



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Friday, December 21, 2012  
CPM 2012-15

**MEMORANDUM FOR: Heads Of Executive Departments And Agencies**

FROM: John Berry, Director

Subject: Excusing Federal Employees on Monday, December 24, 2012

The President has issued an Executive order excusing executive branch non-Postal Service employees from duty on Monday, December 24, 2012, except those who, in the judgment of the head of the agency, cannot be excused for reasons of national security, defense, or other essential public need. (See Attachment 1.) For pay and leave purposes, December 24, 2012, will be treated as falling within the scope of statutes and Executive orders governing holidays for Federal employees.

Most employees who are excused from duty on December 24th will receive the basic pay they would have received if no Executive order had been issued. An employee who was previously scheduled to take annual leave on December 24th will not be charged annual leave (or any other form of paid leave, compensatory time off, or credit hours). (This policy does not apply to employees who receive annual premium pay for standby duty under 5 U.S.C. 5545(c)(1) or to firefighters who are covered by the special pay provisions of 5 U.S.C. 5545b.) An employee who is required to work nonovertime hours on December 24th is entitled to holiday premium pay under 5 U.S.C. 5546(b).

If an employee has scheduled "use or lose" annual leave for December 24, 2012, and is unable to reschedule that leave for use before the end of the leave year (i.e., for most employees, January 12, 2013), the leave will be forfeited. When "use or lose" leave is forfeited under these conditions, the law does not permit restoration of the leave. (See 5 U.S.C. 6304(d).)

The attached questions and answers provide pay and leave administration guidance. (See Attachment 2.) For additional information, see the U.S. Office of Personnel Management's (OPM's) fact sheets on —

- Federal Holidays - Work Schedules and Pay  
at <http://www.opm.gov/oca/worksch/HTML/HOLIDAY.asp>
- Compressed Work Schedules  
at <http://www.opm.gov/oca/worksch/HTML/AWSaws.asp>
- Flexible Work Schedules  
at <http://www.opm.gov/oca/worksch/HTML/awsfws.asp>

The President's Executive order excuses Federal employees from duty during a pay period in which multiple holidays fall within the same pay period. For further information on the procedures for multiple holidays during a pay period, see the attached questions and answers and the fact sheet "Federal Holidays - Work Schedules and Pay" referenced above.

Employees of the U.S. Postal Service and contract employees should contact their supervisor (or contract officer) to obtain information on their pay and leave entitlements for December 24th.

### **Additional Information**

For general information on Federal pay, leave, and work scheduling policies, please visit [www.opm.gov/oca/index.asp](http://www.opm.gov/oca/index.asp). Since policies may differ from agency to agency, employees should contact their agency human resources office for information on their agency's policy on holidays, agency field offices should contact their appropriate headquarters-level agency human resources office, and agency headquarters-level may contact Pay and Leave at OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov). (Requests from individual employees will be returned or forwarded to the appropriate agency human resources office.)

cc: Chief Human Capital Officers  
Human Resources Directors

## **Attachment 1- Executive Order - Closing of Executive Departments and Agencies of the Federal Government on Monday, December 24, 2012**

By the authority vested in me as President of the United States of America, by the Constitution and laws of the United States, it is hereby ordered as follows:

Section 1. All executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2012, the day before Christmas Day, except as provided in section 2 below.

Sec. 2. The heads of executive branch departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 24, 2012, for reasons of national security or defense or other public need.

Sec. 3. Monday, December 24, 2012, shall be considered as falling within the scope of Executive Order No. 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 4. The Director of the Office of Personnel Management shall take such actions as may be necessary to implement this order.

Sec. 5. General Provisions.

