

7A U.S.C. 6104  
75-41

**DECISION**



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-192104

DATE: September 1, 1978

MATTER OF: Commissary Employees - Entitlement to Holiday

**DIGEST:** Army closed Commissary on Saturday to avoid payment of holiday pay to full-time employees who were entitled to a holiday. In view of regulations governing administrative dismissal of employees, agency properly required part-time employees who were not entitled to a holiday to take annual leave or leave-without-pay on the Saturday the Commissary was closed.

This action is in response to the request from the American Federation of Government Employees (AFGE), reference 12q/L 2324, for a decision regarding the entitlement of regularly scheduled part-time employees of the Fort Riley, Kansas, Commissary, to compensation without charge to leave when the activity was closed by administrative order on Saturday, February 18, 1978.

The facts, as presented by the union, are not in dispute. The Commissary employs both full-time and part-time employees whose regularly scheduled workweek is Tuesday through Saturday. Since the observance of Washington's Birthday occurred for most Federal employees on Monday, February 20, 1978, a nonworkday for these employees, the agency declared that the full-time employees would observe the holiday on Saturday, February 18, 1978. See 5 U.S.C. 6102(b)(2) (1976). In view of the anticipated expenditure of funds for holiday pay, the agency chose to close the Commissary on Saturday, February 18, 1978, as well as Monday, February 20, 1978. For these full-time employees, Saturday was considered a holiday for which there would be no charge to leave. However, the agency advised the part-time and intermittent employees who were scheduled to work on Saturday that they would be forced to take annual leave or leave-without-pay for that day.

The union does not dispute the agency's contention that under the appropriate statute, Executive order, and decisions of our Office, part-time employees are not entitled to a day in lieu of a holiday which does not fall within their basic workweek. Instead, AFGE argues that under the authority of 5 U.S.C. 6104 (1976), regularly scheduled part-time employees are entitled to compensation for a day in which their activity is closed by administrative order, regardless of the reason for its closing.

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The Department of the Army, in providing its comments on the request, states that under the regulations contained in 5 C.F.R. chapter 610 which implement chapter 61 of title 5, United States Code, each agency is authorized to issue supplemental regulations concerning the use of "administrative dismissal" authority. Under the applicable regulation, Department of Defense (DOD) Instruction 1424.2, October 10, 1972, the authority of heads of DOD components to administratively dismiss or excuse employees without a loss of pay or a charge to leave shall not be used to cover periods of interrupted or suspended operations which may be anticipated in sufficient time so as to permit the assignment of employees to other work or the scheduling of annual leave.

Under the provisions of 5 U.S.C. 6103(b)(2), it appears that where Monday is the declared holiday and it is also the regular nonworkday of an employee whose normal workweek is Tuesday through Saturday, then the Saturday immediately preceding the holiday is the employee's legal holiday. See 44 Comp. Gen. 803 (1965). We have also held that the term "basic workweek" which appears in Executive Order No. 11582 as well as in its predecessor, Executive Order No. 10358, applies only to full-time employees and not part-time employees. See 32 Comp. Gen. 376 (1953). Thus, as both the agency and the union agree, part-time employees are not entitled to a day in lieu of a holiday which does not fall within their basic workweek.

The union contends, however, that under the provisions of 5 U.S.C. 6104 part-time employees are entitled to compensation when the Commissary was closed by administrative order on Saturday, February 18, 1978. The legislative history of this provision indicates it was intended to extend to part-time employees the same entitlement to time off with pay and without charge to leave as full-time employees enjoyed when they were relieved or prevented from working by administrative order. S. Rep. No. 1470, 83d Cong., 2d Sess. reprinted in (1954) U.S. Code Cong. & Ad. News 2337, 2338. The implementing regulations, contained in 5 C.F.R. Part 610, Subpart C, provide in pertinent part:

"610.302 Policy statement.

The authority in this subpart may be used only to the extent warranted by good administration for short periods of time not generally exceeding 3 consecutive work days in a single period of excused absence. This authority may not be used in situations of extensive duration or

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for periods of interrupted or suspended operations such as ordinarily would be covered by the scheduling of leave, furlough, or the assignment of other work. Insofar as practicable, each administrative order issued under this subpart shall provide benefits for regular employees paid at daily, hourly, or piece-work rates similar to those provided for employees paid at annual rates." (Emphasis added.)

See also Federal Personnel Manual Supplement 990-2, Book 610, subchapter 3.

In accordance with 5 C.F.R. 610.306, the agency has issued supplemental regulations which preclude the agency from administratively dismissing its employees under the circumstances described above. Since our Office has recognized that agency heads have the discretion to require employees to take annual leave when an office is closed for administrative reasons, we cannot conclude that the agency was in error under these circumstances. See 40 Comp. Gen. 312 (1960) and 54 id. 503 (1974).

Accordingly, we find no basis to allow these part-time employees to be excused from duty without a charge to leave.

  
Deputy Comptroller General  
of the United States