overtime?

Yes. Excepted employees may work part time and overtime, if approved by management and in accordance with applicable CBAs.

# May an excepted employee be permitted to earn compensatory time off and credit hours (under flexible work schedules) during the shutdown period?

Yes. With agency approval, excepted employees may earn compensatory time off and/or credit hours subject to requirements found in 5 U.S.C. 5543 and 6120–6133; 5 CFR 550.114, 551.531, and part 610, subpart D or other applicable authority. Each agency is responsible for approving the number of hours an excepted employee can work related to the performance of excepted activities. Employees will not be permitted to use earned compensatory time off or credit hours during the shutdown period.

# If, during a furlough, federal agencies are operating under a delayed arrival, unscheduled leave or other emergency operating status policy because of emergency weather conditions, which employees should report for work?

Excepted employees designated as “emergency” or “mission-critical” may be required to report, even when the FAA office or facility is closed. See [EMS-11.5, Identifying Essential Supporting Activities and Designating Emergency and Mission-Critical Employees for Emergency Situations](#). If you are unsure whether you fall into these categories or whether you need to report in such situations, check with your manager.

Other excepted employees will follow normal emergency operating procedures during the FAA office or facility closure or change in operating status, which may result in placing excepted employees in furlough status for any hours of work not performed. For a lapse in appropriation, these periods of approved absence will count as furlough hours for which the employee will receive retroactive compensation, without charge to his/her leave balances. For other types of furloughs, when an excepted employee is not working or not performing excepted activities in compliance with the Antideficiency Act (31 U.S.C. 1341 et seq.), he or she cannot be in a pay status. That employee must be in a furlough status during any absence from work and may not be in an excused absence or Leave Without Pay (LWOP) status.

Unless recalled using the normal recall process, furloughed employees will be unaffected if their FAA office or facility is closed or announces a change in operating status during a shutdown furlough and will remain in furlough status.

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## Leave

# Are excepted employees volunteering their services or are they compelled to come to work? What happens if an excepted employee chooses not to come to work?

In the event of a furlough, excepted employees may be compelled to come to work, and the government will incur an obligation to pay them when authorized. Managers will address an excepted employee who refuses to come to work on a case-by-case basis and may place him/her in an Absent Without Leave (AWOL) status subject to disciplinary action.

# Can excepted employees have intermittent unpaid absences from work during a shutdown furlough?

Excepted employees are permitted to use paid leave (e.g., annual or sick leave) during a lapse in appropriations (as authorized under the [Government Employee Fair Treatment Act \(GEFTA\) of 2019](#)), but not during other types of shutdown furloughs. There will be no payment for such leave until after the furlough. Employees should request leave through their manager using normal procedures. However, excepted employees are **not** required to use their paid leave to cover periods of authorized absences from work during a furlough. Instead, the employees may opt to default to a furlough status for any authorized absence during a lapse in appropriations.

An excepted employee may not be charged or substitute other paid time off (i.e., compensatory time off, travel compensatory time, religious compensatory time, credit hours or time off award hours) for an authorized absence during a lapse in appropriations. In addition, managers may not place excepted employees in LWOP status.

# If an agency is willing to approve brief or intermittent unpaid absences from work for an excepted employee, and use of workplace flexibilities is not appropriate, does the excepted

# employee have to be in furlough status for these brief or intermittent unpaid absences?

Yes. During a lapse in appropriations or authorizations, excepted employees who are absent from the workplace will be placed in a furlough status for the duration of any approved brief or intermittent absences from work. Under [GEFTA](#), the excepted employees will receive retroactive pay for such absences. However, an excepted employee, at their election, may during a lapse in appropriation shutdown, substitute leave for those absences rather than placement in a furlough status. Payment of any compensation for approved leave taken during the furlough period will occur after the lapse in appropriations end.

## What should an agency do if an excepted employee faces FMLA-qualifying circumstances?

During a lapse in appropriations, an excepted employee must either be (1) working (i.e., excepted from furlough) — unless they elect to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3), or (2) in a furlough status. An excepted employee may face circumstances that would normally qualify him or her for unpaid leave under the Family and Medical Leave Act (FMLA). The employing agency should allow such an excepted employee to be placed in a furlough status (a form of unpaid leave) for appropriate periods, consistent with his or her rights under FMLA.

## May an excepted employee take previously approved paid time off or be granted new requests for paid time off during a shutdown furlough?

A lapse in appropriations cancels an excepted employee’s previously approved paid leave or other paid time off, for the same reasons that apply to furloughed employees. This does not mean that an excepted employee cannot seek approval to be excused from duty during a lapse. An agency may excuse an excepted employee from duty and place the employee in furlough status for approved periods. An agency may allow an excepted employee to be off duty during periods when the employee was previously scheduled to be on paid leave. That off-duty time may be accommodated by workplace arrangements.

