

Lupton  
C.D.

**DECISION**



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

04636

FILE: B-190011

DATE: December 30, 1977

**MATTER OF:** Department of Health, Education, and Welfare -  
Use of Employee Rest Periods to Expand Lunch  
Breaks or Leave Periods

- DIGEST:**
1. Department of Health, Education, and Welfare questions whether it may expand a regularly scheduled employee lunch break of 30 minutes to 45 minutes by permitting an employee to take a 15-minute rest period just prior to lunch. This practice is improper because employee lunch breaks are authorized under 5 U.S.C. 6101(a)(3)(F). A statute that mandates a thing to be done in a given manner normally implies that it shall not be done in any other manner. Hence lunch break should be expanded under that statutory authority.
  2. Department of Health, Education, and Welfare questions whether an employee may be permitted to depart his work place 15 minutes before beginning of leave period if he refrains from taking scheduled 15-minute afternoon rest break. This practice would be improper because rest periods are included within basic workday and by departing early the employee would not satisfy time and attendance reporting requirements to be credited with working full 40-hour week.

This decision is in response to a request for a decision from Thomas S. [redacted] Acting Assistant Secretary for Personnel Administration, Department of Health, Education, and Welfare (HEW), as to the legal parameters of that Department's administrative authority in scheduling lunch breaks and rest periods for its employees.

The issues involved in this case arose out of a labor-management dispute. A Social Security Administration field office under HEW had been allowing its employees two 15-minute rest periods and a 45-minute lunch break during regularly scheduled work hours of 8 a.m. to 4:30 p.m. Management later reduced the lunch break to 30 minutes on the basis that the lunch break was noncompensable, and as scheduled, allowed employees to be on duty

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for less than 8 hours per day and consequently less than 40 hours per basic workweek as required by statute and Civil Service Commission regulations. The local union immediately demanded unconditional reinstatement of the 45-minute lunch break. In order to settle the dispute, the union agreed to hold the issue in abeyance until management could seek and receive a clarification of management's authority in scheduling lunch and rest periods.

Both sides acknowledge that management has authority to grant brief rest periods during the daily tour of duty when such rest periods are beneficial or essential in maintaining employee efficiency. However, HEW desires clarification as to the limits of its authority in scheduling rest periods in conjunction with lunch breaks or leave.

The statutory authority that empowers agency heads to schedule a basic 40-hour workweek for each full-time employee is contained in 5 U.S.C. 6101. See for example, National Broiler Council, Inc. v. Federal Labor Relations Council, 382 F. Supp. 322 (1974). That statute provides in pertinent part as follows:

"(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall--

"(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

"(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

"(3) Except when the head of an Executive agency, a military department, or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that--

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"(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

"(B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

"(C) the working hours in each day in the basic workweek are the same;

"(D) the basic nonovertime workday may not exceed 8 hours;

"(E) the occurrence of holidays may not affect the designation of the basic workweek; and

"(F) breaks in working hours of more than 1 hour may not be scheduled in a basic workday."

Pursuant to the above-quoted statute agency heads are required to schedule 40 hours of work per week for each full-time employee. When possible the basic 40-hour workweek is to be scheduled as 5 8-hour days, Monday through Friday. Breaks or "time off the clock" in the basic 8-hour workday may not exceed 1 hour without concurrence of the employee. An example of such a break in working hours is the lunch break. In this connection we have held that time set aside for eating is noncompensable unless the employee is required to perform substantial official duties during that period. B-166304, April 7, 1969; 42 Comp. Gen. 195 (1969).

A department head is also vested with administrative authority to prescribe regulations covering the conduct of his or her employees. Butler v. White, 83 F.578, 581, reversed on other grounds 171 U.S. 379 (1897). That authority is contained in 5 U.S.C. 301 and is sufficiently broad to empower a department head in his or her discretion to grant employees brief rest periods when such periods are determined to be beneficial or essential to the efficiency of the Federal service. B-166304, April 7, 1969. Unlike lunch breaks, brief employee rest periods, when granted, are considered to be a part of the employee's basic workday. Because the employee is in

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a pay status during such rest periods he would generally not be authorized to depart his place of work during such rest periods.

In this regard department heads should take cognizance of section 16.2, title 6, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies governing employee time and attendance reporting procedures which provides as follows:

"For each civilian employee except those who work on a piecework basis a record of time in pay or nonpay status shall be maintained on a daily basis by designated employees who take no part in preparing the payroll or distributing the pay checks or pay envelopes. For each employee paid on a piecework basis, a daily record of the piecework completed shall be currently maintained by such designated employees.

