

**FREQUENTLY ASKED QUESTIONS  
REGARDING A LAPSE IN APPROPRIATIONS  
FOR DEPARTMENT OF JUSTICE EMPLOYEES**

**EMPLOYEES – EXCEPTED AND NON-EXCEPTED STATUS**

**1. What is the proper terminology?**

- **“Excepted” employees** are those employees who are required to work.
- **“Non-excepted” employees** are furloughed. (A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.)
- **“Emergency” employees** are the subset of excepted employees who are required to work under the emergency exception.

**2. Who are “excepted” employees?**

- **Employees needed to engage in shutdown activities** for a brief time in order to ensure the orderly shutdown of those functions that will not continue during the lapse.
- **Emergency employees** - those whose work, if suspended, would threaten the safety of human life or the protection of property. First, there must be some reasonable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question. Employees who support emergency functions can also be excepted to the extent that suspending their work would threaten the safety of human life or the protection of property.
- **Employees whose salaries are funded by sources that have not lapsed** – for example, employees paid from permanent indefinite appropriations or from available carryover of multi-year or no-year appropriations. These employees are sometimes referred to as “exempt” employees.
- **Employees whose functions have express authority to continue** - for example, if the activity is required to continue by a court order.
- **Employees whose functions arise by necessary implication** - for example, the continuation of activities necessary to protect life or property may necessarily imply the continuation of a limited amount of administrative support personnel, such as IT support, without which the excepted activities could not continue. Also, where Congress funds an activity but does not fund those functions that support or administer the primary activity, the supportive or administrative function may continue if suspending that support would significantly damage the execution of the terms of the statutory provision underlying the funded activity.

**3. Are all non-excepted employees required to come to work on the first day of a lapse to engage in orderly shutdown activities?**

- Components have the discretion to decide which non-excepted employees should come in (or work from home) on the first day of a lapse to engage in orderly shutdown activities. There is no requirement that all non-excepted employees be asked to come in or engage in shutdown activities from home, and it is the Department's preference that non-excepted employees *not* be brought in unless necessary to perform shutdown activities beyond receiving a formal furlough notice. To the extent that non-excepted employees are asked to work on the first day (either at the office or at home) they will be considered excepted for the period that they are engaged in orderly shutdown activities.

**4. Can a supervisor change the status of an employee from non-excepted to excepted and vice-versa as needs change?**

- Yes, supervisors may change the status of employees as needs change. Note that employees cannot change their status without supervisory approval. Components should keep track of such changes and the justifications for them, especially to the extent that such changes cause the component to deviate from the numbers of excepted personnel provided in the contingency plan. Prior Department-level approval is not required for such deviations. Components should use their judgment when making such deviations, consistent with the guidance provided.

**5. For those employees who are excepted, what are the expectations for hours worked, including alternative work schedules (AWS)?**

- Components and supervisors have discretion to instruct employees to adjust their work schedules as necessary to perform excepted functions during the lapse. For example, supervisors may need to change an employee's schedule from an AWS to 8 hours per day/5 days per week to ensure adequate coverage of excepted functions.

**6. Will employees who are not excepted be given furlough notices?**

- Any reasonable advance notice of a furlough is permissible, including oral or telephonic notice. While an employee will ultimately receive a written notice of the furlough, such a written notice is not required to be given prior to implementing the furlough if it is not feasible.

**7. Can an excepted employee perform non-excepted work?**

- If the non-furlough (excepted) function of the employee can be performed in less than an entire day, the employee is required to resume furlough status after completing the function.

- However, there may be cases in which an employee is required to perform this excepted support function intermittently throughout the course of the day, and the intervals in between are too short to enable the employee to be furloughed and then recalled in time to perform the function. In such cases, the employee may remain at work, and may perform non-excepted functions during these intervals. In such situations, components must minimize the number of employees who are performing excepted functions on an intermittent basis, by consolidating the excepted functions, to the extent possible, for performance by a smaller number of employees (e.g., components should not except from furlough multiple employees in order to perform intermittent excepted work, when instead the agency could have fewer employees perform the excepted work on more of a full-time basis).
- Excepted employees should manually track the hours they work during the lapse.

## **PAY**

### **1. Will pay accrue to an excepted employee who performs work during a furlough?**

- The Government is required to pay an excepted employee who performs work during the lapse according to the normal rules governing pay. However, the timing of when an excepted employee is paid may be impacted, and he or she may not be paid until an appropriations act or a continuing resolution is enacted.

