



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

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Dear Mr. Postmaster General:

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On November 3, 1965, your Deputy Postmaster General requested our decision construing 39 U.S. Code 3573, as amended by section 5(b) of the Federal Employees Salary Act of 1965, Pub. L. 89-301, 79 Stat. 1114, reading in part as follows:

"(a) In emergencies or if the needs of the service require, the Postmaster General may require employees to perform overtime work or to work on holidays. Overtime work is any work officially ordered or approved which is performed by--

"(1) an annual rate regular employee in excess of his regular work schedule,

"(2) an hourly rate regular employee in excess of eight hours in a day or forty hours in a week, and

"(3) a substitute employee in excess of forty hours in a week.

* * * * *

"(b) For each hour of overtime work the Postmaster General shall compensate an employee in the 'PFS' Schedule as follows:

"(1) He shall pay each employee in or below salary level PFS-7 compensation at the rate of 150 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

"(2) He shall grant each employee in or above salary level PFS-8 compensatory time equal to the overtime worked, or in his discretion in lieu thereof pay such employee compensation at the rate of 150 per centum of the hourly rate of basic compensation of the employee or of the hourly rate of the basic compensation for the highest step of salary level PFS-7, whichever is the lesser.

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(c) For officially ordered or approved time worked on a day referred to as a holiday in the Act of December 26, 1941 (55 Stat. 862; 5 U.S.C. 87b), or on a day designated by Executive order as a holiday for Federal employees, under regulations prescribed by the Postmaster General, an employee in the PFS schedule shall receive extra compensation, in addition to any other compensation provided for by law, as follows:

(1) Each regular employee in or below salary level PFE-7 shall be paid extra compensation at the rate of 100 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(2) Each regular employee in or above salary level PFS-8 shall be granted compensatory time in an amount equal to the time worked on such holiday within thirty working days thereafter or, in the discretion of the Postmaster General, in lieu thereof shall be paid extra compensation for the time so worked at the rate of 100 per centum of the hourly rate of basic compensation for his level and step computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty.

(3) For work performed on Christmas Day (A) each regular employee shall be paid extra compensation at the rate of 150 per centum of the hourly rate of basic compensation for his level and step, computed by dividing the scheduled annual rate of basic compensation by two thousand and eighty, and (B) each substitute employee shall be paid extra compensation at the rate of 50 per centum of the hourly rate of basic compensation for his level and step.

* * * * *

(h) For the purposes of this section and section 3571 of this title—

(1) 'Annual rate regular employee' means an employee for whom the Postmaster General has established a regular work schedule consisting of five eight-hour days in accordance with section 3571 of this title.

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"(2) 'Hourly rate regular employee' means an employee for whom the Postmaster General has established a regular work schedule consisting of not more than forty hours a week.

"(3) 'Substitute employee' means an employee for whom the Postmaster General has not established a regular work schedule."

Pursuant to an informal understanding with representatives of your Department, herewith is our decision upon items 1 - 9 and upon items 11 and 13. Questions 10 and 12 require further consideration but answers thereto will be furnished as soon as possible.

"1. Employee A is an annual rate regular distribution clerk in PFS-4. He has a scheduled five day basic work week, Monday through Friday, eight hours each day from 8:00 A.M. to 4:30 P.M. each day. On Monday, he is on leave without pay for the first four hours. He then works until 8:00 P.M. Is employee A entitled to be paid at overtime rates for the hours of actual work performed after 4:30 P.M., or is he entitled to be paid only his regular computed hourly rate?"

The quoted statute defines "overtime work" as "any work ordered or approved" which is performed by—

"(1) An annual rate regular employee in excess of his regular work schedule."

Under the quoted statute an employee must have been in a work or leave with pay status for the number of hours included in his regular work schedule before he may be compensated at overtime rates for work performed outside his scheduled hours. While a leave with pay status may be included as a part of the basic 8-hour day or 40-hour week, a period of leave without pay may not be included for such purpose. Compare 25 Comp. Gen. 102; id. 121; and also FPM 550-4, 1-3b(1) and (2) and FPM Supplement 990-2, 81-3b(b). Accordingly, employee "A" would not be entitled to be compensated at the overtime rate for service rendered after 4:30 p.m. but only at his basic rate.

"2. Employee B is an annual rate regular in PFS-8. His work schedule is identical with Employee A. He is on leave without pay for the first four hours on Monday and he works until 8:00 P.M. The Department has decided to grant employees in

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PFB-8 to 14 who perform overtime work compensatory time rather than compensation. Is employee B entitled to compensatory time for hours of actual work performed after 4:30 P.M.?"

