



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: EEOC - Holiday Pay - Furlough

File: B-224619

Date: August 17, 1987

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### DIGEST

Employees placed on furlough for a period including both the workday preceding and the workday succeeding a holiday are not entitled to holiday pay. They have been removed from duty without expectation of pay and there is no longer a presumption that, but for the holiday, they would have worked on that day. However, agencies are cautioned not to indiscriminately furlough employees for periods when holidays occur.

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### DECISION

The Management Director, on behalf of the Chairman, U.S. Equal Employment Opportunity Commission (EEOC), requests an opinion as to whether an employee who is placed on furlough status before and after a paid holiday would be entitled to pay for the holiday. For the reasons that follow, we hold that the employee would not be entitled to such pay.

### BACKGROUND

The EEOC states that, if it carries out its proposal to furlough its employees, it will follow the prescribed adverse action procedures in 5 U.S.C. §§ 7512 and 7513 (1982). However, the EEOC asks the question about entitlement to pay for a holiday because of an interpretation by the General Services Administration (GSA), the agency charged with administering its payroll, on the status of the furlough days and the effect of our decision B-222836, May 8, 1986. The submission does not fully explain the rationale behind GSA's interpretation. However, we do not feel that such an explanation is necessary in order for us to respond to the question as posed by EEOC.

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## OPINION

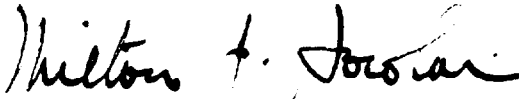
Our general rule in this area is that an employee is entitled to pay for a holiday so long as he or she is in a pay status on either the workday preceding a holiday or on the workday succeeding a holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. 45 Comp. Gen. 291 (1965). This rule applies even if the employee is in an absent without leave status on the workday preceding a holiday or the workday succeeding a holiday since the presumption remains that, but for the holiday, the employee would have worked. See 56 Comp. Gen. 393, at 396 (1977), modifying several prior decisions which drew a distinction between employees on leave without pay and those absent without leave.

With regard to a furlough, we held in B-222836, previously cited, that an agency did not have the authority to furlough employees solely for a holiday, and then deny them pay for that day. We so held primarily on the basis of decisions of this Office and our interpretation of the statutory definition of a furlough in 5 U.S.C. § 7511(a)(5) (1982). 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." Thus, the basic concept of a furlough 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. See B-222836 *supra*, at 4. That case is not on point here because it involved a proposal to furlough employees only for the holiday. The EEOC question involves a longer furlough which includes a holiday within the furlough period.

In the EEOC situation the furloughed employee would be completely removed from duty without any expectation of pay for the days preceding or succeeding a holiday. In this case, there is no longer a presumption that, but for the holiday, the employee would have worked since the employee's ability to work has been removed by the furlough. Therefore, where the employee is placed on furlough for both the day preceding and the day succeeding the holiday, the employee has, by definition, been removed from a pay status and would no longer be entitled to pay for the holiday. See 18 Comp. Gen. 206 at 210 (1938), *modified*, 56 Comp. Gen. 393, *supra*. Compare, Employees of the Government Printing Office, B-206655, May 25, 1982. The fact that the employee would normally be in a pay status immediately before and after the furlough, as suggested by EEOC, is irrelevant.

Accordingly, employees placed on furlough for both the workday preceding and the workday succeeding a holiday are not entitled to holiday pay.

Finally, we wish to point out that our conclusion is based on the assumption that the selection of the furlough period in question can be justified on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. In our view, an agency may not properly furlough employees for a 3-day period, the middle of which is a holiday, for the purpose of saving 3 days' pay while losing only 2 days of work.

*for*   
Comptroller General  
of the United States