

January 21, 2019

MEMORANDUM FOR Employee of (BUREAU NAME)

FROM: PHRM Name here

SUBJECT: Notice of Furlough Due to Shutdown

Due to the continuing lapse in Fiscal Year (FY) 2019 appropriations and no continuing resolution for the Department of Commerce (DOC) no further financial obligations may be incurred, except for those directly related to the orderly suspension of operations or the performance of excepted activities as defined in the Office of Management and Budget's (OMB) memorandum for Heads of Executive Departments and Agencies (dated November 17, 1981) and supplemented by OPM's memorandum (dated August 22, 1995) transmitting an updated legal opinion by the Department of Justice (DOJ).

In the absence of a continuing resolution or a FY 2019 appropriation by January 20, 2019, you will be placed in a furlough status effective January 21, 2019. This furlough, i.e., non-duty, non-pay status, is not expected to exceed 30 days. Therefore, this furlough notice expires on February 19, 2019. When a continuing resolution or an FY 2019 appropriation for DOC is enacted, you will be expected to return to duty on your next regular scheduled work day. Please monitor public broadcasts and/or the Office of Personnel Management's website at www.opm.gov. Furlough information is also available on www.commerce.gov.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 Code of Federal Regulations (CFR) §752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR §359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) has been waived. If employees are being retained in your organization, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the two OMB memoranda.

Furloughed employees should keep in mind that the ethics rules applicable to Federal employees, including rules with respect to outside employment, remain in effect even while the employee is in a non-duty, non-pay status.

Pay

During the furlough period, you will be in a non-duty, non-pay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Appeal Rights

If you are an employee who has completed a probationary or trial period, or 1 year of current continuous employment in the competitive service under other than a temporary appointment, you may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veteran's preference may appeal to MSPB if they have completed one (1) year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veteran's preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed two (2) years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two (2) years or less.

Career Senior Executive Service (SES) Appointees

Career SES appointees (except re-employed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following links:

Plan for Orderly Shutdown Due to Lapse of Congressional Appropriations at

www.doc.gov

OHRM's SES Furlough Information webpage, including 5 CFR 359 Subpart H, at

http://hr.commerce.gov/Employees/SESEmployees/PROD01_010219

How to Appeal

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website <https://www.mspb.gov/>. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you are a bargaining unit employee, you may appeal to the MSPB in accordance with the procedures outlined above or you may grieve this action in accordance with the applicable negotiated grievance procedure (NGP), but not both. You shall have been deemed to have exercised your option to raise this matter under the MSPB procedures or the NGP when you timely file a notice of appeal with the MSPB or timely file a written grievance in accordance with the provisions of the NGP. To obtain information on filing a grievance under the NGP, or an appeal with the MSPB, contact your local union representative.

Filing a grievance under an NGP does not preclude you from seeking review by the MSPB of the final decision of the NGP.

If you believe you have been subjected to a prohibited personnel practice other than prohibited discrimination, you may elect to grieve the matter under the applicable NGP, file an appeal with

the MSPB, or file an action with the U.S. Office of Special Counsel (www.osc.gov) in accordance with 5 U.S.C. § Chapter 12, subchapter II and III.

You are deemed to have made your election when you timely file a written grievance or file a timely appeal with the MSPB or Special Counsel.

If you file an appeal with the MSPB, the MSPB should send the Acknowledgement Order and copy of the appeal to the designated Agency Official as follows:

John K. Guenther
Chief, Employment and Labor Division
Office of the General Counsel
Department of Commerce
14th and Constitution Ave., NW
Room 5717
Washington, DC 20230
Phone: 202-482-5017
Fax: 202-501-2878
Email: jguenther@doc.gov

Equal Employment Opportunity Commission Rights

If you believe that you have been discriminated against by the laws of the Equal Employment Opportunity Commission (EEOC), you have the option of grieving the matter under the NGP or file an appeal with the EEOC, but not both. You are deemed to have made your selection when you timely file an appeal with the EEOC or a written grievance under the NGP.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available.

Attachment (2)
Unemployment Compensation for Federal Employees
Benefits Fact Sheet

Reference:
Guidance for Shutdown Furloughs, September 2015, at www.opm.gov