

MEMORANDUM FOR: <Insert Employee's Full Name and email address/ mailing address>

FROM: <Insert Official's Name and Title>

SUBJECT: NOTICE OF DECISION TO FURLOUGH DUE TO LAPSE OF APPROPRIATIONS

In the absence of either a Fiscal Year (FY) 20xx appropriation, or a continuing resolution for the Department of Defense (DoD), no further obligations may be incurred by the DoD, except those related to "excepted" functions as authorized by the Deputy Secretary of Defense. As provided in the Deputy Secretary of Defense's, <Insert Date> memorandum, "Guidance for Continuation of Operations During a Lapse of Appropriations," such excepted situations include:

- Statutes that expressly authorize incurring obligations in advance of appropriations;
- Emergencies involving the safety of human life or the protection of property;
- Functions necessary to discharge the President's constitutional duties; and
- Activities necessary for the orderly shutdown of activities that do not fall within one of the above categories.

We very much regret the shutdown furlough and recognize the difficult financial implications of any furlough, no matter how limited its length. However, because your services are not necessary for orderly suspension of operations and because you are not engaged in one of the other excepted functions, you are being placed in a furlough status effective <Insert Date>. The duration of the furlough is not known at this time. This furlough, *i.e.*, non-duty, non-pay status, is not expected to exceed 30 days. Therefore, this furlough notice expires on <Insert Date>. It is your responsibility to listen to public broadcasts and to keep abreast of the latest news regarding the budgetary status of the United States Government. When you hear that a continuing resolution or a FY 20XX appropriation for the DoD has been approved, you will be expected to report to work on your next regular duty day or as otherwise directed by your supervisor.

This action is being taken because of a sudden emergency requiring immediate curtailment of DoD activities; therefore, no advance notification was possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of section 752.404(d)(2) of title 5, Code of Federal Regulations (C.F.R.), for non-Senior Executive Service (SES) employees and under section 359.806(a) for SES career appointees.

If employees are being retained in their competitive level or competitive area, it is

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because they are performing one of the excepted functions as authorized by the Deputy Secretary of Defense.

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

The following employees may appeal this action to the Merit Systems Protection Board (MSPB):

- Employees may appeal to the MSPB if they have:
 - completed a probationary or trial period,
 - One year of current continuous employment in the competitive service under other than a temporary appointment, if appointed to a DoD position on or after December 31, 2022, or
 - Two years of current continuous employment in the competitive service under other than a temporary appointment, if appointed to a DoD position prior to December 31, 2022.

- Employees in the excepted service, unless encumbering the same position as held at the time the position was converted from the competitive service, who have veterans' preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar position as the one they now occupy.

- Unless encumbering the same position as held at the time the position was converted from the competitive service, employees in the excepted service who do not have veterans' preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less.

- Career SES appointees (except reemployed annuitants) who believe the requirements of part 359, subpart H, of title 5, C.F.R., or the agency's procedures have not been correctly applied may also appeal to the MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following location:
<identify location and times, as appropriate>.

Employees in the excepted service on Schedule C appointments do not have appeal rights to the MSPB; nor do non-career, limited-term, and limited emergency employees in the SES.

If you have the right of appeal to the MSPB and wish to appeal this action to the MSPB,

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you must file an appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice, whichever is later. If your appeal is not submitted within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide you an opportunity to show why the appeal should not be dismissed as untimely. You may obtain a copy of the appeals form and information about the appeals process from the MSPB website at: <http://www.mspb.gov/appeals/appeals.htm> or contact your servicing Employee Relations Specialist at <insert local HR contact name, phone number, and email address>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate regional or field office is <insert regional/field office, mailing address, phone and fax numbers>. The MSPB strongly encourages the use of electronic filing at: <https://e-appeal.mspb.gov>. You may wish to check the MSPB's website for its operating status during this time. Employees with appeal rights to the MSPB have a right to representation in this matter and may be represented by an attorney or other person of their choosing at no expense to the Government.

The MSPB will send an Acknowledgment Order and copy of your appeal to <insert contact information including the official's mailing address, email address, telephone and fax number >.

If you are a bargaining unit employee, you may grieve this action in accordance with the applicable negotiated agreement <negotiated agreement citation>, or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. Your election to proceed under one process will be considered made when, in a timely manner you: file a grievance in writing; or file a notice of appeal, whichever event occurs first. To obtain information on filing a grievance under the negotiated grievance procedure, contact: <name of exclusive union representative>. If you believe the furlough was effected in a discriminatory manner and elect to proceed under the applicable negotiated agreement's grievance procedure, you may request MSPB review of the final decision on your grievance by filing an appeal with the MSPB within 35 days after the date of issuance of the decision, or within 30 days of receipt of the decision, whichever is later.

If you believe this action was taken as reprisal for whistleblowing, you may elect to file a complaint with the MSPB: <https://e-appeal.mspb.gov/>, file a complaint with the Office of Special Counsel (OSC): <https://osc.gov/>, which can be followed by an Individual Right of Action appeal filed with the MSPB; or, if you are a bargaining unit employee, file a grievance in accordance with the applicable negotiated agreement. Your election to proceed under one process will be considered made when, in a timely manner you: file a complaint with the MSPB; file a complaint with OSC; or file a grievance in writing, whichever event occurs first.

You have the right to file a complaint with your Equal Employment Opportunity (EEO) Office if you believe that this furlough was effected in a discriminatory manner. To do so, you must contact an EEO counselor within 45 calendar days of receipt of this notice. Information regarding the federal sector EEO process is available on the EEO Commission website at:

http://eeoc.gov/federal/fed_employees/complaint_overview.cfm. You may contact your servicing EEO Office at **[insert EEO office contact information]**. *[Note: Consult local collective bargaining agreements to determine if discriminatory matters are covered under the negotiated grievance procedure. If so covered, employees may use either the EEO complaint process or the negotiated grievance procedure, but not both.]*

Attached is the Standard Form (SF) 8, “Notice to Federal Employee about Unemployment Insurance.” Additional information about unemployment insurance is available at: <https://www.dcpas.osd.mil/policy/benefits/unemploymentcompensation>.

Under 31 U.S.C. § 1341(c), after the lapse in appropriations has ended, both excepted and furloughed employees will receive retroactive pay at the employee’s standard rate of pay.

Deciding Official

Date

I acknowledge receipt of the notice.

Employee’s Name

Date

Attachment: SF-8