



Federal Employee Pay in the Context of a Government Shutdown

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As Congress debates a continuing appropriations measure to avoid a lapse in appropriations and government shutdown at the beginning of the new fiscal year, Members and staff may seek to understand how a shutdown would affect federal employee pay. The [Government Employee Fair Treatment Act of 2019](#) (P.L. 116-1) guaranteed that all employees of the federal government will be paid following the end of a [government shutdown](#).

Applying the Government Employee Fair Treatment Act to Federal Employees

This [statutorily guaranteed](#) retroactive pay applies to [furloughed employees](#) and employees who are required to work during a shutdown. The Office of Personnel Management (OPM) [defines furlough](#) as “the placing of an employee in temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.” Employees who are required to work during a shutdown are referred to as “[excepted](#)” from furlough. The law states that the term *excepted employee* carries the same meaning as the definition used by OPM. In a [guidance document](#) issued in December 2021, OPM defined *excepted employees* as those “whose work is funded through annual appropriations but who are not furloughed because they are performing tasks that, by law, are allowed to continue during a lapse in appropriations.”

P.L. 116-1 applies to any government shutdown caused by a lapse in appropriations that occurs on or after December 22, 2018. It requires that employees, furloughed and excepted, be paid at their standard rates of pay at the “earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates.” Under the law, furloughed employees may not use previously approved [leave](#) and other paid time off during a lapse in appropriations. However, excepted employees are allowed to use approved leave during a lapse. Alternatively, an agency may excuse an excepted employee from duty and place the employee on furlough status for the approved period.

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Government Shutdowns and Federal Employee Pay Before P.L. 116-1

Prior to P.L. 116-1, employees who were furloughed during government shutdowns were not entitled to retroactive pay for the days furloughed. However, federal employees furloughed under shutdowns generally received their pay retroactively as a result of legislation to that effect after the conclusion of the shutdown. For example, a [continuing resolution provision](#) required that employees who were furloughed during the [FY2014 government shutdown](#) be paid retroactively:

Employees furloughed as a result of any lapse in appropriations which begins on or about October 1, 2013, shall be compensated at their standard rate of compensation, for the period of such lapse in appropriations, as soon as practicable after such lapse in appropriations ends.

A [similar provision](#) was enacted in Section 124 of P.L. 104-56 after the first FY1996 shutdown. This provision was [extended](#) by P.L. 104-94, which applied to the second FY1996 shutdown period.

Before the Government Employee Fair Treatment Act of 2019 became law, Congress authorized retroactive pay for excepted employees who worked during government shutdowns by ratifying and approving the obligations incurred in anticipation of appropriations. For example, the continuing resolution that was enacted following the FY2014 shutdown included [the following provision](#):

All obligations incurred in anticipation of the appropriations made and authority granted by this joint resolution for the purposes of maintaining the essential level of activity to protect life and property and bringing about orderly termination of Government functions, and for purposes as otherwise authorized by law, are hereby ratified and approved if otherwise in accord with the provisions of this joint resolution.

Congress pursued similar courses of action regarding the two FY2018 shutdowns.

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