- (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (b) Nothing in this order shall be construed to impair or otherwise affect:
  - (i) the authority granted by law to an Executive department or agency, or the head thereof; or
  - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE

## Attachment 2- Questions and Answers on Pay and Leave Administration for December 24 and 25, 2012

### Leave

- Q1. Are employees who are scheduled to take annual leave on Monday, December 24, charged leave for that day?
- A1. Employees who are scheduled to take annual leave on Monday, December 24, will not be charged leave for that day.
- Q2. Will employees forfeit “use or lose” annual leave scheduled for Monday, December 24?
- A2. If an employee has scheduled “use or lose” annual leave for Monday, December 24, and is unable to reschedule that leave for use before the end of the leave year (i.e., for most employees, January 12, 2013), the leave will be forfeited. When “use or lose” leave is forfeited under these conditions, the law does not permit restoration of the leave. (See 5 U.S.C. 6304(d).) (We note that employees may donate their excess annual leave to an approved leave recipient under the voluntary leave transfer program or under the Emergency Leave Transfer Program for approved leave recipients adversely affected by Hurricane Sandy. For more information, see our Voluntary Leave Transfer Program and Emergency Leave Transfer Program fact sheets, and CPM 2012-10, Emergency Leave Transfer for Federal Employees Affected by Hurricane Sandy. Employees interested in donating leave should speak with their servicing HR office.)

### “In Lieu of” Holiday

- Q3. What days are the “in lieu of” holidays for an employee whose basic work schedule does not include Monday, December 24 and/or Tuesday, December 25?
- A3. When a holiday falls on a nonworkday outside a full-time employee's basic workweek, he or she is entitled to an “in lieu of” holiday. Except when the holiday falls on Sunday, the day to be treated as the “in lieu of” holiday is the workday immediately preceding the nonworkday. (See 5 U.S.C. 6103(b) and section 3(a) of Executive Order 11582, February 11, 1971.)

#### *Example 1— Tuesday - Saturday Work Schedule*

(Monday is a scheduled nonworkday, Tuesday a scheduled workday)

If the employee has a regularly scheduled nonworkday on Monday, December 24, and a regularly scheduled workday on Tuesday, December 25, the “in lieu of” holiday for December 24 would be the preceding workday — in this example, Saturday, December 22. There is no need for an “in lieu of” holiday for December 25.

#### *Example 2 — Thursday - Monday Work Schedule*

(Monday is a scheduled workday, Tuesday a scheduled nonworkday)

If the employee has a regularly scheduled workday on Monday, December 24, and a regularly scheduled nonworkday on Tuesday, December 25, Monday becomes a nonworkday and there is no need for an “in lieu of” holiday for that day. The “in lieu of” holiday for December 25 would be the preceding workday — in this example, Sunday, December 23.

*Example 3 — Wednesday – Sunday Work Schedule*

(Both Monday and Tuesday are scheduled nonworkdays)

If the employee has regularly scheduled nonworkdays on both Monday, December 24, and Tuesday, December 25, the “in lieu of” holiday for December 24 would be the immediately preceding workday (in this example, Sunday, December 23) and the “in lieu of” holiday for December 25 would be the next preceding workday (in this example, Saturday, December 22).

- Q4. What is the “in lieu of” holiday for an employee on an alternative work schedule (AWS) (i.e., flexible work schedule or compressed work schedule) whose regularly scheduled AWS day off is Tuesday or Monday?
- A4. For full-time employees on an AWS whose regularly scheduled nonworkday is Monday, December 24, or Tuesday, December 25, the workday immediately preceding that day will be designated as the employee's “in lieu of” holiday.

*Example 1 — Regularly scheduled nonworkday is Monday*

If an employee on an AWS has his or her regularly scheduled AWS day off on Monday, December 24, and Friday, December 21, is the preceding workday, the “in lieu of” holiday for Monday, December 24, is Friday, December 21.

*Example 2 — Regularly scheduled nonworkday is Tuesday*

If an employee on an AWS has his or her regularly scheduled AWS day off on Tuesday, December 25, and Friday, December 21, is the preceding workday (because Monday, December 24, has become a nonworkday), the “in lieu of” holiday for Tuesday, December 25, is Friday, December 21.

