

## **Questions and Answers on Pay and Leave Administration for December 24 and 25, 2019**

### **Leave**

**Q1. Are employees who are scheduled to take annual leave on Tuesday, December 24, charged leave for that day?**

A1. No. Employees who are scheduled to take annual leave on Tuesday, December 24, will not be charged leave for that day.

**Q2. Will employees forfeit “use or lose” annual leave scheduled for Tuesday, December 24?**

A2. Yes. If an employee has scheduled “use or lose” annual leave for Tuesday, December 24, and is unable to reschedule that leave for use before the end of the leave year (January 4, 2020, for employees on the standard biweekly pay period cycle), the leave will be forfeited. When “use or lose” leave is forfeited under these conditions, the law does not permit restoration of the leave. (See 5 U.S.C. 6304(d).) (We note that employees may donate their excess annual leave to an approved leave recipient under the Federal Government’s voluntary leave transfer programs or under the Emergency Leave Transfer Program for approved leave recipients. Employees interested in donating leave should speak with their servicing HR office.)

### **“In-Lieu-of” Holiday**

**Q3. Which employees are entitled to an “in-lieu-of” holiday when a holiday falls on a nonworkday?**

A3: All full-time employees, including those on flexible or compressed work schedules, are entitled to an “in-lieu-of” holiday when a holiday falls on a nonworkday. In such cases, the employee’s holiday generally is the basic workday immediately preceding the nonworkday. A basic workday for this purpose includes a day when part of the basic work requirement for an employee under a flexible work schedule is planned or scheduled to be performed. Limited exceptions apply, please see our fact sheet for further guidance: <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/holidays-work-schedules-and-pay/>

Part-time and intermittent employees are not entitled to an “in-lieu-of” holiday when a holiday falls on a nonworkday. Part-time and intermittent employees are not entitled to receive premium pay for working on a designated “in-lieu-of” holiday provided to full-time employees. See Q7 for further guidance.

**Q4. What days are the “in-lieu-of” holidays for an employee whose basic work schedule does not include Tuesday, December 24 and/or Wednesday, December 25?**

A4. When a holiday falls on a nonworkday outside a full-time employee’s basic workweek, he or she is entitled to an “in-lieu-of” holiday. The general rule is that the “in-lieu-of” holiday is the workday **immediately preceding** the nonworkday. However, if the holiday falls on a Sunday nonworkday, the “in-lieu-of” holiday is the **next** workday **immediately following** the holiday. [Note: For an employee whose basic workweek includes a Sunday workday, an agency may designate one of the employee’s regularly scheduled nonworkdays as an “in-lieu-of Sunday”—to be treated as if it were a Sunday in applying the “in-lieu-of” holiday rules—in other words, if the holiday falls on the “in-lieu-of Sunday,” the “in-lieu-of” holiday is the next workday immediately following the holiday.] (See 5 U.S.C. 6103(b) and sections 3(a) and (b) of Executive Order 11582, February 11, 1971.)

*Example 1— Wednesday - Sunday Work Schedule  
(Tuesday is a scheduled nonworkday, Wednesday is a scheduled workday)*

Since the employee has a regularly scheduled nonworkday on Tuesday, December 24, and a regularly scheduled workday on Wednesday, December 25, the general rule would be that the “in-lieu-of” holiday for Tuesday, December 24, would be the preceding workday — in this example, Sunday, December 22. However, if an agency has designated Tuesday as the “in-lieu-of-Sunday” for the employee, then the next workday, Thursday, December 26, would instead be the “in-lieu-of” holiday for Tuesday, December 24.

There is no need for an “in-lieu-of” holiday for Wednesday, December 25, as it is a scheduled workday and provided for as a holiday.

*Example 2 — Friday - Tuesday Work Schedule  
(Tuesday is a scheduled workday, Wednesday is a scheduled nonworkday)*

Since the employee has a regularly scheduled workday on Tuesday, December 24, and a regularly scheduled nonworkday on Wednesday, December 25, Tuesday is converted from a workday to a holiday, and there is no need for an “in-lieu-of” holiday for that day. Under the general rule, the “in-lieu-of” holiday for Wednesday, December 25 would be the preceding workday — in this example, Monday, December 23. In this example, Wednesday, December 25 is the “in-lieu-of” holiday that needs to be determined, since it is a nonworkday.

*Example 3 — Thursday – Monday Work Schedule  
(Both Tuesday and Wednesday are scheduled nonworkdays)*

Since the employee has regularly scheduled nonworkdays on both Tuesday, December 24, and Wednesday, December 25, the general rule would be that the “in-lieu-of” holiday for December 24 would be the immediately preceding workday (in this example,

Monday, December 23) and the “in-lieu-of” holiday for December 25 would be the next preceding workday (in this example, Sunday, December 22). However, if an agency has designated Wednesday as the “in-lieu-of-Sunday” for the employee, then the next workday, Thursday, December 26, would instead be the “in-lieu-of” holiday for Wednesday, December 25.