"The time and attendance report shall provide affirmative evidence that each employee is entitled to his normal pay or to a greater or lesser amount by a showing as to the number of hours of duty attendance and the nature and length of absences. The time and place at which the work was performed and other circumstances which affect the computation of pay, allowances, and deductions must be included in the report. If the employee is entitled to other than his normal pay and deductions, a report shall be made to the payroll office in the detail necessary for preparation of the payroll. Time and attendance reports shall be kept available for audit for a period of 3 years.

"The exact time of day of all absences from duty, except for authorized lunch periods, shall also be recorded each day. This information may be recorded either on time and attendance reports or in such related records in support of pay entitlement as the employing agency deems appropriate. This requirement is based on:

- "(1) The need for such information in determining pay entitlement

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under certain conditions--  
for example, leave without pay  
before or after a holiday or  
leave where night differential  
pay is involved.

"(2) The overall management respon-  
sibility of each agency to main-  
tain adequate records for  
purposes of effective and  
efficient supervision of  
employees.

"Where the absence is for a full workday, it is  
not necessary to show the exact time of absence  
provided the employee's tour of duty is shown on  
the time and attendance report. Indicated absences  
should be initialed by the employee or supported by  
a signed application. Obtaining the employee's  
initials or a signed application may be waived by  
the department or agency when mechanical time record-  
ing devices are used by the employees for recording  
and reporting attendance.

"Sick leave absences in excess of 3 days must be  
supported by a medical certificate or other evidence  
of illness that is administratively acceptable.

"The designated persons responsible for time and  
attendance reports should have positive knowledge  
as to the employee's presence or absence before  
marking the report. Likewise, supervisors should  
keep currently informed as to the attendance or  
absence of the employees for whom they are  
responsible so that their approval of the time  
and attendance reports is meaningful."

It is clear from the foregoing statutory authorities and  
guidance, that there are significant differences between lunch  
breaks and rest periods. Essentially an employee is off duty and  
in a nonpay status during his authorized lunch period and is free  
to depart his place of work and generally use such time as he  
desires. On the other hand, an employee is in a pay status during

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authorized rest periods and may not generally absent himself from his place of work during such periods.

With regard to these issues, HEW has asked this Office to rule on three specific questions which we shall address in seriatum.

Question 1.

"1. Does management have the authority to grant employees short periods of compensable time (de minimus) contiguous to lunch breaks?"

Pursuant to 5 U.S.C. 6101(a)(3)(F), agency heads have authority to schedule breaks in employee working hours of not more than 1 hour in a basic workday. This is the authority that Congress has provided for scheduling employee lunch break. It is a general principle of statutory interpretation that the mention of one thing implies the exclusion of another under the maxim "expressio unius est exclusio alterius." Hence, a statute that mandates a thing to be done in a given manner normally implies that it shall not be done in any other manner. Botany Worsted Mills v. United States, 278 U.S. 282 (1928); and Raleigh and G.R. Co. v. Reid, 80 U.S. 269 (1871). Therefore, we hold that employee lunch breaks scheduled under authority contained in 5 U.S.C. 6101(a)(3)(F) may not be expanded through the use of other authority.

Question 2.

"2. In order to provide the 45-minute lunch break, can management allow employees to forego a morning or afternoon rest period and add the extra 15 minutes to the lunch break?"

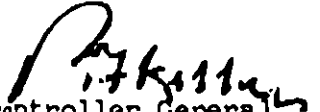
This question is answered in the negative based on the rationale set forth in our answer to question 1. We do, however, encourage agency heads to schedule realistic employee lunch periods of 45 minutes or 1 hour under the authority contained in 5 U.S.C. 6101(a)(3)(F) when that amount of time is actually required for employees to have lunch. This would necessitate an appropriate adjustment in the hours of the basic workday to maintain the 40-hour workweek. See GAO Letter Report FPCD-76-147 (B-179810) April 9, 1976.

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Question 3.

"3. Can an employee who has scheduled leave from 3:30 p.m. to 4:30 p.m., during his normal work hours, be allowed to forego a 15-minute afternoon rest period and leave his duty station and 3:15 p.m.?"

This question is also answered in the negative based on the rationale we expressed in our response to question 1. In the hypothetical situation described above, the employee's time and attendance record, could not accurately reflect 40 hours of work for the week and, therefore, such an arrangement would be improper.

  
Acting Comptroller General  
of the United States