- Q5. May an agency change an AWS employee's “in lieu of” holiday?
- A5. No, with one limited exception. An agency may select an alternative “in lieu of” holiday for employees on fixed compressed work schedules if the agency head determines that a different “in lieu of” holiday is necessary to prevent an “adverse agency impact,” as defined in 5 U.S.C. 6131(b). (See 5 U.S.C. 6103(d).)
- Although there is no authority for an agency to change the “in lieu of” holiday for an employee on a flexible work schedule, the employee may reschedule his or her AWS day off consistent with agency policy.
- Q6. Are part-time or intermittent employees entitled to “in lieu of” holidays?
- A6. No, there is no authority to grant “in lieu of” holidays to part-time or intermittent employees. Part-time employees are entitled to a holiday only if they have a regularly

scheduled basic (i.e., nonovertime) tour of duty on the actual holiday (i.e., on Tuesday, December 25, or Monday, December 24). Intermittent employees do not have a regularly scheduled tour of duty and may not be paid for holidays not worked.

Agencies may exercise their discretionary authority to grant excused absence (administrative leave) to part-time employees whose offices are closed on a day when most full-time employees have an “in lieu of” holiday. For example, in an organization in which employees generally have a Tuesday through Friday schedule, the “in lieu of” holiday for Monday, December 24, would be Friday, December 21. The agency may wish to excuse part-time employees from working on Friday, since the office's full-time employees have a holiday on that day.

### **Basic Pay Entitlement on a Holiday**

Q7. How many hours of basic pay are employees entitled to receive for a holiday?

A7. *Full-Time Employees*

Full-time employees under a standard work schedule (8 hours a day, 40 hours a week) are excused from 8 hours of nonovertime work, which are considered part of the 40-hour basic workweek.

*Part-Time Employees*

A part-time employee is entitled to a holiday when the holiday falls on a day when he or she would otherwise be required to work or take leave. This does not include overtime work. Part-time employees who are excused from work on a holiday receive their rate of basic pay for the hours they are regularly scheduled to work on that day.

*Compressed Work Schedule*

A full-time or part-time employee on a compressed work schedule who does not work because of a holiday receives his or her rate of basic pay for the number of hours he or she was scheduled to work on the holiday. For example, if a holiday falls on a 10-hour basic workday, the employee's holiday is 10 hours. (See 5 CFR 610.406.)

*Flexible Work Schedule*

A full-time employee on a flexible work schedule is entitled to 8 hours of pay on a holiday when the employee does not work. (See 5 U.S.C. 6124.) A part-time employee under a flexible work schedule is generally excused from duty for the number of hours of his or her basic work requirement (i.e., nonovertime hours) on that day, not to exceed 8 hours. (See 5 CFR 610.405.)

Two holidays fall within the same pay period beginning December 16, 2012, and ending December 29, 2012. Therefore, full-time employees on a “5/4-9” flexible work schedule (or other flexible work schedules under which employees work more than 8 hours a day) must make arrangements to work extra hours during other regularly scheduled workdays or take annual leave, credit hours, compensatory time off, or compensatory time off for travel in order to fulfill the 80-hour biweekly work requirement.

