

December 21, 2018

MEMORANDUM FOR ALL EMPLOYEES

FROM: IRS Human Capital Officer

SUBJECT: Furlough Decision

This memorandum is to advise you that Congress has not passed an appropriation for Fiscal Year 2019, or a Continuing Resolution by midnight on December 21, 2018; therefore, you will be furloughed for a period not to exceed 30 calendar days. The furlough will begin on December 22, 2018.

This furlough is being initiated under the authority of 5 CFR Part 752, Subpart D (non-SES and Schedule C employees) and 5 CFR Part 359, Subpart H (career SES appointees), because the IRS does not have a current appropriation for Fiscal Year 2019, which began October 1, 2018. The absence of continued funding is an emergency under these regulations. As a result, the 30-day advance notice is not being provided under 5 CFR Part 752, Subpart D (non-SES and Schedule C employees) and 5 CFR Part 359, Subpart H (career SES appointees).

When you are on furlough, you will be in non-pay, non-duty status. Paid leave, such as annual, sick, court, or military leave which has been approved for this furlough period is cancelled. Also, during the furlough, you must remain away from your workplace and you are prohibited by law from working, even on a voluntary basis. If you are in travel status at the time of furlough, return home unless otherwise directed by your manager.

All employees are receiving this memorandum; however, some employees in your competitive level (generally, positions at the same grade level and classification series, the duties of which are generally interchangeable) are not being furloughed, because they have been excepted from the furlough because of their specific duties. Unless you have received specific notification that you are excepted from the furlough, you are being furloughed beginning midnight on December 21, 2018.

For those employees who have been notified that you are excepted from the furlough you can anticipate a subsequent memorandum from your Business Operating Division outlining the specific instructions for your excepted status.

During the furlough, you may get information from the media about the status of the furlough. When you hear that a continuing resolution or an FY 2019 appropriation has been approved, you will be expected to report to work no later than four (4) hours after that announcement, if it occurs on a workday. Otherwise, you should report at your normal start time on your next regularly scheduled workday. In the event the announcement contains more specific instructions on when to report to work, you will be expected to follow those instructions. The unscheduled leave policy will be in effect on

the day the IRS is re-opened. You may also call the IRS Hotline at 1-866-743-5748, or TTY at 1-866-924-3578, for information. Campus employees should use your emergency hotline procedures specific for your campus. Information is also available at www.irs.gov, type “*employee emergency*” in the search box.

You may appeal this action to the Merit Systems Protection Board (MSPB) if your employment status meets any of the following criteria:

1. You have completed a probationary trial period or one year of current continuous employment in the competitive service under other than a temporary appointment.
2. Employees in the excepted service who have veteran’s preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they hold.
3. You are in an excepted service appointment and have completed two years of current continuous service in the same or similar position under other than a temporary appointment limited to two years or less.
4. You are a Career SES appointee (except reemployed annuitants) who believes the requirements of 5 CFR Part 359, Subpart H, or the agency’s procedures have not been correctly applied.

Non-SES and Schedule C employees with the right to appeal to the MSPB have the right to request review of the material the agency relied on to support this action. Career SES appointees may inspect the regulations and records pertinent to this action at the following location: [IRS Shutdown Recall](#) site.

If you have the right of appeal and wish to appeal this action to the MSPB, you must file your appeal during the period beginning the day after the effective date of the furlough and ending on the 30th day after the effective date. You have the right to be represented in this matter by an attorney or other person you may choose. You may obtain a copy of the appeal form, review the MSPB regulations, and ascertain the location of the appropriate MSPB Regional Office through the web address: <http://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. Based upon your duty station, the appropriate field office can be found in **attachment 1** of this document. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. You may wish to check MSPB’s website for its operating status during this time. Should you file an appeal with the MSPB, the MSPB should send a copy of the appeal and the Acknowledgment Order to the appropriate office designated in **attachment 2** of this document.

Bargaining unit employees, as an alternative to an appeal to the MSPB, may grieve this action in accordance with the negotiated grievance procedure in Article 41 of the 2016

National Agreement. With the consent of NTEU, bargaining unit employees may appeal the agency's decision to binding arbitration under Article 43 of the 2016 National Agreement. Under no condition may bargaining unit employees file both a grievance under the negotiated grievance procedure and an appeal to the MSPB regarding this action. (Filing in both forums will result in the dismissal of whichever is filed later.) To obtain information on filing a grievance under the negotiated grievance procedure, contact your local NTEU representative.

If you believe the Agency took this action against you in retaliation for making protected "whistleblowing" disclosures or other protected activity, as defined in 5 CFR 1209.4, you have the right to file either an appeal to the MSPB (reference 5 CFR Section 1209.6), a complaint with the Office of Special Counsel with the option to file an Individual Right of Action appeal with MSPB, or, with the consent of the Union, an appeal to binding arbitration in accordance with the 2016 National Agreement. Whichever is filed first shall be considered an election to proceed in that forum. If you choose to file a complaint with the Office of Special Counsel before filing an appeal with the MSPB, you will have elected an Independent Right of Action appeal and in any subsequent appeal to the MSPB your rights will be limited. Unlike a direct appeal to the MSPB, the agency will not be required to prove the charge, nexus, and the reasonableness of the penalty but will only be required to prove by clear and convincing evidence that it would have taken the same action in the absence of a protected disclosure or other protected activity.

Should you allege this action was based in whole or in part on discrimination on the basis of race, color, religion, sex, age, national origin, or physical or mental disability, you may choose one of the following:

1. Include the discrimination allegations in an appeal to the MSPB.
2. File a complaint with the Equal Employment Opportunity Commission (EEOC) consistent with 29 CFR §§ 1614.301 and 1614.302.
3. Grieve the unlawful discrimination allegations consistent with the provisions of 5 USC § 7121(d) and Article 41 of the 2016 National Agreement. (**BARGAINING UNIT EMPLOYEES ONLY**)

To appeal under 29 CFR Part 1614, the allegations must be brought to the attention of an EEO counselor within 45 calendar days of the effective date of this action. For allegations of unlawful discrimination, you must choose only one of the above forums. (Whichever is filed first shall be considered an election to proceed in that forum and all later filings will be dismissed.) You can obtain information about appeal rights and procedures by contacting the IRS EEO Care Line at 1-866-743-5748 or TTY at 1-866-924-3578.

If you are a bargaining unit employee and choose to grieve allegations of unlawful discrimination and do not prevail at arbitration, you have the right to request MSPB review of the arbitrator's decision under 5 USC § 7702. The request for MSPB review must be filed with the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419, within 35 days of the issuance of a decision, or, if it

can be shown that a decision was received more than 5 days after the date of issuance, within 30 days after the date the decision was received.

Any employee whose appeal of this action to the MSPB included allegations of unlawful discrimination has the right to petition the EEOC, within 30 days of the MSPB's decision, for consideration of the MSPB's decision, or to file a civil action in an appropriate United States District Court.

You may be entitled to unemployment benefits during the furlough period. You may wish to contact the State Unemployment Office in your jurisdiction to determine eligibility and procedures through the following web address:

http://www.dol.gov/whd/contacts/state_of.htm. The SF-8 form, notated as **attachment 3** of this document, is notice to Federal Employee about Unemployment Insurance. Additional information about unemployment insurance is available at <http://www.servicelocator.org/OWSLinks.asp>.

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. If you have questions pertaining to this letter you may submit them through our [IRS Q&A site](#) and a subject matter expert will respond timely.

[Attachments\(3\)](#)