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Federal Employee Furloughs: Types and Implications

Federal employees perform complex duties in pursuit of the diverse missions of their agencies. Some outcomes of the federal budget process have significant implications for employees. Among other impacts, certain budgetary situations may result in employee furloughs (i.e., placement in temporary non-duty, non-pay status because of lack of work or funds). Furloughs affect how agencies perform their missions and may affect the well-being of employees. This *In Focus* discusses the two types of furloughs as well as related procedures, case studies, and some potential issues for Congress.

Two Types of Furloughs

The term *furlough* refers to two types: *shutdown furloughs* (also called *emergency furloughs*) and *administrative furloughs* (also called *money-saving furloughs*). Both types involve placement of an affected employee in a temporary non-duty, non-pay status because of lack of work or funds or other non-disciplinary reasons but with continued benefits under certain conditions. Because furloughs are temporary, they may be distinguished from the permanent separation of employees (e.g., through permanent reductions in force (RIFs)). The Office of Personnel Management (OPM) has provided detailed guidance to executive agencies on both types of furloughs, including related topics such as pay, leave, and benefits during furlough status. However, the two types of furloughs differ in several respects, as discussed below.

Shutdown (“Emergency”) Furloughs

Statutory framework. Shutdown furloughs are generally governed by provisions known as the Antideficiency Act including, Title 31, Sections 1341-1342, of the *United States Code*. Among other things, this law generally prohibits agencies from accepting voluntary services and employing personnel services exceeding those authorized by law, “except for emergencies involving the safety of human life or the protection of property” (31 U.S.C. § 1342). In a shutdown, an agency may suddenly lack authority to obligate and spend certain funds due to a temporary lapse in annual appropriations or the expiration of an authorizing act that provides access to certain funds. When a lapse in funding occurs, the law requires agencies to cease activity and furlough employees, with some exceptions. For employees who are paid from affected funds, some employees by law may be “excepted” from a shutdown furlough. For example, employees whose duties involve the safety of human life or the protection of property may be told by an agency to come to work during the period of time in which funds are lapsed or unavailable. Employees who are funded by other, non-lapsed sources of funding may be called “exempt” from a shutdown furlough.

Procedures. The Office of Management and Budget (OMB) and OPM outline procedures for shutdown furloughs (see “Selected References” box). A shutdown furlough is considered to be an adverse action, which provides employees with certain notice and appeal rights under applicable regulations (5 C.F.R. Part 752, relating to adverse action procedures). Agencies are responsible for notifying employees of the furlough as soon as possible. In contrast with administrative furloughs, the length of a shutdown furlough does not affect the furlough’s implementation procedures. OPM guidance explains: “For most employees, shutdown furloughs lasting 30 calendar days or less (22 workdays) are covered by ... adverse action procedures.” Shutdown furloughs lasting longer than this duration are also covered by adverse action procedures instead of RIF procedures, because the ultimate duration of a shutdown furlough is not known in advance. OPM advises, “When the shutdown furlough goes beyond 30 days, agencies should treat it as a second shutdown furlough and issue another adverse action or furlough notice.”

Pay. Before 2019, employees who were furloughed during a shutdown were not entitled to retroactive pay for the days furloughed. After an extended shutdown in FY2019, however, Congress and the President enacted the Government Employee Fair Treatment Act (P.L. 116-1), which statutorily requires retroactive pay for furloughed employees following the end of a lapse in appropriations (31 U.S.C. § 1341(c)).

Leave and benefits. The Antideficiency Act requires agencies to cancel paid time off scheduled during a shutdown furlough. In many situations, a shutdown furlough would not affect the accrual of annual leave and sick leave. OPM guidance explains, “If an employee is furloughed (i.e., placed in non-pay status) for part of a biweekly pay period, the employee’s leave accrual will generally not be affected for that pay period.” However, a lengthier shutdown furlough may affect the accrual of leave. Generally, benefits such as health insurance continue during a shutdown furlough. However, federal employees may need to wait until they are returned to pay status before they can adjust their benefits.

Case study: FY2014 shutdown. A funding gap began on October 1, 2013, the first day of FY2014, that resulted in a shutdown furlough of many federal personnel. The shutdown lasted 16 full days until an interim continuing resolution resumed funding. Initial reports suggested, based on the contents of agency shutdown plans, that 800,000 or more executive branch employees had been furloughed. Three weeks after the shutdown terminated, OMB released a retrospective report that indicated that the shutdown

resulted in the furlough of “roughly 850,000 employees per day” at its peak in the first few days of October, or approximately 40% of the federal civilian workforce. The number of furloughs varied over time, because agencies adjusted employees’ “excepted” status in response to changing circumstances.

