



GOVERNMENT SHUTDOWN Q&A – v. DEC. 22, 2018

A) EXCEPTED / NON-EXCEPTED EMPLOYEES

Q1. If an employee is scheduled to work during the shutdown, is it optional to show up? Would there be any disciplinary actions if the employee doesn't show up to work?

A1: If an employee is scheduled to work and has not been advised that they are a non-excepted employee and are on furlough, then they are obligated to report to work.

Q2. Are Developmentals and CPC-ITs considered excepted?

A2: Employees that have no position certifications in their current facility will likely be determined to be "non-excepted," meaning subject to furlough during the shutdown.

B) LEAVE

Q1. Sick Leave:

A2: During a shutdown, employees cannot be in a paid leave status, this means no annual leave, sick leave, holiday leave, or credit hours used. "Non-excepted" employees will remain in a furlough status for the duration of the shutdown. However, a designated "excepted" employee who is incapacitated for duty should call in sick in accordance with Article 25 of the CBA. They cannot be placed on sick leave, so they will be placed on a furlough status during their absence. They should return for the next regularly scheduled shift for which they are no longer incapacitated for duty. Whether or not you get paid at a later date will be determined by Congress.

Q2. Annual Leave:

A2: During a shutdown, employees cannot be in a paid leave status, this means no annual leave, sick leave, holiday leave, or credit hours used. "Non-excepted" employees will remain in a furlough status for the duration of the shutdown. However, if you are designated as an "excepted" employee and are on any form of paid leave, you should be contacted and advised that your paid leave status is canceled. At that point you will have the option of returning to work. If you choose not to, you will be placed in furlough status, and there will be no charge to leave balances. Whether or not you get paid at a later date will be determined by Congress.

Q3. Holiday Leave:

A3: During a shutdown, employees cannot be in a paid leave status, this includes holiday leave. Excepted employees that are not scheduled to work the holiday will be placed in a furlough status for the holiday and shall return to work on their next scheduled workday. "Non-excepted" employees will remain in a furlough status for the duration of the shutdown. Whether or not employees will be paid for furlough time will be determined by Congress.

Q4. If an employee has properly scheduled "use-or-lose" annual leave before the start of the third biweekly pay period prior to the end of the leave year, but is unable to use some or all of the scheduled leave because of the furlough, does the furlough constitute an "exigency of the public business" that would permit an agency to restore the leave after the beginning of the new leave year?

A4: 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 that is not possible due to a lapse in

appropriations/shutdown, the Agency will restore any lost annual leave that the employee was prevented from using.

Q5. If an exempt employee elects to take the furlough in lieu of approved leave, is there anything they need to do, such as advise management or request furlough change in Webschedules, or will it be automatically converted? Can an exempt employee take part of their leave as furlough and then cancel other parts and return to work, or will they be forced on furlough the entire time?

A5: If you are on any form of paid leave, you should be contacted and advised that your paid leave status is canceled. At that point you will have the option of returning to work. If you choose not to, you will be placed in furlough status by management, and there will be no charge to leave balances. You can return to work for a portion of the time, you will not be forced onto furlough for the duration.

Q6. If an employee leaves for military duty during the shutdown, should they be coded furlough or military leave?

A6: Military leave is treated like any other type of paid leave. "Non-excepted" employees will remain in a furlough status for the duration of the shutdown. However, if you are designated as an "excepted" employee and are on any form of paid leave, you should be contacted and advised that your paid leave status is canceled. At that point you will have the option of returning to work. If you choose not to, you will be placed in furlough status, and there will be no charge to leave balances. Whether or not you get paid at a later date will be determined by Congress.

Q7. Do we accrue sick and annual leave during the shutdown?

A7: Employees who are excepted from the furlough continue to accrue leave. However, it won't be credited until after the shutdown ends. Employees who are non-excepted and placed in a furlough status will continue to accrue leave as long as they do not exceed 80 hours of unpaid status. For each period of 80 unpaid hours, accrual is suspended for the period in which they cross 80 hours of unpaid time. This applies to all hours of unpaid status, including furlough, LWOP, suspensions, etc.

Q8. Is excused absence for change of station considered paid leave?

A8: Excused absence for change of station is paid leave. During a shutdown, employees cannot be in a paid leave status. This means no annual leave, sick leave or credit hours used. "Non-excepted" employees will remain in a furlough status for the duration of the shutdown. However, if you are designated as an "excepted" employee and are on any form of paid leave, you should be contacted and advised that your paid leave status is canceled. At that point you will have the option of returning to work. If you choose not to, you will be placed in furlough status, and there will be no charge to leave balances. Whether or not you get paid at a later date will be determined by Congress.