If that off-duty time cannot be accommodated by workplace flexibilities, the excepted employee will be placed in a furlough status for any approved absence, unless the employee requests to use paid leave under 31 U.S.C. 1341(c)(3). We expect that excepted employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3), because 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends.

If an excepted employee chooses to request leave under 31 U.S.C. 1341(c)(3) instead of the default approach of being placed in a furlough status, the employee may make new requests to use paid leave under 5 U.S.C. chapter 63 (or under other applicable law governing the use of leave if chapter 63 is not applicable). Such “paid leave” does not include the various types of paid time off found outside chapter 63 (e.g., compensatory time off, time off award or credit hours). Use of paid leave is subject to the normal rules for the applicable leave program, including leave request and approval procedures. While the paid leave can be used (i.e., resulting in a government obligation of funds), compensation for the leave cannot be paid until after the lapse ends.

An excepted employee cannot use paid leave under 31 U.S.C. 1341(c)(3) to cover an unauthorized period of absence. If an excepted employee is directed to perform excepted work but fails to report to duty, the employee may be placed in AWOL status for missed work hours in accordance with agency policy and procedures. For such an excepted employee, the “standard rate of pay” for AWOL hours is zero. In other words, no retroactive pay is provided for AWOL hours after the lapse in appropriations ends.

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## Holidays

### How will an excepted employee know whether or not they should report to work on a holiday that occurs during a shutdown furlough?

The excepted employee should confirm their status for the holiday with their manager on their last workday before the holiday or their “in lieu of” holiday. If their manager is in furlough status, they should ask the manager to whom they are reporting about their excepted or recalled work activities.



## Will an excepted or recalled employee receive pay for the holiday if they are not required to work on a holiday that occurs during a shutdown furlough?

No. An excepted or recalled employee who does not perform work on a holiday must be in a furlough status for the holiday. During a lapse of appropriations or authorization, employees must be either performing excepted/recalled activities or be furloughed. This applies to any period of an affected employee’s regularly scheduled administrative workweek, including a holiday.

## Can an excepted/recalled employee voluntarily report to work on the holiday?

No. Each Line of Business (LOB)/Staff Office (SO) must identify the excepted activities needed on a holiday and the employees needed to perform those functions. Employees who do not receive an assignment to perform excepted functions on the holiday must be in furlough status for that day.

## Can excepted/recalled employees be required to perform work on a holiday that occurs during a shutdown furlough?

Yes. Each LOB/SO is responsible for determining which excepted/recalled activities must be performed on a holiday (or “in lieu of holiday,” where applicable) and which excepted/recalled employees must work to carry out those functions. If an excepted/recalled employee refuses to report for work on a holiday after being scheduled or ordered to do so, they can be considered AWOL and may be subject to disciplinary action. Failure to report to duty on a holiday is no different than failure to report to work on any other day.

## If I am an excepted/recalled employee who is required to work on a holiday, will I receive holiday premium pay?

Excepted/recalled employees who perform work on a holiday receive pay according to the normal rules governing pay for work on a holiday, as defined in FAA policy or the applicable CBA. Typically, an employee receives their rate of basic pay, plus holiday premium pay at a rate equal to the employee’s rate of basic pay for hours that fall within the assigned nonovertime shift hours for that day.

In addition, if an employee performs officially ordered or approved overtime work on a holiday (i.e., work in excess of their basic nonovertime work requirement for that day), the employee will receive overtime pay (or compensatory time off) for that work.

However, excepted/recalled employees will have their pay delayed until after the shutdown ends. Please note, holiday premium pay and overtime pay are not applicable to certain employees, such as FAA officers and members of the FAA Executive System (FAAES).

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## Other

## Will the FAA be able to permit travel for excepted employees paid by annual appropriations, trust fund or general fund (i.e., inspectors making a site visit) and, if so, will employees receive reimbursement for travel expenses?

Yes, FAA may permit limited travel for excepted employees; however, reimbursement for the travel may not occur until after the furlough.

## An OPM investigator is trying to conduct an interview with one of our excepted employees as part of the employee’s routine background investigation. What should we do?

The employee can participate in the interview in between essential duty functions.

# If an excepted employee with a security clearance has an item to report as required under Security Executive Agent Directive 3, should they submit a SEAD 3 report during the shutdown?

Yes. Excepted employees should submit their Security Executive Agent Directive (SEAD) 3 reports at <https://reporting.faa.gov> in between essential duties.

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## U.S. Department of Transportation

**Federal Aviation Administration**  
800 Independence Avenue, SW  
Washington, DC 20591  
866.835.5322 (866-TELL-FAA)

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