

11193 PLM-1

**DECISION**



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

FILE: B-194459

DATE: August 22, 1979

MATTER OF: Administrative Office of U.S. Courts - Forfeiture  
of Leave <sup>and</sup> Failure to Timely Schedule

DIGEST: Two employees submitted written requests for annual leave on first day of third pay period before end of leave year, but they later forfeited annual leave. Civil Service Regulation (5 C.F.R. § 630.308) requires that leave be scheduled before start of third biweekly pay period prior to end of leave year. Employees failed to satisfy this requirement; hence forfeited leave may not be restored.

This decision is in response to the request from William E. Foley, Director, Administrative Office of the United States Courts, concerning the advance scheduling requirement for restoration of forfeited annual leave. The issue presented for decision is whether a written request for leave submitted on the first day of the third pay period before the end of the leave year satisfies the requirement that forfeited leave which is restored due to sickness or public exigency be scheduled in advance.

The letter from the Administrative Office states that two employees have requested that annual leave which they forfeited be restored to them. Prior to the third pay period before the end of the leave year the employees orally requested annual leave, but their written requests for annual leave were not submitted until the first day of the third pay period before the end of the leave year. The request was approved that day but the leave was later forfeited due to public exigency. The Administrative Office denied their requests for restoration of the forfeited annual leave on the ground that they had not scheduled their annual leave within the time limits established under the applicable law and regulation.

Under the provisions of 5 U.S.C. § 6304(a), except otherwise specifically provided, an employee may not carry over more than 30 days (240 hours) of annual leave into a new leave year, and any excess annual leave is forfeited. However, section 6304(d) provides as follows:

"(d)(1) Annual leave which is lost by operation of this section because of--

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"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

"(B) exigencies of the public business when the annual leave was scheduled in advance; or

"(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee."

The Civil Service Commission (now Office of Personnel Management) has, pursuant to 5 U.S.C. §§ 6304(d)(2) and 6311, issued regulations implementing the provisions of 5 U.S.C. § 6304(d)(1). As these regulations were issued under statutory authority, they have the force and effect of law. The regulations, which appear in 5 C.F.R. Part 630, provide in pertinent part as follows:

"Beginning with the 1974 leave year, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year." 5 C.F.R. § 630.308.

With regard to this advance scheduling requirement, paragraph 5c(3) of the Attachment to Federal Personnel Manual Letter 630-22 provides in pertinent part as follows:

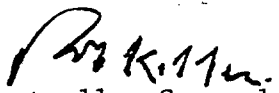
"(a) The requirement that annual leave be scheduled for use in advance means that the scheduling decision must have been made prior to the end of the leave year. By regulation, the Commission has set a fixed cutoff before which the scheduling decision must have been made. This date is three biweekly pay periods prior to the actual end of the leave year. It should be noted that the leave may be scheduled for use during the last three pay periods of the leave year.

"(b) While the above cutoff date is applicable only to those situations involving the possible forfeiture

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and restoration of annual leave, management and employees should not wait until this date approaches to schedule leave. Positive action should be taken to assure that annual leave is scheduled for use during the year so as to avoid situations where employees approach the end of the leave year with a significant amount of annual leave that must be used or forfeited. For example, if an exigency should occur during the year that results in the cancellation of scheduled leave, action must be taken to reschedule the leave for use before the end of the leave year to avoid forfeiture."

In the present case it appears that the leave was not scheduled in advance as provided under the applicable law and regulation since it was not scheduled before the start of the third pay period prior to the end of the leave year. We have consistently held that for restoration of forfeited annual leave due to sickness or public exigency, the statutory requirement for scheduling must be met and cannot be waived or modified. See Michael Dana, 56 Comp. Gen. 470 (1977); and B-191540, December 8, 1978. Therefore, we conclude that this forfeited leave may not be restored.

  
Deputy Comptroller General  
of the United States