Q9. Am I not entitled to pay even while on leave? Being able to use paid time off in lieu of the unpaid FMLA time is an Agency obligation to pay me, isn't it?

A9: The contract cannot conflict with law, and the Anti-Deficiency Act does not allow any Federal Agency to compensate employees on leave. As a result, during a shutdown, employees cannot be in a paid leave status. This means no annual leave, sick leave or credit hours used. "Non-excepted" employees will remain in a furlough status for the duration of the shutdown. However, if you are designated as an "excepted" employee and are on any form of paid leave, you should be contacted and advised that your paid leave status is canceled. At that point you will have the option of returning to work. If you choose not to, you will be placed in furlough status, and there will be no charge to leave balances. Whether or not you get paid at a later date will be determined by Congress.

Q10. I have annual leave scheduled for a day during the shutdown. I was told that I could come back to work or stay absent and be placed in LWOP status and that would be up to the discretion of management later on whether or not I would be paid. Is this correct?

A10: No. During the furlough no one can be in a paid leave status. But that does not mean that the Agency has to bring these employees back to work. They cannot continue to stay on paid leave. But if these employees choose to stay away from work during the previously approved leave time period, the FAA will code their absence as "Furlough." These employees would also have the option to return to work if they did not want to go into a "furlough" status for the time period they originally had leave approved for. Technically, the FAA is not placing them in a Leave Without Pay (LWOP) status.

Q11. Can we still use credit time off during a shutdown?

A11: No. During a shutdown, employees cannot be in a paid leave status. This means no annual leave, sick leave, or credit hours used.

Q12. Management has indicated that they will code my leave taken during the shutdown as LWOP, not furlough. Is this correct?

A12: That is not correct. Excepted employees that are approved for an absence from performing excepted duties are to be coded as furlough.

Q13. Management has been allowing me to use LWOP intermittently as staffing permits. Is this still allowed during the shutdown since I'm not being paid for the time off anyway?

A13: No. Excepted employees may not be placed in leave without pay (LWOP) status. The basic rule for excepted employees is that they are either performing excepted work, or on furlough. You will likely be placed in a furlough status rather than on LWOP.

Q14. I am currently on annual leave and will be returning at some point during the shutdown. If nothing is done to pass a spending bill or continuing resolution, those two days of annual leave I had pre-approved that I won't be paid for, will it be deducted from my available annual leave balance?

A14: If you are on any form of paid leave, you should be contacted and advised that your paid leave status is canceled. At that point you will have the option of returning to work. If you choose not to, you will be placed in furlough status, and there will be no charge to leave balances. Whether or not you get paid at a later date will be determined by Congress.

Q15. I have annual leave slotted for the next five days. I know my leave is now canceled, but I am 1,000 miles away from work and will not be able to go. Should I call work and ask them to give me sick leave? Are they required to notify me if I'm being furloughed? Will I be charged annual leave or sick leave?

A15: If you are on any form of paid leave, you should be contacted and advised that your paid leave status is canceled. At that point you will have the option of returning to work. If you choose not to, you will be placed in furlough status, and there will be no charge to leave balances. Whether or not you get paid at a later date will be determined by Congress.

Q16. I understand that there is no paid leave associated with the shutdown. My question relates to Article 30 (my infant is five weeks old). I am currently out on maternity leave, taking portions of annual leave, sick leave, and LWOP. Am I still able to take annual leave and sick leave in this status? If not, will it all be converted to furlough LWOP? And if so, how do I go about paying for my TSP contribution, health insurance, dependent care and flex spending Accounts?

A16: You will be placed in a furlough status. That is different than LWOP and will not count against your limitation for FMLA purposes. If you do not have sufficient pay to cover your TSP contribution, it will cease for that pay period. Your contribution to FEHB will be suspended and will be made up in the next pay period in which you have sufficient pay to make up the contribution. You will not lose FEHB coverage. For flexible spending and dependent care, payroll deductions will cease for any employee that does not receive pay. The employee remains enrolled in FSAFEDS, but eligible health care claims incurred during a non-pay status will not be reimbursed until the employee returns to a pay status and allotments are successfully restarted. The remaining allotments are recalculated over the remaining pay periods to match the participant's election amount. Eligible dependent care expenses incurred during a non-pay status may be reimbursed up to whatever balance is in the employee's dependent care account as long as the expense incurred during the non-pay status allows the employee (or spouse if married) to work, look for work or attend school full-time.

Q17. I am currently out of the country on leave with little to no way to return for approximately a week. I understand that I am furloughed. But is there any chance I can be fired for not showing up to work?

A17: You should advise your facility of your location and status. Your leave will be canceled and you will be placed in a furlough status. When you return home as planned, go in for your next regularly scheduled shift.

