



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Friday, December 5, 2014

CPM 2014-15

MEMORANDUM FOR: AGENCY HEADS MEMBERS OF THE PRESIDENT'S MANAGEMENT COUNCIL AND CHIEF HUMAN CAPITAL OFFICERS

FROM: Katherine Archuleta Director

Subject: Excusing Federal Employees from Duty on Friday, December 26, 2014

The President has issued an Executive order excusing executive branch non-Postal Service employees from duty on Friday, December 26, 2014, with pay and without a charge to leave, 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 26, 2014, 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 26th 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 26th 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 (5 U.S.C. 5545(c)(1)) or firefighters who are covered by special pay provisions (5 U.S.C. 5545b).) An employee who is required to work nonovertime hours on December 26th is entitled to holiday premium pay (5 U.S.C. 5546(b)).

If an employee has scheduled "use or lose" annual leave on December 26, 2014, and is unable to reschedule that leave for use before the end of the leave year (i.e., January 10, 2015), the leave will be forfeited. When "use or lose" leave is forfeited under these conditions, the law (5 U.S.C. 6304(d)) does not permit restoration of the leave.

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/policy-data-oversight/pay-leave/pay-administration/fact-sheets/holidays-work-schedules-and-pay>
- Compressed Work Schedules at <http://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/fact-sheets/alternative-work-schedules-compressed-work-schedules>
- Flexible Work Schedules at <http://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/fact-sheets/alternative-flexible-work-schedules>

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 26th.

Additional Information

For general information on Federal pay, leave, and work scheduling policies, please visit <http://www.opm.gov/policy-data-oversight/pay-leave>. 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. (Requests from individual employees will be returned or forwarded to the appropriate agency human resources office.)

cc: Chief Human Capital Officers and Human Resources Directors

Attachment 1: [Executive Order -- Closing of Executive Departments and Agencies of the Federal Government on Friday, December 26, 2014](#)

Attachment 2: Questions and Answers on Pay and Leave Administration for December 25 and 26, 2014

Leave

Q1. Are employees who are scheduled to take annual leave on Friday, December 26, charged leave?

A1. Employees who are scheduled to take annual leave on Friday, December 26, will not be charged leave.

Q2. Will employees forfeit “use or lose” annual leave scheduled for Friday, December 26?

A2. If an employee has scheduled “use or lose” annual leave for Friday, December 26, and is unable to reschedule that leave for use before the end of the leave year (i.e., for most employees, January 10, 2015, 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. For more information, please see the Voluntary Leave Transfer Program fact sheet. Employees interested in donating leave should speak with their servicing HR office.)

“In Lieu of” Holiday

Q3. What days are the “in lieu of” holiday/half-day holiday for an employee whose basic work schedule does not include Thursday, December 25 and/or Friday, December 26?

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— Friday - Tuesday Work Schedule

(Thursday is a scheduled nonworkday, Friday a scheduled workday)

If the employee has a regularly scheduled nonworkday on Thursday, December 25, and a regularly scheduled workday on Friday, December 26, the “in lieu of” holiday for December 25 would be the preceding workday — in this example, Wednesday, December 24. There is no need for an “in lieu of” holiday for December 26.

Example 2 — Sunday - Thursday Work Schedule

(Thursday is a scheduled workday, Friday is a scheduled nonworkday)

If the employee has a regularly scheduled workday on Thursday, December 25, and a regularly scheduled nonworkday on Friday, December 26, Wednesday, December 24 becomes the “in lieu of” holiday for December 26. There is no need for an “in lieu of” holiday for December 25.

Example 3 — Saturday – Wednesday Work Schedule

(Both Thursday and Friday are scheduled nonworkdays)

If the employee has regularly scheduled nonworkdays on both Thursday, December 25, and Friday, December 26, the “in lieu of” holiday for December 25 will be observed on Wednesday, December 24 and the “in lieu of” holiday for December 26 will be observed on Tuesday, December 23.

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 Thursday or Friday?

A4. For full-time employees on an AWS whose regularly scheduled nonworkday is Thursday, December 25, or Friday, December 26, the workday immediately preceding that day will be designated as the employee's “in lieu of” holiday.

Example 1 — Regularly scheduled nonworkday is Thursday

If an employee on an AWS has his or her regularly scheduled AWS day off on Thursday, December 25, and Wednesday, December 24, is the preceding workday, the “in lieu of” holiday for Thursday, December 25, is Wednesday, December 24.

Example 2 — Regularly scheduled nonworkday is Friday

If an employee on an AWS has his or her regularly scheduled AWS day off on Friday, December 26, and Wednesday, December 24, is the preceding workday (because Thursday, December 25, is a nonworkday), the “in lieu of” holiday for Friday, December 26, is Wednesday, December 24.

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 Wednesday, December 25, or Friday, December 26). 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 Friday through Tuesday schedule, the “in lieu of” holiday for Thursday, December 25, would

be Tuesday, December 23. The agency may wish to excuse part-time employees from duty on Tuesday, 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 holiday. For example, if a part-time employee has an 8-hour basic workday, the holiday would be 8 hours and if a part-time employee had a 4-hour basic workday, the holiday would be 4 hours.

Compressed Work Schedule

A full-time or part-time employee on a fixed compressed work schedule who is excused from duty is entitled to receive his or her rate of basic pay for the total number of hours he or she was scheduled to work on that day. 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 a maximum of 8 hours of pay on a holiday. (See 5 U.S.C. 6124.) A part-time employee under a flexible work schedule is entitled to one-half of the total number of hours in his or her basic work requirement (i.e., nonovertime hours) on that day, not to exceed 8 hours. (See 5 CFR 610.405.)

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 perform non-overtime work during their regularly scheduled tour of duty during a holiday, not to exceed 8 hours.

Compressed Work Schedule

Employees under compressed work schedules are entitled to holiday premium pay if they are required to perform non-overtime work during their regularly scheduled tour of duty during a holiday. The number of hours of holiday premium pay may not exceed the total number of 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 during a holiday are entitled to receive holiday premium pay for up to 8 hours of nonovertime work (or up to half of the maximum number of nonovertime hours if on a 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 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.