

Memorandum of Agreement  
Between  
AFGE Local 2923 and NIEHS  
Furlough

The Parties agree that the intent during a furlough is to reduce any adverse impact upon employees to the fullest extent practicable while having an efficient and effective shutdown of operations. For the purposes of this MOA the term "excepted" has the same meaning as "essential" with regard to those employees who may work during a furlough to do their work responsibilities. The term non-excepted has the same meaning as "furloughed." Furloughs for 30 days or more fall under RIF.

The Agency agrees to involve the Union in pre-decisional matters in compliance with Executive Order 13522, to the extent possible, in order to improve the productivity and effectiveness of the Federal Government.

This MOU shall comply with the Anti-Deficiency Act and any other applicable rules and regulations.

All Union proposals herein which are not mandatory subjects of bargaining by virtue of some interference with a "management right" under 5 U.S.C. are intended as "appropriate arrangements" under 5 U.S.C. §7106(b)(3) for employees adversely affected by the exercise of one or more management rights.

1. The employer will continue to provide the full employer contribution to health benefits under the Federal Employees Health Benefit Program for employees affected by a furlough consistent with the law.
2. When possible, health insurance premiums may be prorated, at the election of the employee, so that a larger amount is withheld during a period of greater pay. For example, if an employee is paying \$100 in bi-weekly insurance premiums, but is furloughed for 2 days during the second pay period in a month, the employee can opt to have the \$100 decreased in that pay period by 2/10 and that dollar amount allocated to pay periods during which no furlough is effective. This will be consistent with applicable rules and regulations. The Agency shall provide information on the available options concerning health insurance premium catch-up payments.
3. Employees shall receive credit toward retirement and their high-three salary even if they aren't getting paid or coming to work, consistent with applicable rules and regulations.
4. Employees who are directed to report for work (whether excepted or not) shall be paid for that time they were at work.

5. Employees who are furloughed during a lapse in appropriations may be retroactively paid and otherwise compensated wherever reasonable and practicable when appropriations are approved to the extent provided by law and regulation.
6. The Agency may grant employees who suffer a loss of pay because of furloughs, administrative leave equal to the lost time when an appropriation measure is enacted to the extent to which funds have been appropriated and were available and adequate on the dates of the lost time to cover the costs incurred by the granting of administrative leave.
7. The Agency shall identify employees excepted employees as those that meet the following criteria: (1) Employees involved in obligations "authorized by law" or (2) Employees involved in the safety of human life or the protection of property. agreed
8. To the extent possible, whenever there is a pool of employees to choose from for a limited number of excepted positions, the following shall be applied:
9. The Agency shall select qualified volunteers by using 1) seniority or service comp date and 2) service time at NIEHS to determine who shall be on duty during a furlough.
10. If no one volunteers, the Agency shall use the reverse of 'A' above to determine who shall be on duty during a furlough. When this is the case the qualified employee shall be the one with the least amount of government service and NIEHS service.
11. Whenever practicable, qualified volunteers (excepted employees) should rotate into shifts composed of a full day as excepted personnel. A schedule of such rotation shall be developed by the supervisor. Such schedules shall be fair.
12. The Agency shall ensure that those employees who must work during the furlough who need accommodations shall receive such accommodations.
13. The following services shall continue during a furlough: vending machines (and restocking thereof), security, health and safety, nursing mother/lactation rooms, and other such services that are necessary for those employees who are in excepted status.
14. Child care through the First Environment Early Learning Center will continue during a furlough. If the Agency is notified that any of the services are changed, the Agency shall promptly notify the Union, normally within 2 business days of the change.

