

Alleged
5-13-8

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

January 28, 1970

SCA 203

This is in further reference to your letter of November 26, 1969, raising several questions regarding the payment of holiday fringe benefits to temporary or part-time employees as required under a wage determination issued pursuant to the Service Contract Act. Before answering your specific questions, we would like to point out several general principles relating to holiday benefits which have application in your case.

Where the determination lists the holidays for which payment is required under the act, the employer is required to furnish the named holidays with pay to all employees. However, this obligation may be discharged if the employer furnishes another day off with pay to his employees. Such substitution, however, must be made according to a plan that is communicated to the employees involved. In the event that the employer does not furnish the paid holidays, and the employee works on the day designated as a holiday, he must be paid, in addition to the amount that he would ordinarily be entitled to for that day's work, an amount equal to his usual day's pay as the cash equivalent of the fringe benefit to which he is entitled.

All employees, including part-time and temporary employees, are entitled to a proportionate share of the required holiday fringe benefits to which full-time employees are entitled under a determination, if they perform any work in the workweek in which the holiday occurs. It is immaterial whether or not the holiday falls on Sunday, another day during the workweek for which the employee is not normally scheduled to work, or on the employee's lay-off day. Holiday payments are determined on the basis of a standard 8-hour day and 40-hour week, unless a different standard is specified in the wage determination.

1. In this situation, Group I is entitled to 8 hours holiday pay; Group II is entitled to 6 hours holiday pay ($3/4 \times 8$ hours) and Group III, assuming they perform some work in the workweek, which is not necessarily the same as the normal pay period (see section 4.165(b) of Regulations, 29 CFR 4), would be entitled to either $2/5$ or $3/5$ of 8 hours of holiday benefits depending on whether the employees work 2 or 3 days in the workweek. It is immaterial whether the employee performs such work prior to or after the holiday occurs,

except that if a temporary or casual employee is hired during a holiday week but after the holiday, he would be due no holiday benefits for that particular week. It should be noted that an employee must also be paid a "proportionate share" of the benefit when compensated for fringe benefits on an hourly cash equivalent accrual basis as discussed in Subpart B, ~~of~~ Regulations, 29 CFR 4.

2. It is our experience that under the principle of pro-rata or "proportionate share" the benefits paid to the employees, whether they are paid those benefits specifically stated in a wage determination or whether they are furnished an equivalent combination of bona fide fringe benefits or are paid on the basis of equivalent or differential cash payments, will equalize out over the course of the contract year, and all employees will receive the required number of paid holidays or their equivalent regardless of the method used. We wish to point out that a contractor may not during the contract period alternate his method of payment for fringe benefits, that is, he may not elect to provide the benefit specified in the determination for a period of time and then switch to payments in cash equivalents or vice versa for his own convenience. Once a method is chosen for each employee or group of employees at the beginning of the contract period, that method must be used over the entire contract period.

3 & 4. Assuming again the contractor does not elect to pay hourly cash equivalents, employee A must receive 1/5 of the required holiday benefit and employee B must receive 7/40 of such benefit.

5. As stated above, the calendar day on which a holiday falls or on which particular employees work are not determinative in assessing the liability for holiday pay so long as the employees perform some work in the particular workweek in which the holiday occurs. Of course an employee may not be laid off during such workweek if the lay-off is a subterfuge to evade the payment of holiday pay.

See answers to 1 and 3.

6. See answer to 1. It should be pointed out that employees paid on a cash equivalent accrual basis added to their regular hourly wage rate must be paid such equivalent for all hours worked over the course of the entire contract period, as computed on an annual basis (8 holidays x 8 hours x hourly rate + 2080 hours = equivalent per hour), and not on any other partial time breakdown as shown in your example.

7. If Man A performs any work during the workweek in which the holiday occurs, he is entitled to a proportionate share of the

benefit, as indicated above. For example, if he works 8 hours in that week, he is entitled to an additional payment of 1/5 of the benefit required (i.e. 1/5 of 8 hours).

8. If the employer elects to pay the stated benefit, the employee would be entitled to 8 hours pay. If he prefers to pay on a cash equivalent basis, the employee would be due \$4.31 (8 hours x 8 holidays x \$4.00 ÷ 2000 hours = \$0.10769 x 40 hours) in addition to his regular pay. However, it should be kept in mind that once an employer elects to pay an employee such cash equivalents, they must be paid for all hours worked in every week such employee works, and not just in weeks that a holiday occurs.

9. In this particular fact situation, our position is that this employee would be entitled to 1/5 of 8 hours as holiday pay, if he has not been paid on a cash equivalent accrual basis.

Sincerely,

s/Robert D. Moran

Administrator

Enclosure