OPM Updates Guidance on Pay Issues
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OPM has issued revised guidance to agencies on back pay issues for employees who went unpaid during the partial shutdown, reminding them that both those who continued working and those who are furloughed are to be paid retroactively to December 22 at their “standard rate of pay.”

For an “excepted” employee, that is “the pay the employee is entitled to for actual hours of work under the normally applicable pay rules. For example, if an excepted employee performed additional overtime work beyond the normal requirements for his or her job, he/she would be paid for that actual overtime work. All excepted hours of work are time in a pay status for pay, leave, and benefit purposes,” the new guidance says.

For furlough time, the “standard rate of pay” is the pay the employee would have received for the furlough hours had the lapse in appropriations not occurred and the employee had performed work.

It says that means that (quoting the guidance directly):

* An employee is entitled to receive his or her rate of basic pay for the furlough time to the extent that he or she would have been in a basic pay status but for the lapse of appropriations.

* An employee receives retroactive pay for furlough time without being charged paid leave, since a lapse in appropriations generally prevents the use of paid leave. (With an exception for the use by excepted employees of paid leave in place of furlough time.)

* All furlough hours for which retroactive pay is received are treated as time in a pay status for pay, leave, and benefit purposes. For example, for the purpose of applying general schedule waiting periods associated with within-grade increases, the furlough time during the lapse in appropriations is treated as time in pay status.

* A furloughed employee who, during the lapse in appropriations, had been regularly scheduled to perform overtime work or to perform work at night or during a period for which any other form of premium pay would otherwise be payable is entitled to receive overtime pay, night pay, or other premium pay as if the work had been performed.

* Allowances, differentials, and other payments otherwise payable on a regular basis (e.g., administratively uncontrollable overtime pay and law enforcement availability pay) must be paid as if the furloughed employee actually continued to work.

* All periods of time during which a furloughed employee would, but for the lapse in appropriations, have been in a pay status (including regularly scheduled overtime hours
and standby duty) must be considered “hours of work” for pay administration purposes under the Fair Labor Standards Act.

* A furloughed employee is not entitled to retroactive pay for furlough periods if the employee had been previously (before the lapse) scheduled to be in nonpay status during those periods. For example, an employee may have scheduled leave without pay (LWOP) for an extended period or be in a suspension status (i.e., pay suspended based on an adverse action). In effect, those already-in-place periods of nonpay status override the furlough status. The “standard rate of pay” for such previously scheduled periods of nonpay status is zero. In addition, employees who were directed to perform excepted work during a lapse in appropriations but failed to report to duty were placed in absent-without-leave (AWOL) status for missed work hours, in accordance with agency policy and procedures. For such an employee, the “standard rate of pay” for AWOL hours is also zero.