In line with the answer to question 1, employee "B" performed no overtime work--work in excess of that included in his regular work schedule. Since compensatory time may be granted only for overtime work performed, employee "B" is not entitled to compensatory time for the hours of work performed after 4:30 p.m.

"3. Employee C is an hourly rate regular in PFS-4. He is scheduled to perform three hours of service each day, six days a week; Sunday through Friday, from 5:00 P.M. to 8:00 P.M. On Friday he is on authorized annual leave between 5:00 P.M. and 6:00 P.M. He works until 8:00 P.M. Because of extra work performed earlier in the week, he will have performed 40 hours of actual work during the service week at 6:00 P.M. on Friday if the hour of annual leave is counted. Is employee C authorized to be paid overtime for the two hours after 6:00 P.M.? If your answer is in the affirmative, would it be the same if he were on authorized leave without pay?"

The first question in this example is answered in the affirmative. However, if employee "C" were on leave without pay rather than annual leave for the one hour, he would be entitled to pay at the overtime rate for one hour only.

"4. Employee D is a substitute in PFS-4. He is on authorized annual leave from Saturday through Thursday inclusive for a total of 40 hours. He is called to work on Friday at 8:00 A.M. and works until 4:30 P.M. Is employee D entitled to be paid at overtime rates for the eight hours work performed on Friday? If your answer is in the affirmative, would your answer be the same if part of the leave had been authorized leave without pay?"

For the purpose of satisfying the 40 hours of work requirement, a condition precedent to accumulation of overtime by a substitute employee, time in a leave with pay status should be counted despite the fact that a substitute has no scheduled tour of duty. However, time in a leave without pay status may not be counted for such purpose. The two questions posed concerning employee "D", therefore, are answered "yes" and "no" respectively. Compare answer to question 1.

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"5. Employee E is a substitute in PFB-4. For the first service week of the pay period he works 42 hours and 40 minutes. For the second week of the pay period he works 42 hours and 31 minutes. May the excess over 40 hours in each week, 2 hours and 40 minutes and 2 hours and 31 minutes respectively, be totaled at the end of the two week pay period and rounded off to the nearest whole hour, i.e., 5 hours, for overtime pay purposes, or is the Department to round off the overtime to the nearest hour each week, i.e., 3 hours overtime for each week, or a total of 6 overtime hours for the pay period. It has always been the practice of the Post Office Department to round off at the end of the pay period."

We are aware of no statutory provision governing the matter of rounding off overtime hours. However, we understand that the practice of rounding off overtime hours at the end of each biweekly pay period is one of long standing in the Post Office Department. Under the circumstances we will not object to the practice of rounding off overtime hours to nearest hour at the end of each pay period being continued. The first question is answered in the affirmative and the second question in the negative.

"6. Employee F has a regular hourly rate appointment as a janitor in PFB-1. He also has a dual appointment as an annual rate distribution clerk in PFB-4. As a janitor he is scheduled to work 12 hours a week, from 10:00 A.M. to 12:00 Noon, Saturday through Friday, exclusive of Sunday. As an annual rate regular distribution clerk he is regularly scheduled to work 40 hours a week, namely eight hours a day from 1:30 P.M. to 10:00 P.M., Saturday through Thursday, exclusive of Sunday. These are two distinct and separate appointments. Does this fact require that for overtime purposes each appointment is separate, or may the hours of service in each of these two separate, independent positions be combined for overtime purposes? If your answer is that the hours may be combined, at what rate is overtime to be paid to employee F?"

Since both hourly rate regular employees and annual rate regular employees are entitled to overtime compensation for officially ordered work performed in excess of 8 hours a day or 40 hours a week, the hours of work in the two positions may be combined in order to satisfy the basic workday or workweek requirements. After the basic requirements have been satisfied overtime shall be computed at the rate applicable to the position or

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positions in which the employee actually performs overtime service--work in excess of 8 hours a day or 40 hours a week. Thus, employee "F" would be entitled to two hours overtime based on the PFS-4 rate for service on Saturday, Monday, Tuesday, Wednesday and Thursday. In addition, he would be entitled to two hours overtime based on the PFS-1 rate for service on Friday. However, duplicate use of same hours of work is not authorized. See reply to item 7, below.

