



State of West Virginia
OFFICE OF THE ADJUTANT GENERAL
1703 COONSKIN DRIVE
CHARLESTON, WEST VIRGINIA 25311-1085

James A. Hoyer
Major General, WVARNG
The Adjutant General

(304) 561-6317
DSN: 623-6317
FAX (304) 561-6327

NGWV-TAG

APR 04 2011

MEMORANDUM FOR RECORD

SUBJECT: Actions in the Absence of Budget Authority

1. In the event of a lack of Budget Authority, either a Defense Appropriations Act or Continuing Resolution Authority, the following guidance applies. This is a compilation of direction received from the National Guard Bureau.
2. In general, AGR and ADOS personnel on valid orders report for duty; but, all other training and related activity is halted with the exception of emergency operations involving functions or activities necessary to protect life and property and for response to emergencies, including fire protection, physical security and law enforcement. Certain Technician personnel may be designated as "exempt" and be required to perform duty in support of initial operations such as processing personnel actions relating to the shutdown.
3. While AGR and ADOS personnel on valid orders report for duty, they will receive no pay during the shutdown. All pay earned will be provided upon enactment of proper budget authority and resumption of normal operations.
4. Examples of activities exempt from the shutdown period include; forward based combat, combat support and combat service support units and forward deployed units executing CJCS or COCOM operations or deployment orders and units supporting counterdrug operations.
5. Examples of non-exempt activities during the shutdown period include:
 - Basic skill and qualification training that obligates current year funds.
 - Training activity that improves skills and proficiency but not necessarily oriented towards specific operational contingency or wartime tasking.
 - Training exercises not essential to the execution of wartime or OPLAN tasking.
6. Both Active Duty and National Guard or Reserve personnel will cease training unless their unit is providing direct support to ongoing exempt activities. All military personnel performing non-exempt training in a TDY status should return to their home station as expeditiously as possible within carrier availability. This policy will result in additional costs and waste; however, under the law, no other option is available.
7. Contract employees must comply with the guidance given by their supervisor (i.e. the contractor). In most cases, they cannot occupy government facilities if there are no government

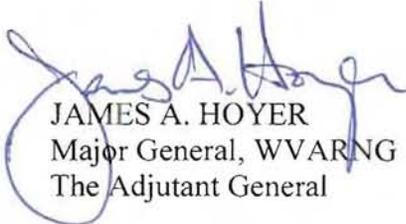
employees there. The contractor will decide if they work from government facilities, home, or, if at all. They still have a valid contract to provide a service.

8. Federally reimbursed State employees report to duty subject to State guidance.

9. Rollup:

Status	Duty?	Comments
AGR	Yes	Will accrue pay and allowances but will not be paid until resumption of Government Operations
Tech	No	The law will determine extent of pay during a Government shutdown.
IDT, RST, RMP, AFTP, RUTA	No	Possible rare exception if supporting Other Contingency Operations (OCO). RST/RUTA performed before the loss of budget authority will be paid. RST cannot be performed in absence of budget authority.
AT	No	Possible rare exception if supporting OCO.
ADOS	Yes	During period of duty covered by existing, valid orders.
Points Only	No	This is still an obligation that cannot be made.
Counterdrug	Yes	Activity is exempt from shutdown period pending updated or subsequent direction from NGB.
OCO	Maybe	Some activities supporting OCO are essential. This will require a case by case analysis.
OCO Spt	Maybe	Necessary activities (ASP, Range Control, Billeting, TISA, Maint) to support OCO.
TDY	No	TDY Personnel, even AGRs, should return. Possible OCO exceptions.
State Military Authority	Yes	Cooperative Agreements are a funded contract. Extent of funding will be determined for individual appendices. Payment will not be made until there is budget authority.
GPC	No	We have no authority to obligate funds.
Awarded Contracts	Yes	Awarded contracts must still be fulfilled. Contracts to be performed during a "shut down" should be subject to availability of funds.
New Contracts	No	We have no authority to obligate funds.
Contract Employees	Yes	Subject to guidance from the contractor. There is a valid contract that must be fulfilled. Their place of work may have to change. We should evaluate if we need the contract and amend it if necessary.
Shipping	No	We have no authority to obligate funds.

10. Attached are frequently asked questions pertaining to Furlough of National Guard Technicians for 30 days or less. Office of Primary Responsibility (OPR) for Furlough questions is the HRO; overall OPR for Actions in Absence of Budget Authority is the USPFO.



JAMES A. HOYER
Major General, WVARNG
The Adjutant General

1 Attachment – As Stated

Distribution – “A”

FURLOUGH OF NATIONAL GUARD TECHNICIANS FOR 30 CALENDAR DAYS OR LESS

1. Q. What is a furlough?

A. 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.

2. Q. What Technician Personnel Regulation covers furloughs for 30 continuous calendar days or less (22 workdays when days on furlough are not continuous)?

