

# Social Security

## Memorandum

Date: [Enter effective date of furlough here] Refer To:

To: [Type or write employee’s name here]

From: [Type or write deciding official’s name here]

Subject: Decision to Effect Furlough

In the absence of either an appropriation or a continuing resolution to continue the ongoing operations of the Social Security Administration (SSA), no further financial obligations may be incurred by SSA, except for that work which, as defined by law, is excepted from furlough. Because your work functions do not fit within the categories of work excepted under existing law, I am placing you in furlough status effective [enter effective date of furlough here]. You may monitor public broadcasts and the Internet for information regarding the furlough end date. You should also call SSA’s nationwide furlough hotline at 1-866-909-6876 (employees who are deaf or hard of hearing should use a relay service when accessing this number), or view the SSA website for updated furlough information: <https://www.ssa.gov/agency/shutdown/employees.html>. When an appropriation or a continuing resolution is approved, you are expected to return to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the agency’s activities. The 30-day advance notice period and opportunity to respond are suspended under the provisions of 5 Code of Federal Regulations (CFR) §§ 359.806(a) and 752.404(d)(2).

During the furlough period, you will be in a non-pay, non-duty status and you may not work at your official duty station or your alternate duty station unless and until you are recalled. Further, you may not serve as an unpaid volunteer at SSA; you must remain away from your workplace unless and until you are recalled to work. Any paid leave (e.g., annual, sick, credit) approved for use during the furlough period is cancelled.

NOTICE OF APPEAL RIGHTS

If you wish to appeal this personnel action, you may elect one of the following options:  you may appeal to the Merit Systems Protection Board (MSPB); you may seek corrective action before the U.S. Office of Special Counsel (OSC); you may file a complaint of discrimination with the agency under 29 CFR Part 1614; or, if you are a bargaining unit employee, you may file a grievance in accordance with the negotiated grievance procedure. Except as described below, you may pursue only one of these options.  If you pursue more than one of these options, whichever is filed first shall be considered an election to proceed in that forum.  Once you make your choice by timely initiating one of these options, that choice is irrevocable.

MSPB Procedure:  Employees who have completed a probationary period, trial period, or 1 year of continuous employment in the competitive service under an appointment other than a temporary appointment, may appeal this action to the MSPB. Employees in the excepted service who have veterans’ preference may appeal to the MSPB if they have completed 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 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 2 years of current continuous service in the same or similar positions in an Executive agency under an appointment other than a temporary appointment limited to 2 years or less. Senior Executive Service career appointees adversely affected may also appeal to the MSPB.

If you have the right of appeal to the MSPB and wish to appeal this action to the MSPB, you must file the appeal no later than 30 calendar days after the effective date of your furlough, or

30 calendar days after the date you receive this notice, whichever is later. 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 at <http://www.mspb.gov/appeals/appeals.htm>. If you are unable to access the MSPB website or download a copy of the regulations, you can contact [insert contact info]. The MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your official duty station was located when the action was taken. [Appendix II](https://www.ecfr.gov/current/title-5/chapter-II/subchapter-A/part-1201/appendix-Appendix%20II%20to%20Part%201201) of Part 1291 of the MSPB’s regulations provides a complete listing of the coverage for each regional and field office. 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 decide to file an appeal with the MSPB, you must notify the MSPB that the agency contact official for the purpose of your appeal is:

Deputy General Counsel

Social Security Administration

Law and Policy

Employment Law

Attn: SSA Employment Litigation

6401 Security Boulevard

Baltimore MD 21235-6401

TEL: 410-965-0600

SSA.OGC.Employment.Litigation@ssa.gov

This information is required by the MSPB to process your appeal.

Your election of filing an MSPB appeal is binding at the time the appeal is filed and will preclude you from filing a grievance.

You may initially file an appeal with the MSPB or a complaint of unlawful

discrimination with the agency, but not both. You will be deemed to have elected a remedy when you first file a timely appeal or formal complaint.

Office of Special Counsel (OSC) Procedure:  If you believe this action constitutes a prohibited personnel practice under 5 U.S.C. § 2302(b), including retaliation for making protected whistleblowing disclosures, you may include that allegation in an MSPB appeal, under the procedures discussed above. You may also seek corrective action from the OSC by filing a complaint online ([osc.gov](http://www.osc.gov)).

You have the option of filing an Individual Right of Action (IRA) appeal with the MSPB after you have sought corrective action from the OSC. You must file the IRA appeal to the appropriate MSPB regional or field office (see [Appendix II](https://www.ecfr.gov/current/title-5/chapter-II/subchapter-A/part-1201/appendix-Appendix%20II%20to%20Part%201201) of Part 1291 of the MSPB’s regulations) within 65 days of OSC’s determination or, if you show OSC’s notification was received more than five days after the date of issuance, within 60 days after the date you received OSC’s notification. Your IRA appeal to the MSPB will be limited to resolving the claim(s) of reprisal for whistleblower or other protected activity. The MSPB will not directly review the merits of the personnel action. Further information may be found at 5 United States Code (USC) § 1221.