## Holiday Premium Pay

- Q8. What pay do employees receive for working during their regularly scheduled basic (i.e., nonovertime) hours on a holiday?
- A8. An employee who performs any work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday receives holiday premium pay in addition to his or her regular pay. Employees assigned to work on a holiday during their regularly scheduled tour of duty are entitled to a minimum of 2 hours of holiday premium pay.
- Q9. Are all Federal employees entitled to holiday premium pay?
- A9. No. Members of the Senior Executive Service (SES), the Federal Bureau of Investigation and Drug Enforcement Administration SES, the Senior Foreign Service, Foreign Service officers, and certain other employees who are excluded from the premium pay provisions of 5 U.S.C. chapter 55, subchapter V, are not entitled to holiday premium pay. (See the definition of “employee” in 5 U.S.C. 5541(2).) In addition, employees receiving standby duty pay under 5 U.S.C. 5545(c)(1) and Federal firefighters compensated under 5 U.S.C. 5545b are not entitled to holiday premium pay.
- Q10. How many hours of holiday premium pay are employees entitled to earn?
- A10. *Full-Time Employees*  
Full-time employees on standard work schedules (8 hours a day, 40 hours a week) receive holiday premium pay for up to 8 hours of work during their regularly scheduled basic tour of duty on a holiday.
- Flexible Work Schedule*  
Employees under flexible work schedules are entitled to holiday premium pay if they are required to work during the hours of their basic work requirement (i.e., nonovertime hours) on that day, not to exceed 8 hours.
- Compressed Work Schedule*  
Employees under compressed work schedules are entitled to holiday premium pay if they are required to work during their basic work requirement on that day. The number of hours of holiday premium pay may not exceed the hours in an employee's compressed work schedule for that day (e.g., 10 nonovertime hours). (See 5 CFR 610.407.)
- Part-Time Employees*  
Part-time employees who are required to perform work during a regularly scheduled basic tour of duty on a holiday are entitled to receive holiday premium pay for up to 8 hours of nonovertime work (or up to the maximum number of nonovertime hours in their compressed work schedule) on a holiday.
- Q11. How is holiday premium pay calculated?
- A11. For each hour of holiday work, employees receive holiday premium pay. Holiday premium pay is equal to an employee's rate of basic pay. Employees who are required to work on a holiday receive their rate of basic pay, plus holiday premium pay, for each hour of holiday work. (See 5 U.S.C. 5546(b).)

## **Compensatory Time Off and Overtime Pay**

Q12. May an employee who is required to work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday earn compensatory time off instead of holiday premium pay for that work?

A12. No. An employee must receive holiday premium pay for work performed during his or her regularly scheduled basic (i.e., nonovertime) tour of duty (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday.

Compensatory time off is provided in lieu of overtime pay for irregular or occasional overtime work (or, when permitted under agency flexible work schedule programs, in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work). However, because a holiday is considered part of a full-time employee's regular 40-hour workweek (or 80 hours biweekly for employees on certain kinds of flexible or compressed work schedules), work performed during a regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday is not considered overtime work.

Q13. What if an employee performs work outside his or her regularly scheduled basic (i.e., nonovertime) tour of duty (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday? How is he or she compensated for that work?

A13. An employee who performs work outside his or her regularly scheduled basic tour of duty (i.e., overtime work) on a holiday is compensated at the applicable overtime pay rate or through compensatory time off (in appropriate circumstances). (See fact sheets on Title 5 Overtime Pay and Compensatory Time Off.)

## **Night Pay**

Q14. What pay will General Schedule (GS) employees receive if they perform work at night on a holiday?

A14. GS employees are entitled to night pay for regularly scheduled work (i.e., work scheduled in advance of the administrative workweek) between 6:00 p.m. and 6:00 a.m. (See fact sheet on Night Pay for General Schedule Employees.) Night pay for GS employees is equal to 10 percent of the employee's hourly rate of basic pay. Night pay is earned for regularly scheduled work at night even if an employee is also entitled to overtime pay/compensatory time off or holiday premium pay for the same hours of work. (See 5 CFR 550.122(c).)

Employees also are entitled to night pay when they are excused from regularly scheduled night work during holiday hours. A GS employee who is excused from night work during holiday hours receives his or her rate of basic pay plus night pay. (See 5 CFR 550.122(a).)

## **Night Shift Differential for Federal Wage System Employees**

Q15. What pay will Federal Wage System (FWS) employees receive if they perform work at night on a holiday?



- A15. Under the FWS, a night shift differential is basic pay for the purpose of computing holiday premium pay. The night shift differential is 7.5 percent for an FWS employee for whom the majority of regularly scheduled nonovertime hours are between 3:00 p.m. and midnight. The night shift differential is 10 percent for an FWS employee for whom the majority of regularly scheduled nonovertime hours are between 11:00 p.m. and 8:00 a.m. An FWS employee who is entitled to holiday premium pay and who performs nonovertime work on a holiday is entitled to his or her rate of basic pay (including any applicable night shift differential) plus premium pay at a rate equal to the rate of basic pay (including night shift differential). The term “majority of hours” means the number of whole hours greater than half of a shift (e.g., 5 hours of a scheduled 8-hour shift). An FWS employee is entitled to pay (including night shift differential) for overtime work on a holiday under the same rules that apply to overtime work on regular workdays.