A. Section 3-7, TPR 715.

3. Q. Is there a requirement to notify technicians in advance of being furloughed?

A. Notices of furloughs should be given to affected technicians at least 24 hours before the furlough is effected. However, if emergencies or unforeseen circumstances prevent issuance of advance written notices, notify technicians orally, and follow up with written notice as soon as possible.

4. Q. What information should be included in the notice?

A. There are three items of information required: (1) reason (s) for the furlough, (2) estimated length of the furlough, and (3) right to have the furlough action reviewed by the state Adjutant General. If applicable, inform the technicians regarding the reasons why some are furloughed and others are exempt.

5. Q. May employees take other jobs while on furlough?

A. Even while on furlough, an individual is an employee of the Government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes which prohibit certain outside activities. Agencies also have varying supplemental rules regarding the requirement for prior approval of outside employment, and some prohibit certain types of outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their own agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

6. Q. When an employee's pay is insufficient to permit all deductions to be made, what is the order of withholding precedence?

A. Each employing agency is responsible for establishing an order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions. The established order of precedence must comply with any applicable laws, regulations or other legal authority, including the regulations in title

5 CFR: section 550.301 (dealing with allotments), section 550.805(e) (dealing with back pay awards), section 550.1104 (dealing with collecting debt to the Government via salary offset), section 581.105 (dealing with garnishments for child support and/or alimony), and section 582.103 (dealing with garnishments for commercial debt). Consistent with 5 U.S.C. 8334(a)-(c) and 8422(a)-(c), retirement deductions are made before any other deduction.

7. Q. Can an employee obtain a loan from their Thrift Savings Plan (TSP) account while in a nonpay status? What happens if an employee has a TSP loan and is placed in a nonpay status?

A. An employee may not obtain a loan from their TSP account while in a nonpay status. As to current TSP loans, employees should refer to the TSP Fact Sheet - *Effect of Nonpay Status on TSP Participation*. This issuance is available from the TSP web site at <http://www.tsp.gov/>.

8. Q. Is furlough or leave without pay (LWOP) considered a break in service?

A. No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, extended furlough or LWOP may affect the calculation of creditable service for certain purposes.

9. Q. To what extent does nonpay status affect civil service benefits and programs?

A. Nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) is credited as follows:

- For career tenure, the first 30 calendar days of each nonpay period is creditable service.
- For completion of probation, an aggregate of 22 workdays in a nonpay status is creditable service.
- For time-in-grade requirements, nonpay status is creditable service.
- For retirement purposes, an aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411). The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.
- For health benefits, enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 CFR 890.303(e)). The Government contribution continues while employees are in a nonpay status. The Government also is responsible for advancing from salary the employee share as well. The employee can choose between paying the

agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.

- For life insurance, coverage continues for 12 consecutive months in a nonpay status without cost to the employees (5 CFR 870.401(c)) or to the agency (5 CFR 870.401(d)). The nonpay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.
- For within-grade increases, an aggregate of 2 workweeks nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 CFR 531.406(b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek nonpay status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 CFR 532.417(b)).
- For annual and sick leave, when a full-time employee accumulates 80 hours of leave without pay, the amount of annual and sick leave that may be accrued in that pay period is reduced by the amount of leave the employee would normally earn during the pay period (5 CFR 630.208). When a part-time employee is in a nonpay status, he or she will accrue less annual leave and sick leave, since part-time employees earn leave on a pro-rata basis--i.e., based on hours in a pay status (5 CFR 630.303 and 630.406). For purposes of computing accrual rates for annual leave, creditable service for time in a nonpay status is limited to an aggregate of 6 months in a calendar year (5 U.S.C. 6303(a) and 8332(f)).
- For severance pay, nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595(b)(1) and 5 CFR 550.705. However, for purposes of determining service creditable towards the *computation* of an employee's severance pay fund under 5 U.S.C. 5595(c)(1) and 5 CFR 550.707-708, no more than 6 months of nonpay status time per calendar year is creditable service. (This is the same rule used in crediting nonpay status time as "service" in determining annual leave accrual rates.)
- For military duty or workers' compensation, nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

10. Q. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?

A. Generally there will be no effect on the high-3 average unless the furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.

11. Q. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?

A. Yes.

12. Q. What happens to retirement and insurance in a *discontinuous* furlough?

A. As explained above, retirement credit is not affected as long as an employee does not exceed 6 months of nonpay status in a calendar year. Retirement deductions are taken on the basic pay the employee earns during the pay period.

