

**STATE OF OHIO
ADJUTANT GENERAL'S DEPARTMENT
2825 West Dublin Granville Road
Columbus, Ohio 43235-2789**

AGOH-HRO-Z

18 March 2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Human Resources Office Guidance in Case of Congressional Appropriations Lapse

1. **Reference.** National Guard Bureau Guidance in the Event of a Personnel Furlough (Encl 1); Furlough Guidance (TN-11-05) (Encl 2); Correction to paragraph 8 of TN-11-05 (Encl 3); and Furlough Q&A (Encl 4).
2. **Purpose.** The purpose of this memorandum is to provide information on human resources requirements and procedures in case of a lapse in Federal appropriations.
3. **Background.** Until such time as Congress and the President approve both the Appropriations and Authorization bills, funding for normal operations is provided for under a series of short-term continuing appropriations. Should a continuing resolution authority (CRA) expire without a follow-on appropriation, funding for normal operations would lapse. Continuing normal operations and obligating funds during a lapse constitutes a violation of the Anti-Deficiency Act. During a funding lapse, the Office of Management and Budget (OMB) requires all agency operations be shut down other than those required for the protection of life, property, and/or national security.
4. To prepare for the unlikely but possible eventuality that funding may lapse, command leadership will identify agency functions that must continue for the protection of life, property, and/or national security. Leadership should do this in partnership with labor representatives and with the advice of the Comptroller.
5. If a lapse occurs, leadership is required to inform the Human Resources Office which agency functions will continue and provide a by name list of technicians to be furloughed. Furloughed technicians may not use leave or volunteer their services to the agency during a lapse in funding. Commanders may use their discretion to grant leave to AGR or ADOS members, as per normal procedures.
6. All individuals on Active Duty orders (including AGR and ADOS) and non-furloughed technicians will continue to report to their duty stations. Dual and Non-Dual Status Technicians will be furloughed if they are not required for the support of continuing agency functions. Technicians may be informed of furlough verbally or telephonically, with written notice to follow. Pay may not be issued until the funding gap is bridged.
7. All military members' and technicians' health and life insurance will remain in effect. Furloughed technicians may pay their share of premium deductions upon return to work. Loans from TSP accounts are allowed during a lapse.

AGOH-HRO-Z

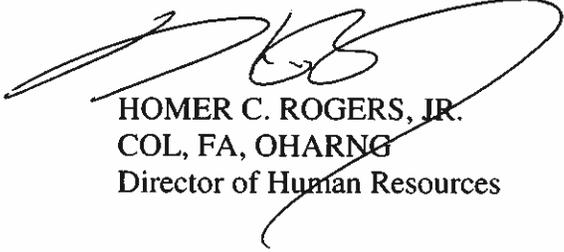
SUBJECT: Human Resources Office Guidance in Case of Congressional Appropriations Lapse

8. Furloughed technicians must be advised they will be required to report to work on the first full work day, following the end of a lapse in funding.
9. Direct questions regarding fulltime employee benefits and entitlements, during a furlough, to LtCol Michell Herder, Deputy HRO, DSN 346-7057 or 614-336-7057. Direct questions regarding obligation of funds during a furlough to your local Comptroller.

FOR THE ADJUTANT GENERAL:

4 Encls

1. CNGB Furlough Guidance
2. Furlough Guidance TN-11-05
3. Corrected para. 8 of TN-11-05
4. FAQs



HOMER C. ROGERS, JR.
COL, FA, OHARNG
Director of Human Resources

DISTRIBUTION:

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1636 DEFENSE PENTAGON
WASHINGTON DC 20301-1636

NGB-ZA

MAR 11 2011

MEMORANDUM FOR THE ADJUTANTS GENERAL OF ALL STATES, PUERTO RICO, THE U.S. VIRGIN ISLANDS, GUAM, AND THE COMMANDING GENERAL OF THE DISTRICT OF COLUMBIA

SUBJECT: National Guard Bureau Guidance in the Event of a Personnel Furlough

1. This memorandum provides National Guard Bureau guidance until the Department of Defense receives congressional action on the FY 11 federal budget. If the budget is not approved, or Congress fails to pass a Continuing Resolution Authority, the National Guard will not have the funds required to pay full-time National Guard federal technicians (Title 32, Dual Status and Non-Dual Status) in support of the operations and maintenance of Army and Air National Guard missions and activities. Technician personnel who are engaged in exempt activities will continue to work and be paid until all available Operation and Maintenance funds are expended. Technicians not engaged in exempt activities will be furloughed. Furlough is defined as the placement of an employee in a temporary non-pay and non-duty status.
2. All military personnel (Active Guard Reserve) will continue in a normal duty status regardless of their affiliation with exempt or non-exempt activities. Military personnel will serve without pay until such time as appropriated funds are available to compensate them for this period of service.
3. The NGB-J1 will immediately issue additional specific guidance to your Human Resource Officers (HROs). It is critically important that state HROs maintain close coordination with their U.S. Property and Fiscal Office for additional guidance provided by Army National Guard and Air National Guard Comptrollers.
4. Questions regarding this memorandum may be directed to COL Thomas Languirand, NGB-J1-TN, at 703-607-5419, or thomas.languirand@us.army.mil.


