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DECISION



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

[Holiday Pay for Employees on]

12396

FILE: B-196653

DATE: December 31, 1979

MATTER OF: Compressed Work Schedules } Holiday Time Off

DIGEST: OPM regulations provide that employees working four 10-hour workdays under Title II of the Federal Employees Flexible and Compressed Work Schedules Act of 1978 shall receive 10 hours off for a holiday. Employees covered by Title I (flexible schedules) are specifically limited by section 104 of that title to receive no more than 8 hours off for a holiday. No such limiting provision appears in Title II. In view of this and since Congress provided holiday premium pay in excess of 8 hours to employees covered by Title II but retained the limit on holiday premium pay to 8 hours for employees under Title I, OPM's determination is in accordance with the law.

a/r

This decision, requested by Mr. H. O. Miller, Accounting and Finance Officer, Defense Logistics Agency (DLA), concerns the legality of DLA employees receiving 10 paid hours off for holidays incident to their being scheduled to work four 10-hour days under Title II of the Federal Employees' Flexible and Compressed Work Schedules Act of 1978, Public Law 95-390, September 29, 1978.

378

FACTS

Mr. Miller states that on September 30, 1979, the Accounting and Finance Division, Office of the Comptroller, Headquarters, DLA, began participating in a compressed work schedule experiment under the Federal Employees Flexible and Compressed Work Schedules Act of 1978. The work schedule provides for four 10-hour workdays each week. Mr. Miller states that in accordance with guidance furnished by the Office of Personnel Management (OPM), employees on the compressed 4-day workweek will receive 10 hours off on a holiday. See Attachment to Federal Personnel Manual (FPM) Letter 620-2 (II-3), June 4, 1979. Thus, they would only work 30 hours during a week in which a holiday occurred. Mr. Miller points out that in the normal 5-day, 8-hour week employees get 8 hours off and work 32 hours when a holiday occurs during that week.

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ISSUE

The question presented is whether it is legal to pay employees on a compressed work schedule for 10 hours off on a holiday.

OPINION

The Federal Employees Flexible and Compressed Work Schedules Act of 1978 is experimental legislation designed to determine "over a three year period * * * whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. * * *" See section 2 of the Act. The Office of Personnel Management (OPM), as successor to the Civil Service Commission, is given the authority to prescribe regulations necessary for the administration of the Act.

There are two basic types of alternative work schedules contemplated by the Act: (1) flexible scheduling of work hours under Title I; and (2) compressed work schedules, such as the 4-day week, under Title II. As OPM states, the two types of alternative work schedules "* * * are different in concept, in structure, and most importantly from the viewpoint of personnel administration, they are different by law." See page 1 of FPM Letter 620-2, June 4, 1979.

In this regard, employees working flexible schedules under Title I of the Act only receive up to a maximum of 8 hours of holiday premium pay if they work on a holiday. 5 U.S.C. § 5546(b). By the same token section 104 of the Act (Title I) states as follows:

"SEC. 104. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Commission)."

Thus, employees covered by Title I who choose to work flexible workweeks are limited by section 104 of the Act to 8 hours off for a holiday.

The House and Senate Reports on the bills subsequently enacted as the Federal Employees Flexible and Compressed Work Schedules Act of 1978 describe section 104 in their respective Section-by-Section Analyses as follows:

"Sections 6103 and 6104 of title 5, which relate to entitlement to pay for legal public holidays, speak in terms of 'workday' and 'day on which an ordinary day's work is performed'. Under many flexible scheduling experiments such terms would not have fixed meaning since it is inherent in such experiments that the 'workday' or 'an ordinary day's work' may vary. Accordingly, section 104 provides a fixed measure, e.g., 8 hours, for determining entitlement to holiday pay for employees under a flexible schedule. This provision is intended to insure that an employee's entitlement to pay for a legal holiday under the bill will be consistent with existing law."

H.R. Rep. No. 912, 95th Cong., 2d Sess. 18 (1978);
S. Rep. No. 1143, 95th Cong., 2d Sess. 18, 19 (1978).

Title II of the Act has no comparable provision to section 104 of Title I, which specifically limits the amount of paid time off an employee may receive on a holiday. Moreover, the sectional analyses in the House and Senate Reports do not address the question of time off for holidays under Title II. Furthermore, in contrast to the treatment of employees covered by Title I, section 203 of Title II provides that, notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day,

B-196653

the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended, whichever provisions are more beneficial to the employee. Employees covered by a compressed work schedule under Title II, may receive more than 8 hours of holiday premium pay for work on a holiday (10 hours in the case of an employee on a 4-day, 10-hour workweek).

We note also that section 301 of Title III of the Act, which concerns administrative provisions, states:

"For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under title I or II, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof)."

In that section Congress was clearly restricting the meaning of a day, relative to the cited leave and retirement provisions, to 8 hours for employees covered under both Titles I and II. Therefore, Congress chose to limit a day to 8 hours in situations covered by sections 104 and 301, but placed no such limitation on the length of a day for the purposes of time off for holidays for employees covered by Title II.

Since there is a specific provision limiting time off on holidays to 8 hours for those employees covered by Title I, but no similar restriction exists for employees covered by Title II, we are necessarily lead to the conclusion that employees covered by Title II were not to be bound by the time-off restriction mandated for employees covered by Title I.

Accordingly, we conclude that OPM's determination to allow employees working four 10-hour days, 10 hours off on

B-196653

a holiday, is in accordance with the law. Hence, payments for such holidays to employees on a compressed work schedule are legal under Title II of the Act and the implementing OPM regulations.

A handwritten signature in cursive script, reading "Milton F. Arosola".

For the Comptroller General
of the United States