15. The Parties recognize the adverse impact a furlough may have on employees and recognize the importance of clear communication. The Agency shall provide information to affected employees on local resources that may be available to assist employees (i.e. childcare, eldercare).
16. The Agency agrees to provide a final list of excepted employees to the Union as soon as possible and engage in PDI for any negotiation appropriate under the law. It is expected that this list should be provided no later than 5 days and in no instances less than 1 day prior. The list shall be sent to the Union before being sent to any other BUE's.
17. The Agency agrees to provide employees with information that will explain what a furlough is and provide assistance that they may need such as unemployment benefits, along with any other important or useful information. The Agency agrees to work with the Union on the information contained provided to employees. The information will be provided to employees prior to an official furlough or posted on an official Government website.
18. In the event of a lapse of appropriations on a Friday, furloughed, non-excepted, employees are expected to report to duty that following Monday to conduct orderly shutdown activities. If an employee receives notification on Friday and is able to complete all of the required shutdown activities that day then the employee will not be required to report to duty on Monday. Employees with a weekend tour of duty will not report to work on Saturday if all shutdown activities are completed when they leave work on Friday.
19. Employees that are furloughed shall be provided up to four hours (with pay) to conduct orderly shutdown activities. Additional time will be granted for those rare instances.
20. The Agency shall use the same procedures for adverse weather events to notify employees of when they should return to work. Employees are expected to either use the NIEHS web pages or phone number each morning to learn when they must return to work. Such information shall be posted by 6:00 am.
21. Employees who were on approved leave status shall have the leave canceled during the period of time the furlough lasts. If the approved leave status is longer than the furlough then that employee shall be permitted to continue on that approved leave status.
22. All employee rights and protections during a furlough and while in an excepted status shall remain intact. Annual and sick leave shall continue to accrue and the time of a furlough shall not be a break in service.
23. Telework shall not be used by non-excepted employees during a furlough.

24. Excepted employees may be permitted to telework if a determination is made that off-site work is feasible to the operation of the Agency. When it has been determined that an excepted employee may perform the excepted duties in a telework capacity, such telework arrangements shall be allowed, which can result in a reduction of personal expense for the employee.
25. Employees, excepted and non-excepted will not be held accountable for matters beyond their control. An employee's performance rating will not be adversely impacted solely as a result of the furlough or the Agency's inability to approve or appropriate funds.
26. All employees will be allowed to utilize services such as the Employee Assistance Program (EAP). Additionally, the health unit will be operating during a furlough for those excepted employees.
27. Employees who are in a furlough status will not be subject to orders or other work-related instructions.
28. Employees who are non-excepted will not be required to call-in to work.
29. Furloughed employees are prohibited from performing work outside of the office, including via mobile devices or remote computer connections.
30. Employees will be provided the opportunity for employer-provided budget and credit counseling to help them adjust to the furloughs through services such as the EAP.
31. Excepted employees will be required to sign- and out on a daily basis. This will be done either electronically or hard copy.
32. During the furlough, the Agency is not permitted to allow non-excepted employees on the work-site before, during or after hours. It is illegal for an Agency to allow non-excepted personnel to work even on a voluntary basis.
33. During the furlough, excepted employees will be permitted to keep their work schedules that they had prior to the furlough to the extent feasible. If there is a change, the Agency shall notify the Union and consider the employee's concerns over the change.
34. The Agency shall provide furlough notification to non-excepted employees that may serve as verification to lenders, creditors, etc that the employee is on furlough and in a non-pay status. The employee will be required to sign the notification at that time. In the event the non-excepted employee is unavailable to sign for their furlough notification, the employee may sign upon their return to

pay status or request the notification be forwarded via certified mail or personal email if requested. It is the employee's responsibility to ensure the agency has a current mailing address. The employee's decision to provide their personal email is completely voluntary.

35. To the extent practicable and within regulation, any disciplinary action shall be postponed for the period of furlough. Normally, only egregious violations shall be pursued during a furlough period. Any actions, responses, or reviews with established time frames and/or due dates such as negotiated grievances and performance improvement plans shall be held in abeyance for the extent of the furlough.
36. In the event a bargaining unit employee and/or Management official need to communicate with the Union, the Local President shall be considered the point of contact.
37. No changes to conditions of employment will be implemented in the collective bargaining unit except as agreed to by the parties to the collective bargaining agreement. The Union does not agree to reopen or waive any contractual provisions which may conflict with actions proposed by the agency.
38. Nothing in this MOU necessarily reflects the agreement of AFGE to furloughs or other actions having a negative impact on employees, the performance of the agency mission, or the public interest. Nothing in this agreement is intended to waive or limit any statutory rights of individual employees which may exist in the absence of this agreement.

Nothing in this document changes or waives either party's rights.

For the Agency:

/s/ Noreen E. Gordon  
Labor and Employee Relations Specialist

8 April 2011

For the Union:

/s/ Versal L. Mason for  
President, AFGE Local 2923

4/8/2011