### **2. Will employees furloughed due to a lapse in appropriations be paid for the time they are on furlough?**

- Employees on furlough during a lapse in appropriations will only be retroactively paid if there is an Act of Congress authorizing such payments.

### **3. Will employees excepted from furlough because their compensation is financed by a resource that has not lapsed have to wait until an appropriation is enacted before they are paid?**

- Employees excepted from furlough because they are paid directly from appropriations that have not lapsed will be paid for their work and do not have to wait until an appropriation is enacted, although they may be paid late if personnel needed to process payroll transactions are furloughed. NOTE: Employees who are not directly paid by, but whose pay is reimbursed from, a source that did not lapse (such as the Assets Forfeiture Fund, Three Percent Fund, and Health Care Fraud Program) will not receive pay for work until the lapse in appropriations ends.

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

- No. When an excepted employee is not working or not performing excepted activities in compliance with the Antideficiency Act, he or she cannot be in a pay status. Excepted employees must be either performing excepted activities or

furloughed during any absence from work. The furlough must be documented by a furlough notice. If an excepted employee refuses to report for work after being ordered to do so, he or she may be considered to be absent without leave (AWOL) and may be subject to any consequences that may follow from being AWOL. An employee paid out of non-lapsing funds may take leave as usual.

**5. If a lapse in appropriations begins in the middle of a pay period, will employees who are paid from lapsed appropriations get paid for the days/hours they worked prior to the lapse?**

- Employees paid from a funding source that has lapsed, regardless of whether they are furloughed (non-excepted) or working (excepted) during the lapse period, will be paid in the normal course for regular pay and overtime they worked up until the lapse begins. For the portion of the pay period during the lapse, all such employees, whether working or not, will be in “furlough” status on their T&As and thus will not receive payment for that period. Therefore, employees’ usual paychecks will be reduced.
- While the normal “Order of Precedence” for withholding deductions will be followed (*see* <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=1477>) employees are encouraged to consider contacting institutions regarding the fact that their existing allotments may not be honored. If the full amount of the voluntary allotment cannot be honored from an employee’s pay, it will not be deducted. When the shutdown ends, in those cases where allotments could not be deducted, it will be the employee’s responsibility to ensure that the allotment is caught up.

## **UNEMPLOYMENT COMPENSATION**

**1. Are furloughed employees eligible for unemployment compensation?**

- It is possible that furloughed employees may become eligible for unemployment compensation. DOJ employees may find information on unemployment compensation at <http://www.justice.gov/employees/index.html> .
- State unemployment compensation requirements differ. Some states require a 1-week waiting period before an individual qualifies for payments. In general, the law of the state in which an employee’s last official duty station in federal civilian service was located will be the state law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website “Unemployment Compensation for Federal Employees” <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>).
- Employees should submit questions to the appropriate state (or District of Columbia) office.

## **TRAVEL CHARGE CARDS**

### **1. Are all employees required to pay their government travel card accounts during a lapse in appropriations?**

- Yes. Employees, whether excepted or non-excepted, remain obligated to pay their government travel card accounts on time regardless of whether they have been reimbursed for their travel, in accordance with their cardholder agreement. (Note that processing travel vouchers is not an excepted function and therefore will not occur during the lapse.) However, JMD is working with the travel card bank, JP Morgan Chase, to ensure financial hardships due to the lapse in appropriations are taken into consideration. That said, JMD will not intervene on behalf of individual cardholders. Cardholders need to contact JPMorgan Chase to address their financial hardships associated with the lapse of appropriations.

### **2. If an employee's government travel card was already delinquent prior to the lapse in appropriations, is the employee excused from paying?**

- No. Payment is due as required by the statement due date. If the account was delinquent prior to the lapse in appropriations, it will continue to be considered delinquent until full payment is made. The number of days delinquent does not stop accruing in the event of a lapse in appropriations.

## **CREDITOR LETTERS**

### **1. Will DOJ issue letters to creditors on behalf of DOJ employees who are furloughed?**

- The Department is sympathetic to the financial concerns raised by employees because of the lapse in appropriations, but the Department is not in a position to issue letters to creditors on behalf of DOJ employees who are furloughed.

## **COMMUNICATION**

### **1. How will employees be notified whether or not they should come to work? How will they be notified to return?**

- Component Heads will identify and inform those employees who will be excepted from furlough during a lapse in appropriations. All other employees should assume that they will not report to work if there is a lapse in appropriations.
- Once an appropriation for the Department has been enacted (either a continuing resolution or other type of appropriation), all employees are required to return to work on their next scheduled work day.
- During a lapse, employees should monitor news reports, the Office of Personnel Management web site ([www.opm.gov](http://www.opm.gov)), the Department of Justice website ([www.justice.gov](http://www.justice.gov)), and similar sources for the Federal Government's operational status.

