

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

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May 8, 1986

3-222836

The Honorable Michael D. Barnes
Co-Chairman, Federal Government
Service Task Force
House of Representatives

Dear Mr. Barnes:

This is in response to your letter dated April 4, 1986, requesting our opinion on the authority of a Federal agency to "furlough" its employees on a Federal holiday. For the reasons set forth below, we conclude that agencies may not furlough employees solely on holidays and thereby deny them compensation for the holidays.

The Food Safety and Inspection Service (FSIS) of the Department of Agriculture has notified its employees that, because of budget cuts, the agency intends to furlough its employees on each of the next three scheduled Federal holidays--Memorial Day, the Fourth of July, and Labor Day. The Office of Personnel Management (OPM) issued an advisory statement on March 18, 1986, informing Federal agencies that they could legally furlough employees on a Federal holiday. You suggest that OPM's position is based on a narrow construction of 5 U.S.C. § 6104(3) which conflicts with clear congressional intent to provide pay on legal holidays. In addition, you ask our views on holiday furloughs from the standpoint of sound personnel policy; that is, whether the advantages to the agency of a holiday furlough are outweighed by the consequent blow to employee morale and productivity.

At the outset we note that, subsequent to your request for our opinion, the American Federation of Government Employees filed suit to declare illegal and enjoin the FSIS holiday furlough. It is our general policy not to issue legal opinions on matters in litigation. See, e.g., 58 Comp. Gen. 282, 286 (1979). However, we believe that an exception to this policy is warranted here since, as discussed below, the OPM position supporting the legality of holiday furloughs appears to rest largely on a misapplication of prior Comptroller General decisions.

I.

The OPM advisory memorandum to agency Directors of Personnel dated March 18, 1986, states, on page 8 in the answer to question 21, that there is nothing to prevent an agency from furloughing employees on a holiday since each agency head is responsible for scheduling work in a manner which will best accomplish the agency's mission. The OPM memorandum continues, in the answer to question 22, that employees who are furloughed on a holiday will not be paid for the holiday "since the general rule is that employees will be paid on a holiday only when they have been prevented from working solely because of the occurrence of a legal public holiday." Thus, the memorandum concludes that when employees are prevented from working not solely because of the holiday but also because of a furlough on the holiday, the employees will not be paid for the holiday. The memorandum cites 5 U.S.C. § 6104 and 45 Comp. Gen. 291 (1965) in support of this conclusion.

We have also received a letter dated April 25, 1986, from the OPM General Counsel which elaborates on the position expressed in the advisory memorandum as follows:

"* * * When the individual is placed on furlough he is, of course, placed in a status without duties and pay because of lack of work or funds or other appropriate reasons. 5 U.S.C. § 7511(a)(5). Thus, it can not be said the employee was prevented from working solely because of the holiday. In fact, when construing Public Resolution No. 127, approved June 29, 1938, 52 Stat. 1246, (the predecessor of 5 U.S.C. § 6104) the Comptroller General specifically held that:

If [the employees] are relieved or prevented from working on the holiday for any reason other than the occurrence of the holiday, such as when the holiday occurs on a non-work day, or within a period of furlough or leave of absence, no pay for the holiday as such is authorized. (emphasis added)

48 Comp. Gen. 206/ 209-310 (1933)."

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The General Counsel of OPM goes on to cite several other decisions--12 Comp. Gen. 204 (1932), 19 Comp. Gen. 337 (1939), as well as 45 Comp. Gen. 291 supra--in support of the general proposition that employees are entitled to be paid for holidays only if they are in a pay status for the holiday.

II.

We disagree with OPM's interpretation of the applicable statutes and our prior decisions in this area. The Congress in 5 U.S.C. § 6103(a) has designated 10 legal holidays for employees, and in 5 U.S.C. § 6104 has provided compensation for holidays to employees whose pay is fixed at a daily or hourly rate, or on a piecework basis. Since it might be difficult to determine which days such employees would be working or how much they should be paid section 6104 provides that such employees who are "relieved or prevented from working on a day" (1) on which agencies are closed by Executive order, (2) by administrative order, or (3) solely because of the occurrence of a legal holiday, are entitled to their normal compensation for that day. Our decisions have applied this statutory language to employees who are paid on a monthly or yearly basis. See 45 Comp. Gen. 291 supra.

It is not clear to us how OPM views 45 Comp. Gen. 291 supra as supporting the position that pay can be denied by furloughing employees solely on a holiday. This decision held that certain employees were entitled to pay for a holiday when they were in a pay status on the previous day. Moreover, the decision affirms in general terms the basic entitlement of Federal employees to pay for holidays so long as they are in a pay status preceding or following the holiday:

"* * * by longstanding general rule of law (see 7 Comp. Gen. 430; 12 id. 204; 13 id. 206) or regulation, there now is vested in an employee a legal right to be paid basic compensation for a holiday on which he is not ordered or directed to work, when he has been in a pay status for the full workday immediately preceding or succeeding the holiday.

"Our opinion is that no authority exists for an administrative denial of pay for a holiday when in ordinary circumstances an employee has

been in a pay status immediately before or after the holiday. * * * 45 Comp. Gen. at 292.

The other decision highlighted by OPM--18 Comp. Gen. 206-- while suggesting that employees are not entitled to pay for a holiday "within a period of furlough," does not endorse the view that pay can be denied for a furlough solely on the holiday as is proposed here. In any event, that decision was expressly overruled in 56 Comp. Gen. 393/396 (1977), which reaffirmed the principle that "an employee in a pay status for either the workday preceding a holiday or the workday succeeding a holiday is entitled to straight-time pay for the holiday * * *." The remaining prior Comptroller General decisions cited by OPM likewise fail to support OPM's position. On the contrary, our prior decisions support the opposite conclusion: that employees cannot be deprived of pay for a holiday based on a furlough for that day alone.

III.

Even apart from our prior decisions, we do not see how the action proposed by FSIS and endorsed by OPM can be regarded as a bona fide "furlough." A "furlough" is defined in 5 U.S.C. § 7511(a)(5) as "the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons." (Emphasis supplied.) The basic concept of a furlough, as so defined, is to place an employee into a non-duty status from a duty status, so that the removal of the employee's ability to work becomes the basis for not paying the employee.

This basic concept has no application to the FSIS proposal. Without the proposed "furlough" the FSIS employees would already be in a non-duty status for the three holidays in question, and they clearly would be entitled to pay for the 3 days under 5 U.S.C. § 6104. The FSIS "furlough" merely denies the employees' pay for these days without any concomitant change in their duty status for the holidays or for any other days. Essentially, therefore, it appears to us that the FSIS action is without substance or operative effect as a "furlough." The result would be no different were FSIS to deduct 3 days pay from its employees without designating this action a "furlough." In fact, if salary payments could be reduced in this manner

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agencies would be free, in effect, to abolish all paid Federal holidays and save the associated salary costs simply by declaring such holidays to be "furlough" days.

For the above reasons, we conclude that the proposal here is not supported by our decisions and cannot be justified as a "furlough." In light of this conclusion, we offer no comments on the proposal from a policy viewpoint.

Sincerely yours,

William J. Fowler
for Comptroller General
of the United States

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