CRAIG R. MCKINLEY
General, USAF
Chief, National Guard Bureau

Encl 4

NGB-ZA

SUBJECT: National Guard Bureau Guidance in the Event of a Personnel Furlough

CF:

State Human Resource Officers

United States Property & Fiscal Officers

Director, Army National Guard

Director, Air National Guard

Comptroller, National Guard Bureau



NATIONAL GUARD BUREAU

1411 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3231

NGB-J1-TN

11 Mar 11

MEMORANDUM FOR THE HUMAN RESOURCE OFFICERS OF ALL STATES, THE COMMONWEALTH OF PUERTO RICO, THE U.S. VIRGIN ISLANDS, GUAM, AND THE DISTRICT OF COLUMBIA

SUBJECT: Furlough (TN-11-05)

1. References:

a. 5 C.F.R. § 2635, Standards of Ethical Conduct for Employees of the Executive Branch, 1 Jun 09.

b. TPR 715, Voluntary and Non-Disciplinary Actions, 13 Jul 07.

2. The Department of Defense (DoD) awaits congressional action on the FY11 Federal Budget. If not enacted soon, the Army National Guard (ARNG) and Air National Guard (ANG) will not have the funds to pay full-time National Guard Federal technicians (Title 32, Dual Status and Non-Dual Status) to support the operation and maintenance of ARNG and ANG missions and activities. The FY11 Continuing Resolution Authority (CRA), under which the Federal Government is currently operating, is scheduled to expire at 11:59 pm EST on 18 March 2011.

3. Active Guard Reserve personnel will continue in a normal duty status regardless of their affiliation with exempt or non-exempt activities. Military personnel will serve without pay until such time as appropriated funds are available to compensate them for this period of service. Technician personnel (Dual Status and Non-Dual Status) who are engaged in exempt activities will also continue to work and be paid until all available Operations and Maintenance Funds are expended. Technicians not engaged in exempt activities will be furloughed. Furlough is defined as the placement of an employee in a temporary non-pay and non-duty status. This action is necessary because the federal funding for the FY11 National Guard technician payroll has not been approved.

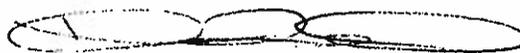
4. Furloughed technicians should be instructed to listen to public broadcasts to obtain the information that either a CRA or the FY11 DoD appropriation has been approved. Once the FY11 DoD appropriation is passed, furloughed technicians are expected to return to work on the next regularly scheduled duty day. Each Human Resources Office (HRO) should develop plans to notify their personnel for recall. Technicians unable to report to work will be charged annual leave, compensatory time, or leave without pay.

Encl 2

NGB J1-TN
SUBJECT: Furlough (TN-11-05)

5. Technicians will not be permitted to serve as an unpaid volunteer and must remain away from the work place until recalled. Technicians may also not be in a paid leave status during the furlough period. This includes annual, sick, court, and military leave.
6. In accordance with 5 C.F.R. § 2635.802, technicians may accept outside employment which does not create a conflict of interest or violate standards of conduct. Technician temporary duty (TDY) and training, scheduled during the period of the furlough, will be cancelled. Technicians currently on TDY will return to home station as soon as possible.
7. Life and health insurance benefits will continue without interruption. Technicians will be required to pay only the employee share of the health insurance cost when they return to duty. Furloughed technicians may file a claim for unemployment compensation benefits. Personnel may, or may not be eligible for these benefits depending on the duration of the furlough.
8. By law, technicians in a non-pay status cannot contribute to their Thrift Savings Plan (TSP) account while on furlough. This also applies to the 1% agency matching contribution under the Federal Employees Retirement System. While on furlough, technicians are also restricted from obtaining a TSP loan.
9. As a general rule, a technician may not appeal a furlough action. However, a technician may request a review of the furlough action, in writing, through the State HRO to the Adjutant General (Ref: T.P.R. § 715, para. 3-7).
10. The enclosed Questions and Answers on furlough provides additional information regarding possible key issues of concern to National Guard technicians. It is critically important that State HROs maintain close coordination with their U.S. Property and Fiscal Office for additional guidance provided by ARNG and ANG Comptrollers.
11. Questions specific to furlough may be directed to Ms. Connie Illing, NGB-J1-TNS, at 703-607-5457 or Constance.Illing@us.army.mil. Questions specific to Employee Benefits may be directed to Ms. Brenda DeCruise, NGB-J1-TNB, 703-607-1478 or Brenda.Decruise@us.army.mil.

Encl



THOMAS E. LANGUIRAND
Colonel, US Army
Chief, Office of Technician Personnel
National Guard Bureau

Team, attached and below offer corrected guidance for paragraph 8 of NGB-J1-TN, 11 Mar 11 Memo, Subject: Furlough (TN-11-05). Additionally, this applies to FAQ #7 Enclosure to Furlough TN-11-05.

//////////////////UPDATED Furlough Information, TSP//////////////////
Can I take a TSP loan while I'm furloughed? Yes. By law, a TSP participant may take a TSP loan any time before separation. 5 U.S.C. § 8433(g)(1). The TSP has adopted an administrative rule that provides that TSP participants must be in a pay status in order to take a TSP loan. 5 C.F.R. § 1655.2(b). The TSP adopted this rule because it generally requires TSP participants to agree to repay their loans through payroll deduction. 5 C.F.R. § 1655.12(b). The first payment is due on or before the 60th day following the loan issue date. 5 C.F.R. § 1655.14(c).

Since shutdowns are rare occurrences and are typically of short duration, the TSP's Executive Director has determined that it is in the best interest of TSP participants to interpret the requirement that participants be in a pay status to mean that a break in pay due to a Government shutdown does not disqualify one from TSP loan eligibility.
A short-term break in pay status would still allow participants to commence payment by payroll deduction within the required 60 days of the loan issue date. If a shutdown were to extend beyond 60 days, participants would still be responsible for making loan payments.

//////////////////END//////////////////

Encl 3

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

Encl 4

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 TSPFact 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.