- If an appropriation is enacted in the middle of the day, employees should return to work as directed; typically this will be on the employee's next scheduled work day.

**2. Can employees use BlackBerrys, laptops and other equipment during the lapse?**

- Excepted employees can continue to use BlackBerrys, desktop computers, laptops, and other equipment during a lapse.
- Non-expected employees should be advised not to use their BlackBerrys, desktop computers, laptops and other equipment provided by the Department during a lapse, except in the following limited circumstances:
  - Non-expected employees may briefly check their email remotely on the first day they would otherwise be working in order to check their status, receive a furlough notice, and/or update an out-of-office message. Employees will be considered excepted for this brief period (up to 15 minutes) and should manually track their time. This activity should only occur on the first workday following the lapse.
  - Non-expected litigators with active cases should be instructed to check their incoming emails once per day for electronic court notices and forward any such notices to an appropriate excepted litigator. This activity should typically take no longer than 15 minutes per day. Litigators who are otherwise non-expected will be considered excepted employees during the time they are performing this activity, and they should manually track this time.

**3. Can supervisors use personal email addresses to communicate with non-expected employees while they are furloughed?**

- Supervisors may use personal email addresses of their own furloughed employees to send furlough notices or return-to-work notices. Absent consent by employees, when sending such messages supervisors must ensure that the recipient cannot see the personal email addresses of other employees. Personal email addresses should not be used for any official work purpose beyond orderly shutdown communications including a furlough notice and/or a return-to-work notice.

**4. Can excepted DOJ employees communicate with employees in other agencies using personal email addresses?**

- Excepted DOJ employees who need to contact employees in other agencies during a lapse should do so through the excepted designees at those agencies. They should not seek or use the personal contact information of their counterparts in other agencies to conduct government business.

**5. Will web services be available?**

- Parts of Justice.gov and DOJNet will remain up. Content changes will be limited to those necessary pursuant to an excepted activity. A notice will be posted that content may be out of date due to the lapse. Limited web services staff will be available to manage content of an emergency nature.

**6. Where can employees go for more information on how a lapse in appropriations will affect them?**

- Refer to the [Information for DOJ Employees](#) link on the Justice web site.
- Refer to the [Office of Personnel Management's website](#).
- Subscribe to email updates when new information becomes available on the [Information for DOJ Employees](#) link. Visit <http://www.justice.gov/govdelivery/subscribe.html> to start your subscription. Select "For Employees" under the Department of Justice category. Be sure to subscribe with a non-DOJ email address.

**UNION ACTIVITY**

**1. Is Union bargaining regarding a furlough required?**

- Because a shutdown is a legal requirement and not a matter of agency discretion, agencies do not need to bargain with unions over what activities may continue or what employees are excepted during a shutdown.
- If a union requests bargaining, the bargaining does not need to be completed before the shutdown.
- The agency may be required to provide certain information to a union if requested, in accordance with 5 U.S.C. 7114.

**2. Can union officials perform representational work on "official time" during an appropriations lapse?**

- Employees who are excepted because they are paid from funding sources that remain available during the lapse and who are serving as union officials may continue to be granted official time to the same extent and in the same manner as they would under non-shutdown conditions.
- Other employees serving as union officials may work on official time during a shutdown if such activities fall within the Antideficiency Act's exceptions. The exercise of a union's statutory and/or contractual rights triggered by an excepted management action taken during a shutdown would constitute an excepted activity. Therefore, if an agency has determined that a management action taken during a shutdown is permissible because it is an excepted activity, and such action triggers union representational rights under the collective bargaining agreement or 5 USC chapter 71 (i.e. a formal discussion, a Weingarten interview, or the representation of

- an employee in connection with an adverse personnel action), official time should be granted to employees to perform representational duties related to that action.
- With this in mind, agency officials should consult with their General Counsel to evaluate whether contemplated management actions will trigger statutorily or contractually guaranteed representation rights, and should consider delaying, if possible, such excepted management actions that may trigger union representational rights until agency funding is restored.

**3. Will union officials have access to their union offices if they are in furlough status?**

- Generally, access to facilities during a furlough may be restricted based on funding, security or other issues, and a particular facility, or portions of a facility, may be fully or partially operational. Access to a union office during a period of furlough should not be prevented solely on the basis that a union official seeking access is not in a duty status. Access for representational purposes would be subject to each facility's requirements at the time, including provisions in collective bargaining agreements.