Discrimination Complaint Procedure: If your appeal involves a claim of discrimination, you may raise the issue of discrimination in an appeal to the MSPB or OSC, as outlined above, or under the negotiated grievance procedure, as outlined below.

You also have the option of filing a complaint of discrimination with the agency under the Equal Employment Opportunity (EEO) procedures set forth at 29 CFR Part 1614 (which are available at <https://www.eeoc.gov>). To do so, you must first initiate EEO counselor contact. You may initiate contact with a counselor at 1-866-744-0374 (800-877-8339 TTY). You must initiate contact with the counselor within 45 calendar days of the effective date of this action. Please note that complaint processing and filing deadlines are suspended during a lapse in appropriation (shutdown). A counselor will contact you once an appropriations or continuing resolution is approved.

If you choose to file a complaint of discrimination with the agency under 29 CFR Part 1614 and are dissatisfied with the agency’s final decision, you may seek review of that decision by the MSPB (not the Equal Employment Opportunity Commission (EEOC)). For this reason, the agency will process your complaint as a “mixed case.” For more information about mixed cases, please see the How to File an Appeal at the MSPB website, [U.S. Merit Systems Protection Board | How to File an Appeal (mspb.gov)](https://www.mspb.gov/appeals/appellantqanda.htm).

If you decide to pursue MSPB review of the agency’s decision on your complaint of discrimination, you have the right to do so as follows:

1. An appeal must be filed within 30 calendar days after you receive the agency resolution or final decision on the discrimination issue; or

1. If the agency has not resolved the matter or issued a final decision on the formal complaint within 120 calendar days, you may appeal the matter directly to the Board at any time after the expiration of 120 calendar days. Once the agency resolves the matter or issues a final decision on the formal complaint, an appeal must be filed within 30 calendar days after the appellant receives the agency resolution or final decision on the discrimination issue.

You are entitled to a representative of your choosing at all phases of the EEO process.

Negotiated Grievance Procedure:  If you are a bargaining unit employee, and you choose to file a grievance under the negotiated procedure, you must submit your written grievance in accordance with the negotiated process.  Except as provided below regarding allegations of discrimination, you must submit your grievance in writing within the negotiated time period as stated in your collective bargaining agreement 20 calendar days from the effective date of this notice for employees covered by the American Federation of Government Employees (AFGE) and 15 work days from the effective date of this notice for employees covered by the National Treasury Employees Union (NTEU)).  You have a right to union representation or union-approved representation, or you may represent yourself. Your designation of representative must be in writing.

Your grievance should be filed with the following grievance official:

 [Enter grievance official’s name here]

The deadlines for filing a grievance or invoking arbitration may be extended by written agreement with the grievance official identified above. Obtaining an extension of the time to file a grievance will not extend the time to file an MSPB appeal.

A grievance filed under the negotiated grievance procedure may raise any issue including unlawful discrimination.  Before filing a grievance that alleges unlawful discrimination, you may first discuss the allegation with an EEO counselor.  You can reach an EEO counselor at 1-866-744-0374 (800-877-8339 TTY). If you choose to consult with an EEO counselor, you must initiate contact with the counselor within 45 calendar days after the date you receive notice of this action.  If you elect not to consult with an EEO counselor, you must file a grievance alleging discrimination within 45 calendar days after the date you receive notice of this action.

If you are dissatisfied with the result of the grievance, you may ask the union to invoke arbitration pursuant to the terms of the applicable collective bargaining agreement. Your election of grievance/arbitration is binding at the time the grievance is filed and will preclude filing an appeal with the MSPB.

If you file a grievance alleging unlawful discrimination, you will have the right to seek review of the final decision on the grievance by the MSPB pursuant to 5 USC § 7121(d) and 5 CFR § 1201.155. The MSPB will review only those claims of discrimination that were raised in the negotiated grievance procedure. Your request for MSPB review must be filed within 35 calendar days after the date of issuance of the final decision or, if you show that you received the decision more than 5 calendar days after the date of issuance, within 30 calendar days after the date you received the decision.

You may also appeal the final decision on a grievance raising unlawful discrimination to the EEOC pursuant to 5 USC § 7121(d) and 29 CFR § 1614.301.

If you have questions about the negotiated grievance procedure, you may contact your local union representative.

None of the options for challenging this action postpones or otherwise delays the effective date of this action.

You may direct questions about the information contained in this memorandum to Human Resources via email to: dchr.ope.policy@ssa.gov.

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.

Counseling services are available through the Employee Assistance Program (EAP).  The EAP is a service provided for employees who are experiencing personal or work-related problems.  All EAP counseling sessions are confidential, and the assessment is free.  You can contact EAP by calling ESPYR at (877) 549-9528, 24 hours a day, seven days per week.  You may also schedule an appointment via the website at <https://ssaeap.com/> and entering access code **ssaeap.**

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(Deciding Official Signature) (Date)

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 I acknowledge receipt of this notice.

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 (Employee’s Signature) (Date)