Administrative (“Money-Saving”) Furloughs

Statutory framework. Under federal appropriations law, agencies have some discretion over how to allocate funds within a budget account and very limited discretion to reallocate funds across budget accounts. Agencies may attempt to exercise this discretion during budget execution. In response to budget situations, agencies may need to implement administrative furloughs in order to function within available funding in carrying out their missions. OPM guidance explains that “an administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations.”

Procedures. When implementing an administrative furlough, agencies consider funding-related circumstances and mission priorities in determining which employees may be affected. The agencies are responsible for notifying the selected employees that the administrative furlough applies to them. OPM guidance includes sample letters that notify an employee of an administrative furlough. Agencies may have considerable discretion in implementing administrative furloughs. The furlough days may be scheduled consecutively or discontinuously. For example, OPM advises, “An agency may furlough employees for 1 day a pay period for a finite period of time, designate a number of furlough hours, shut down the entire agency for a defined number of days, designate specific dates as furlough days off, or allow employees to select their own furlough time off.”

The duration of an administrative furlough has implications for the types of procedures used to implement the furlough. OPM refers to two different types of administrative furloughs: *short furloughs* and *extended furloughs*. A short administrative furlough does not extend past 22 work days or 30 calendar days and follows adverse action procedures (5 C.F.R. Part 752). Extended administrative furloughs lasting longer than 22 work days or 30 calendar days follow RIF procedures (5 C.F.R. Part 351). In this context, OPM guidance advises that “a furlough is a temporary placement in non-pay/non-duty status; it is not a permanent separation from service,” even when RIF procedures are used to implement the furlough.

Pay. Administrative furloughs reduce an agency’s personnel costs, because employees are not required to be paid for furlough days and, in practice, are not paid for these days. This is one way to constrain spending in order to absorb a reduction in funds.

Leave and benefits. During furlough days, employees are not permitted to take paid leave. Administrative furloughs do not generally impact the accrual of annual or sick leave but may affect the accrual of leave if they are longer in

duration. Generally, OPM advises that employees retain their health insurance and life insurance coverage as long as their salaries remain sufficient to pay the premiums.

Case study: FY2013 sequestration. In March 2013, the President ordered a *sequester* (i.e., across-the-board spending reductions) of non-exempt programs, activities, and accounts pursuant to the Budget Control Act of 2011 (P.L. 112-25). One way in which many agencies addressed these budget cuts resulting from the FY2013 sequester was to use administrative furloughs. CRS is not aware of overall executive-branch-wide statistics associated with sequestration-related furloughs. In 2014, however, the Government Accountability Office (GAO) reported, “Seven of the [23 large] agencies that we reviewed furloughed a combined total of more than 770,000 federal employees for 1 to 7 days.” Subsequently, OPM’s web page on furloughs currently indicates, “Furloughs that would potentially result from sequestration would generally be considered administrative furloughs.”

Issues for Congress

The use of furloughs raises a number of questions for Congress. To what extent do furloughs affect employee morale, engagement, and retention and agency performance and efficiency? Can furloughs be avoided through choices in the budget process?

In addition, shutdown and administrative furloughs may each pose different potential issues for Congress related to oversight and legislation:

- **Shutdown furloughs.** What are the criteria for designating employees as “excepted” from furlough? Are agencies correctly complying with the Antideficiency Act? Are agency shutdown plans being properly developed and implemented?
- **Administrative furloughs.** How do agencies determine which employees are furloughed? To what extent are agencies authorized to use budget transfer authorities to avoid administrative furloughs? Are agencies using transfer authorities appropriately?

Selected References

- OPM, “Pay & Leave: Furlough Guidance,” at <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/> (web page links to detailed PDF files below).
- OPM, *Guidance for Shutdown Furloughs*, September 2015 (PDF).
- OPM, *Guidance for Administrative Furloughs*, March 2017 (PDF).
- 5 U.S.C. §§3501-3503; 5 C.F.R. Part 351 (RIF procedures).
- 5 U.S.C. §§7511-7515; 5 C.F.R. Part 752 (adverse action procedures).
- CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.
- GAO, *2013 Sequestration: Agencies Reduced Some Services and Investments, While Taking Certain Actions to Mitigate Effects*, GAO-14-244, March 2014.

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