

# Addendum to OPM Guidance for Shutdown Furloughs

September 29, 2023



## Guidance on Leave, Unemployment Compensation, Thrift Savings Plan, Retirement Services, and Workers' Compensation

### Leave

In section F. (Leave and Other Time Off) of the OPM [Guidance for Shutdown Furloughs](#), we are revising Questions F.6. and F.7. and adding Questions F.21., F.22., and F.23. as follows:

**6. Does leave under FMLA that is scheduled to be taken during a shutdown furlough period count toward the employee's 12-week FMLA leave entitlement?**

No. OPM considers any previously scheduled FMLA leave that occurs during a lapse in appropriations to be canceled—unless the employee is an excepted employee who elects to use leave under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any LWOP that was previously scheduled to be used under FMLA during a period when there is a lapse in appropriations will remain as LWOP, but the LWOP will not be considered FMLA leave and will not count against the FMLA 12-week limit. If an employee had previously scheduled to substitute qualifying paid leave for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled (see Questions F.1. and F.2.) and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). We anticipate that excepted employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 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. The canceled FMLA unpaid leave periods (converted to regular LWOP) and the canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit.

**7. If an employee is scheduled to take appropriate paid leave under FMLA during a shutdown furlough, should the employee be furloughed? Will the employee be paid for the periods scheduled to be in paid leave status by substituting paid leave under FMLA?**

During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including paid leave substituted for FMLA LWOP) during the furlough period must be automatically canceled. Thus, any periods of scheduled paid leave or other paid time off must be documented as furlough periods.

For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will remain in LWOP status, but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.) For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting paid leave for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.)

**21. How does a shutdown furlough affect an employee who is scheduled to take approved paid parental leave (PPL) in substitution for unpaid FMLA leave? Does PPL that is scheduled to be taken during a shutdown furlough period count toward the employee's limited entitlement to 12 weeks of FMLA leave and 12 weeks of PPL in an applicable 12-month period?**

In order to receive paid parental leave (PPL), an employee must invoke unpaid leave under the Family and Medical Leave Act (FMLA) for the birth of a child or placement of a child with the employee for adoption or foster care. PPL is a form of paid leave provided via substitution for FMLA unpaid leave.

During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including PPL substituted for FMLA LWOP) during the furlough period must be automatically canceled. Thus, any absences on days of scheduled PPL, other paid leave, or other paid time off are documented as furlough days.

For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting PPL for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.) For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will remain in LWOP status, but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.)

If an employee had previously scheduled to substitute PPL for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled (see Questions F.1. and F.2.) and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). We anticipate that employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 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. The canceled periods

of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit in a 12-month period.

- 22. In order to be eligible for FMLA leave (and to substitute paid parental leave (PPL) or other paid leave for FMLA unpaid leave), an employee must have 12 months of creditable Federal civilian service as specified in 5 U.S.C. 6381(1)(B). Does time spent in furlough status count towards this 12 months of required Federal service?**

Yes, furlough time counts toward the FMLA 12-months-of-Federal-service eligibility requirement in 5 U.S.C. 6381(1)(B). Neither the title 5 FMLA law or regulations provide for excluding furlough time or any other nonpay status time in determining whether an employee has 12 months of creditable service for purposes of FMLA eligibility. A Federal employee who is furloughed continues to be employed; the placement of the employee in a temporary nonduty, nonpay status does not terminate the employment relationship. (See also Question J.1. for more information on the creditability of nonpay status periods for various purposes.) We note that under U.S.C. 1341(c)(2) furlough periods are generally retroactively converted to pay status periods once the lapse has ended.

- 23. Under the title 5 paid parental leave (PPL) law, an employee who has substituted PPL for unpaid FMLA leave is required to work for the applicable employing agency (i.e., the agency employing the employee at the time paid parental leave concludes) for 12 weeks after the day on which use of PPL concludes. Does time spent in furlough status count towards the required 12 weeks of work?**

No. By definition, a furlough period is a period on non-duty status. It does not count as a period of work meeting the 12-week work obligation. See the definition of “work” in the PPL regulations at 5 CFR 630.1705(b)(2).

## Unemployment Compensation

In section I. (Employee Assistance), we are revising Question I.1. as follows:

- 1. Are employees entitled to unemployment compensation while on furlough?**

It is possible that furloughed employees may become eligible for unemployment compensation. 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](#).”) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor’s website provides links to individual State offices (See Department of Labor’s website at [Unemployment Benefits Finder | CareerOneStop](#)). States will require you to provide your Agency’s Federal Identification Code when you file your application.

## Thrift Savings Plan

In section I. (Employee Assistance), we are revising Question I.2. as follows:

### **2. Can I take a Thrift Savings Plan (TSP) loan while I'm furloughed?**

A lapse in appropriations does not prevent TSP participants from requesting a new TSP loan. The established eligibility requirements continue to apply. TSP participants can go to [TSP.gov/tsp-loans](https://www.tsp.gov/tsp-loans) or [read the TSP Loans booklet](#) for more information about eligibility requirements.

## Retirement Services

In section M. (Retirement Services: Government Closure), we are revising Questions M.2., M.3., M.4., and M.6 as follows:

### **2. How can I make updates or changes to my retirement benefits?**

OPM's Retirement Services is available to assist you with your retirement benefits. As always, you can make many of these changes online through [Services Online](#) or by calling Retirement Services at (888) 767-6738. Due to the volume of calls, we recommend that you first use the online services site to make immediate updates and changes. You can also find general information at [OPM.gov/retire](https://www.opm.gov/retire).

### **3. How do I report the death of a family member during a Government shutdown?**

You can refer to our website [Annuitant Death Index - RS Reporting \(opm.gov\)](#) for information on reporting the death of a current retiree and applying for any benefits, or by calling us directly at (888) 767-6738. If the family member was a Federal employee at the time of death, survivors must contact the agency for which the deceased worked. If the employing agency is closed, you may need to wait until after the shutdown ends to begin the process.

### **4. I recently retired from Federal service. Will my retirement application be delayed by a Government shutdown?**

If your agency or payroll center submitted your retirement application to OPM, you will begin receiving interim annuity payments while OPM Retirement Specialists process your application. Because OPM Retirement Services is funded by the trust fund it manages, OPM Retirement Services employees will still be working normal operating hours during a Government shutdown.

If your agency or payroll center has not yet submitted your retirement application or the application is incomplete, you will likely experience some delay as OPM must wait on other agencies to submit all the information needed to process your retirement. Some functions of these agencies may not be operating during a Government shutdown.

6. Can I submit a court order that awards a retirement benefit to OPM during a Government shutdown?

Yes. OPM employees will continue working to process court ordered retirement benefits.

## Workers' Compensation

In section O. (Benefits under the Federal Employees' Compensation Act (FECA)), we are revising the Note to Section O. as follows:

**Note to Section O:** Any additional questions regarding Federal workers' compensation benefits should be directed to the [Division of Federal Employees', Longshore and Harbor Workers' Compensation](#), Office of Workers' Compensation Programs, U.S. Department of Labor.