### **Credit Hours under a Flexible Work Schedule**

- Q16. May an employee on a flexible work schedule earn credit hours for working on a holiday?
- A16. Employees may not earn credit hours in lieu of receiving holiday premium pay when they perform work during normal working hours. However, an employee on a flexible work schedule may earn credit hours, if permitted under an agency's flexible work schedule policy, for work the employee elects to perform on a holiday that is in excess of his or her basic work requirement (typically 80 hours biweekly).

### **Employees Called Back to Work**

- Q17. Are employees entitled to overtime, night, and/or holiday premium pay if they are called back to work?
- A17. When an employee is required to return to a worksite to perform irregular or occasional overtime work, he or she is entitled to receive a minimum of 2 hours of overtime pay. An employee who is called back to work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday is entitled to receive a minimum of 2 hours of holiday premium pay. (See 5 U.S.C. 5546(c).) However, an employee who is called back to perform irregular or occasional work at night is not entitled to receive night pay.

### **Holiday Premium Pay and Travel**

- Q18. Are employees entitled to holiday premium pay for the time they spend in work-related travel on a Federal holiday?
- A18. Employees generally are not entitled to holiday premium pay for the time they spend in work-related travel during holiday hours of their tours of duty. Holiday premium pay is paid only to employees who perform work on a holiday. (See 5 U.S.C. 5546(b).) The criteria in 5 U.S.C. 5542(b)(2) must be used to determine whether travel time is hours of work for holiday premium pay purposes. (These are the same criteria used to determine travel time as hours of work for title 5 overtime pay purposes. The criteria are also found in 5 CFR 550.112(g).)

Time spent in a travel status is not hours of work for the purpose of paying premium pay, including holiday premium pay, unless it meets one of the criteria in 5 U.S.C.

5542(b)(2)(B) for crediting irregular or occasional hours of work for travel. The criteria state that time spent in a travel status away from the official duty station is not hours of employment unless the travel —

- involves the performance of work while traveling (e.g., employment as a truck driver);
- is incident to travel that involves the performance of work while traveling (e.g., “deadhead” travel performed by a truck driver to return an empty truck after unloading);
- is carried out under arduous and unusual conditions (e.g., on unpaved roads); or
- results from an event that could not be scheduled or controlled administratively by any individual or agency in the executive branch of the Government (e.g., training scheduled solely by a private firm or a job-related court appearance required by a court subpoena).

Note 1: This guidance applies to both Fair Labor Standards Act (FLSA) exempt and nonexempt employees. The provisions on travel time as hours of work for FLSA overtime pay purposes under 5 CFR 551.422 do not apply to the payment of holiday premium pay. Although most employees do not receive holiday premium pay for time spent traveling on a holiday, they continue to be entitled to pay for the holiday in the same manner as if the travel were not required.

Note 2: Under 5 U.S.C. 5542(b)(2)(A), time spent traveling away from the official duty station is also hours of employment if the time spent is within the days and hours of an employee's regularly scheduled administrative workweek. However, this does not apply to travel time on a holiday for holiday premium pay purposes because an employee's regularly scheduled administrative workweek includes only periods of time in which an employee is regularly scheduled to work. Travel time during holiday hours generally is not work time and, therefore, does not fall within an employee's regularly scheduled administrative workweek. (See the definition of “regularly scheduled administrative workweek” in 5 CFR 610.102.)

### **Compensatory Time Off for Travel**

Q19. If an employee is required to travel on a Federal holiday, is the employee entitled to receive compensatory time off for travel?

A19. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Although most employees do not receive holiday premium pay for time spent traveling on a holiday, an employee continues to be entitled to pay for the holiday in the same manner as if the travel were not required. Thus, an employee may not earn compensatory time off for travel during basic (i.e., nonovertime) holiday hours because the employee is entitled to his or her rate of basic pay for those hours. However, if an employee travels outside of normal work hours (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday, he or she is entitled to earn compensatory time off for travel if the travel time is not compensable under any other legal authority.