Federal Employee Health Benefit (FEHB) premiums are deducted from the employee's pay. If the employee's pay is insufficient to cover the FEHB premium, the agency must forward the full premium to the Employee Health Benefits Fund. The employee can pay the premium directly to the agency or have it withheld from pay when he or she returns to regular duty. The enrollment continues for up to 365 days of nonpay status. The nonpay status may be a continuous period or it may include an employee's return(s) to pay status for a period(s) of less than 4 consecutive months.

Federal Employee Group Life Insurance (FEGLI) coverage continues, and contributions made by the employee and the employee's agency continue if the employee's salary in each pay period is sufficient to cover deductions. If the employee's salary is insufficient to cover his or her withholding, the employee's coverage will continue for up to 12 months without cost to the employee or the employee's agency.

13. Q. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program if the agency is unable to make its premium payments on time?

A. Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

14. To what extent does non-pay status affect Flexible Spending Account (FSA) coverage?

A. Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Flexible Spending Account (FSA) premium(s). If the employee is in a non-pay status and has not pre-paid the FSA allotment, their FSA account will be frozen and the employee will not be eligible for reimbursement of any health care expenses incurred during that period until he/she returns to a pay status and allotments are successfully restarted. However, if the employee has a Dependent Care Flexible Spending Account (DCFSA), dependent care expenses incurred during the period in a non-pay status which meet IRS guidelines for eligible expenses (i.e., the employee must incur the expenses in order to allow the

employee and his/her spouse to work or attend school) may be reimbursed up to the FSA account balance. When the employee returns to a pay status, allotments will be recalculated based on the number of pay dates remaining in the Benefit Period. If the employee prepays his/her premiums by accelerating allotments prior to being placed in a non-pay status, allowable health care expenses incurred during the period in a non-pay status will be eligible for reimbursement. Visit the TSP website, www.fsafeds.com for more information.

15. To what extent does non-pay status affect Long Term Care (LTC) coverage?

A. Deductions cease when in the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue Long Term Care (LTC) coverage, the employee must make payments while in a non-pay status. Visit the LTC website, <https://www.ltcfeds.com/documents> for more information.

16. To what extent does non-pay status affect Federal Employees Dental and Vision Insurance Plan (FEDVIP) coverage?

A. Deductions cease when in the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue FEDVIP coverage, the employee must make payments while in a non-pay status. June 2008 Visit the FEDVIP website, <http://www.opm.gov/insure/DentalVision> for more information.

17. Q. If employees request paid leave--i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation--after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?

A. The answer to both questions is yes, and this guidance applies whether it is a "shut-down" or "emergency" furlough or a "save money" furlough.

In a "shut-down" or "emergency" furlough, all paid leave during a furlough is canceled because the necessity to furlough supersedes leave rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the Government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

18. Q. May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations--i.e., a "shut-down" or "emergency" furlough? May *excepted* employees be granted new requests for paid leave during the lapse in appropriations?

A. No. When an employee is not at work and performing the duties determined by the employing agency to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, agencies must take one of the following actions:

(1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or

(2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be charged with insubordination.

19. Q. If employees are receiving Continuation of Pay (COP) due to job-related injuries, can the COP be terminated or interrupted by furlough?

A. No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.

20. Q. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Agencies or employees should submit their questions to the appropriate State office.

21. Q. How is time on furlough and leave without pay documented?

A. An SF-50, "Notification of Personnel Action," must be prepared for each individual subject to furlough (or a list form of notification for a group of employees who are to be furloughed on the same day or days each pay period). A return-to-duty SF-50 is necessary only for return from a consecutive furlough.

22. How is a technician recalled from furlough?

A. Since a furlough lasts for a specific period of time, the technician is expected to return to duty at the end of that period without further notice.

23. What happens if a technician fails to return to duty from furlough status?

A. Removal action should be taken as prescribed in Section 2-4, TPR 715, Abandonment of Position.

24. Q. What is an agency's obligation to bargain when it becomes necessary to furlough employees?

A. The decision to furlough employees is a management right protected from collective bargaining by 5 U.S.C. 7106 (a)(2)(A). However, the agency must bargain over the impact and implementation of its decision and over appropriate arrangements for employees adversely affected by the furlough, unless the matter of furloughs is already "covered by" the agreement. See, in this connection, 47 FLRA Nos. 96, 99 and 114, and other cases in which the Authority has applied its "covered by" doctrine to determine whether the agreement provisions relieve the agency of any duty to bargain on impact and implementation on this matter. If in doubt, prudence dictates that the agency give adequate notice and bargain on impact and implementation rather than run the risk of being ordered to pay back pay to furloughed employees as a remedy for committing a refusal-to-bargain unfair labor practice.