"7. Employee G has two separate appointments. One appointment is as substitute clerk, PFS-4, the other as custodian, hourly rate regular PFS-1. In the latter position he is scheduled to work from 8:00 A.M. to 1:30 P.M., six days a week, Saturday through Friday, Sunday excluded. The substitute service is as needed. In a week of service, employee G worked the following hours:

	<u>PFS-4 position</u>	<u>PFS-1 position</u>
Saturday	-	5
Sunday	0	-
Monday	4	5
Tuesday	3	5
Wednesday	5	5
Thursday	-	9
Friday	-	5
Total	<u>20</u>	<u>34</u>

Is the employee entitled to 14 hours overtime for the excess hours over 40 of the total service in both positions. If so, at what rate would he be paid for the overtime? Is the employee entitled to overtime on a daily basis; 1 hour for Monday, 2 hours for Wednesday and, if so, at what rate would the overtime be paid?"

The first question is answered in the affirmative. Overtime should be computed on the rate for the PFS-1 position since all work performed after completion of the basic 40 hours was in the PFS-1 position. As a substitute employee, "G" is not entitled to overtime for work in excess of 8 hours a day. Even if we assume the service in the regular position was performed daily later than the substitute service on Monday and Wednesday, it would not affect the amount to which employee "G" is entitled. The statute does not contemplate duplicate reimbursement for overtime--reimbursement for work

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in excess of 8 hours a day plus reimbursement for the same such hours as being in excess of 40 hours per week. See page 8, H. Rept. No. 792, 89th Congress, August 16, 1965. Therefore, no overtime is authorized for work in excess of 8 hours on Monday or Wednesday.

8. Employee H is an annual rate regular in FFS-1, Janitor. As such janitor, his work week is Sunday through Thursday, 8:00 A.M. to 4:30 P.M. He performs service at this regular position Sunday through Tuesday. Pursuant to Section 3335 of Title 39, U.S. Code, he is assigned to perform the work of a distribution clerk FFS-4 on Wednesday, Thursday and Friday between the hours of 8:00 A.M. and 4:30 P.M. He is paid compensation at the rate of the higher level position on Wednesday, Thursday and Friday. No separate appointments are involved. Is employee H entitled to overtime for the eight hours work he performs on Friday? If the answer is in the affirmative, at what rate?"

The first question is answered in the affirmative. Employee "H" would be entitled to overtime compensation for work performed on Friday at the FFS-4 rate. Compare answer to question 6.

9. Employee I is an annual rate regular distribution clerk in FFS-4. He has a regularly scheduled work week of Monday through Friday, 8:00 A.M. to 4:30 P.M. He works eight hours on Saturday as a distribution clerk. This work is performed before and, hence, outside of his regularly scheduled work week. He performs no actual work in his regularly scheduled work week as he is in an annual leave status the full regularly scheduled work week. Is employee I entitled to be paid eight hours overtime for the service he performed on Saturday? If the answer is in the affirmative, would he be entitled to be paid overtime for such service if he were in an authorized leave without pay status?"

The answer to the first question is affirmative. If employee "I" were authorized leave without pay as distinguished from annual leave he would not be entitled to overtime compensation for work performed on Saturday. Compare answer to question 1.

11. Employee K is a regular annual rate distribution clerk in FFS-4. His regular work schedule includes an eight hour period of service on Sunday, from 8:00 A.M. to 4:30 P.M.

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At 1:30 P.M. he takes annual leave. Is employee K entitled to be paid the extra 25% of his hourly rate of basic compensation for the hours between 1:30 P.M. and 4:30 P.M.? If your answer is in the affirmative, would your answer be the same if he were absent on authorized leave without pay?"

The first question is answered in the negative. While generally leave with pay is synonymous with duty insofar as entitlement to basic pay is concerned, where, as here, additional pay is authorized for services rendered on a certain day, entitlement to such additional pay would be dependent upon the actual performance of work on such day, unless otherwise expressly provided by statute.

"13. Employee M is a substitute distribution clerk in PFS-4. He works from Saturday through Tuesday for a total of thirty-two hours. Pursuant to Section 3335, on Wednesday and Thursday he is assigned to perform the duties of a position in PFS-7, for which he has previously qualified to receive higher level pay. He performs eight hours service each day in the higher level position. Is employee M entitled to receive eight hours overtime because the combined service exceeded 40 hours in one service week? If the answer is in the affirmative, at what rate is the overtime to be paid?"

The first question is answered in the affirmative. Employee "M" would be entitled to overtime pay for 8 hours computed at the PFS-7 rate. Compare answer to question 6.

Sincerely yours,

FRANK H. WEITZEL

Acting Comptroller General
of the United States

The Honorable
The Postmaster General