C) PAY

Q1. Will excepted employees be paid for performing work during a shutdown furlough? If so, when will excepted employees receive such payments?

A1: Agencies will incur obligations to pay for services performed by excepted employees during a lapse in appropriations, and those employees will be paid after Congress passes and the President signs a new appropriation or continuing resolution.

Q2. Will employees who are furloughed get paid?

A2: Congress will determine whether furloughed employees receive pay for the furlough period.

Q3. May an excepted employee be permitted to earn premium pay (e.g., overtime pay, Sunday premium pay, night pay, OJTI, and all other premiums and differentials contained in NATCA's collective bargaining agreements) during the furlough period?

A3: Yes. Excepted employees who meet the conditions for overtime pay, Sunday premium pay, night pay, and other premium payments will be entitled to payment in accordance with applicable rules, subject to any relevant payment limitations. Premium pay may be earned but cannot be paid until Congress passes and the President signs a new appropriation or continuing resolution.

Q4. If the next regularly scheduled pay date occurs during the shutdown, will employees be paid?

A4: Employees will receive pay for pay periods that were completed prior to the shutdown even if the pay date is during the shutdown.

If a shutdown occurs in the middle of a pay period, employees will receive pay on the regularly scheduled pay date for the time worked prior to the shutdown.

Q5. Will pay continue to be administered every other Tuesday?

A5: Future pay will accrue and remain unpaid until the government is funded and the shutdown ends.

D) TRAINING

Q1. During the last shutdown, I was halfway through my training and went to work every day. Now, I am a CPC-IT but have not yet certified on any positions. Do I still go to work as scheduled if the shutdown is still going on?

A1: If you are an excepted employee, then you should report to duty on your next regularly assigned shift.

Q2. Can we still actively conduct training during the shutdown?

A2: Operational training should be allowed as an excepted activity.

E) FEDERAL CONTRACT TOWERS

Q1. How does the shutdown affect Federal Contract Towers (FCT)?

A1: We confirmed with the FAA FCT Program Office that FCTs will continue to operate as long as they have funding on their service contract.

F) MISCELLANEOUS

Q1. Flight Deck Training (FDT): How long does an employee that is out on Flight Deck Training have to return?

A1: All outbound (new) FDTs are cancelled until there is funding. Inbound FDTs are authorized to return on their filed return FDT paperwork.

Q2. For those of us planning to transfer facilities, how does this affect us?

A2: You should report to your facility on the date you are expected for further direction. Employees that have no position certifications in their current facility will likely be determined to be "non-excepted," meaning subject to furlough during the shutdown.

Q3. May an excepted employee be permitted to earn compensatory time off and credit hours (under flexible work schedules) during the shutdown period?

A3: Yes. With agency approval, excepted employees may earn compensatory time off and/or credit hours subject to requirements found in NATCA's collective bargaining agreements for excepted activities.

G) ORDERLY SHUTDOWN

Q1. I have a co-worker telling me that all employees affected by the shutdown are to report to work for three hours to perform an orderly shutdown. The notification I received from management was that we simply not show up. Which is true?

A1: The information below is taken from the Agency's shutdown furlough guidance. If as a "non-excepted" employee your position requires any of the activities listed below, you are likely expected to report for shutdown activities. If you have not been so notified, you can try messaging the supervisor for confirmation.

Q2: What activities are included under the concept of orderly shutdown?

A2: Shutdown Activities include:

- Adjusting Microsoft Outlook and Voice Mail; Out of Office; Messages.
- Securing files (computer or hard copy).
- Communicating your status as a furloughed employee to necessary business contacts both inside and outside the agency
- Canceling meetings, hearings, and other previously arranged agency business.
- Documenting the status of current projects so that these can be resumed, transferred or otherwise appropriately handled when FAA's funding situation is resolved.
- Completing timecard to reflect hours already worked for the current pay period
- Completing Travel Vouchers.

Q3: Are all employees required to report for work on the day on which an shutdown furlough begins?

A3: A determination regarding reporting to work and the amount of time each non-excepted employee works on the day a furlough begins will be made by employees' managers on a case-by-case basis. These activities normally take less than an hour but may take up to 4 hours. Once the furlough begins, excepted employees are required to be at work.

Q4: Do non-excepted employees have to report to their offices for orderly shutdown activities on the day a shutdown furlough begins?

A4: With management approval, a non-excepted (furloughed) employee may be permitted to conduct shutdown activities from a remote location, even without an existing telework agreement, if the nature of the employees' shutdown activities can be accomplished in a brief period of time. For example, receiving and acknowledging receipt of an electronic furlough notice and adjusting voicemail and email to reflect current work status.