

DECISION



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

7888

FILE: B-191561

DATE: October 3, 1978

MATTER OF: Meat and Poultry Inspectors - Pay for Friday
Hours Worked When Holiday Falls on Saturday

- DIGEST:
1. Employees regularly scheduled to work 4 hours on Friday were entitled to holiday premium pay only for the hours they worked (4 hours) on the Fridays before Christmas of 1976 and New Year's Day of 1977 which fell on Saturdays.
 2. Employees scheduled to work 8 hours on Friday, a holiday, are entitled to holiday premium pay only for those hours remaining in the basic workweek and to overtime pay for those hours worked in excess of the basic workweek on the Fridays before Christmas of 1976 and New Year's Day of 1977.

This action is in response to a request from Mr. Charles A. Bucy, Acting Deputy Assistant Secretary for Administration, Department of Agriculture, for a decision as to the number of hours of pay certain employees of the Meat and Poultry Inspection Programs (MPIP) are entitled to for the holidays of Christmas, December 25, 1976, and New Year's Day, January 1, 1977. These holidays fell on Saturdays and were observed on the preceding Fridays pursuant to 5 U.S.C. § 6103(b) (1970).

The employees involved herein were on a nonstandard tour of duty. They inspected commercial establishments which have different hours of operations based upon various factors, including locations, market considerations, and availability of labor. Because inspectors were provided by MPIP at unusual hours, a standard tour of duty was then considered impractical for the inspectors. The basic workweek of the inspectors began when they first commenced work during the administrative workweek, even if such work commenced at an hour or on a day not normally worked and if it was for less than 8 hours. Such work was compensated at base pay rate, or night, Sunday or holiday rate as appropriate. They were not, however, placed on a "first forty hours" tour of duty under 5 U.S.C. § 5542(a). Any work performed in excess of 8 hours in a day or 40 hours in a week was treated as overtime under 5 U.S.C. § 5542(a) (1970). The agency states that the inspectors were placed on a standard tour of duty in 1977 and therefore the problem should not recur.

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Question 1.

"One group of MPIP inspectors worked forty hours in a six day basic workweek from Sunday to Friday. Less than eight hours were worked on Sunday and on Friday. Eight hours were worked on each Monday through Thursday. MPIP paid the inspectors in this group holiday pay for the two holidays in question for the number of hours they were regularly scheduled to work on Friday (e.g., 4 hours). However, employee representatives have indicated that they believe that each MPIP inspector should be paid for eight hours of holiday pay for each of these holidays. Question 1 is, therefore, are the inspectors in this situation entitled to eight hours of holiday pay or only the number of hours they were scheduled to work on Friday?"

The question in essence is whether the employees involved are entitled to premium pay for holidays worked (double time) under 5 U.S.C. § 5546(b) for the 4 hours actually worked on each Friday or for 8 hours for each of those days. It arises because the provisions of 5 U.S.C. § 6103(b) and Executive Order No. 11582, read together, can be viewed as establishing a general policy that all Federal employees should receive 8 hours of holiday entitlement for each legal Federal holiday independent of the distribution of the hours of the basic workweek across the calendar days of the week.

Subsection (b) of 5 U.S.C. § 6103 provides that when a holiday falls on a Saturday the preceding Friday will be treated as a holiday for certain employees. Executive Order No. 11582 recognizes situations when holidays fall on Sundays, on Saturdays, on regular weekly nonworkdays in lieu of Sundays when the basic workweek includes Sundays, and on regular weekly workdays. However, we find nothing in either of the authorities which would authorize payment of 8 hours' pay where the employee worked a 4-hour regularly scheduled workday on a holiday.

Section 5546 of title 5, United States Code, provides the following concerning pay for holiday work:

"(b) An employee who performs work on a holiday designated by Federal statute, Executive order * * * is entitled to pay at the rate of his

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basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not--

"(1) in excess of 8 hours; or

"(2) overtime work as defined by section 5542(a) of this title."

This statute has been interpreted to permit payment of premium pay only for those hours of work performed on holidays during an employee's regular tour of duty, i.e., the hours of his regular shift of duty. Since the MPIP employees were regularly scheduled to work 4 hours on the Friday holidays and, in fact, worked 4 hours each day, they are entitled only to 4 hours of holiday premium pay for each Friday.

Question 2.

"Another group of MPIP inspectors worked less than eight hours on Sunday and eight hours per day Monday through Friday. Because MPIP at the time considered the basic workweek to begin when the inspectors first commenced work during the administrative workweek (Sunday in this case), these inspectors were considered on overtime on Friday after they had worked forty hours. MPIP paid holiday pay to this group of inspectors for those hours worked on Friday which were not overtime. * * * employee representatives have indicated that they believe that each inspector should receive eight hours of holiday pay for each of these holidays. Question 2 is, therefore, are the inspectors entitled to eight hours of holiday pay for the eight hours worked on Friday or for holiday pay for only those hours that were not overtime?"

Section 5546(b) of title 5, United States Code, quoted above, also controls the answer to the second question. Subsection (b)(2) contains a provision which limits the amount of compensation payable. In 37 Comp. Gen. 1 (1957), dealing with a similar question arising under 5 U.S.C. § 992, the predecessor of 5 U.S.C. § 5546(b), we stated the following concerning the legislative history of that provision (id. at 3):

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"The conference report * * * makes it clear that the premium rate for holiday work was intended to apply to work on a holiday within the 40-hour basic workweek of an employee (House Report No. 2665, 83d Congress, at page 22); and section 302 (c), 5 U. S. C. 922 (c), provides specifically that compensation for overtime work on a holiday is to be paid under section 201, as amended, 5 U. S. C. 911 [5 U.S.C. 5342(a)] * * *."

Therefore, hours worked on a holiday outside of the employee's basic workweek are to be paid at overtime rates (time and a half). Holiday premium pay (double time) is only due when the work on a holiday is performed during the employee's regular work schedule. 38 Comp. Gen. 560 (1959) and 50 Comp. Gen. 519, 524 (1971).

The answer to question 2, accordingly, is that the inspectors are entitled to premium pay for holiday work under 5 U.S.C. § 5546(b) for the two Friday holidays only for those hours worked that were not overtime.

R. F. K. K. K.
Deputy Comptroller General
of the United States