**Q5. What is the “in-lieu-of” holiday for an employee on a Monday-Friday alternative work schedule (AWS) (i.e., flexible work schedule or compressed work schedule) whose regularly scheduled AWS day off is Tuesday or Wednesday?**

- A5. For full-time employees on an AWS whose regularly scheduled AWS day off is Tuesday, December 24, or Wednesday, December 25, the workday immediately preceding that day will be designated as the employee’s “in-lieu-of” holiday.

*Example 1 — Regularly scheduled nonworkday (AWS day off) is Tuesday*

If an employee on an AWS has his or her regularly scheduled AWS day off (a nonworkday) on Tuesday, December 24, and the preceding workday is Monday, December 23, the “in-lieu-of” holiday for Tuesday, December 24, is Monday, December 23.

*Example 2 — Regularly scheduled nonworkday (AWS day off) is Wednesday*

If an employee on an AWS has his or her regularly scheduled AWS day off (a nonworkday) on Wednesday, December 25, and the preceding workday is Monday, December 23, (because Tuesday, December 24, has become a nonworkday—i.e., a holiday through Executive order), the “in-lieu-of” holiday for Wednesday, December 25, is Monday, December 23.

**Q6. May an agency change an AWS employee’s “in-lieu-of” holiday?**

- A6. No, with one limited exception. An agency may select an alternative “in-lieu-of” holiday for employees on fixed compressed work schedules if the agency head determines that a different “in-lieu-of” holiday is necessary to prevent an “adverse agency impact,” as defined in 5 U.S.C. 6131(b). (See 5 U.S.C. 6103(d).)

Although there is no authority for an agency to change the “in-lieu-of” holiday for an employee on a flexible work schedule, the employee may reschedule his or her AWS day off consistent with agency policy.

**Q7. Are part-time or intermittent employees entitled to “in-lieu-of” holidays?**

- A7. No, there is no authority to grant “in-lieu-of” holidays to part-time or intermittent employees. Part-time employees are entitled to a holiday only if they have a regularly scheduled basic (i.e., nonovertime) tour of duty on the actual holiday (i.e., on Tuesday,

December 24, or on Wednesday, December 25). Intermittent employees do not have a regularly scheduled tour of duty and may not be paid for holidays not worked.

Agencies may exercise their discretionary authority to grant administrative leave to part-time employees whose offices are closed on a day when most full-time employees have an “in-lieu-of” holiday.

## **Basic Pay Entitlement on a Holiday**

### **Q8. How many hours of basic pay are employees entitled to receive for a holiday (including an “in-lieu-of” holiday provided to full-time employees)?**

#### *A8. Full-Time Employees*

Full-time employees under a standard work schedule (8 hours a day, 40 hours a week) are excused from 8 hours of nonovertime work, which are considered part of the 40-hour basic workweek.

#### *Part-Time Employees*

A part-time employee is entitled to a holiday when the holiday falls on a day when he or she would otherwise be required to work or take leave. This does not include overtime work. Part-time employees who are excused from work on a holiday receive their rate of basic pay for the hours they are regularly scheduled to work on that day. As provided in Q7 above, part-time employees are not entitled to an “in-lieu-of” holiday.

#### *Compressed Work Schedule*

A full-time or part-time employee on a [compressed work schedule](#) who does not work because of a holiday receives his or her rate of basic pay for the number of hours he or she was scheduled to work on the holiday. For example, if a holiday falls on a 10-hour basic workday, the employee’s holiday is 10 hours. (See 5 CFR 610.406.)

#### *Flexible Work Schedule*

A full-time employee on a [flexible work schedule](#) is entitled to 8 hours of pay on a holiday when the employee does not work. (See 5 U.S.C. 6124.) A part-time employee under a flexible work schedule is generally excused from duty for the number of hours of his or her basic work requirement (i.e., nonovertime hours) on that day, not to exceed 8 hours. (See 5 CFR 610.405.)

For more information on compressed work schedules and flexible work schedules under Alternative Work Schedules (AWS), please see our AWS handbook at <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/>

### *Three Holidays in the Same Pay Period*

Three holidays—December 24 and December 25, 2019, and January 1, 2020—fall within the same pay period beginning December 22, 2019, and ending January 4, 2020, for employees on the standard biweekly pay period cycle.

For full-time employees on a “5/4-9” flexible work schedule (or other flexible work schedules under which employees work more than 8 hours a day) there may be up to 3 holidays in the same pay period, dependent upon whether an “in-lieu-of” holiday is provided due to the legal holiday falling on an employee’s nonwork day (i.e., an AWS day off). An employee under a “5/4-9” work schedule must make arrangements to work extra hour(s) during other regularly scheduled workdays or take annual leave, earned credit hours, compensatory time off for overtime, or compensatory time off for travel in order to fulfill the 80-hour biweekly work requirement because each holiday for employees under this type of flexible work schedule is only provided as an 8-hour day.

## **Holiday Premium Pay**

### **Q9. What pay do employees receive for working during their regularly scheduled basic (i.e., nonovertime) hours on a holiday?**

A9. An employee who performs any work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday (or an applicable “in-lieu-of” holiday) generally receives holiday premium pay under 5 U.S.C. 5546(b) in addition to his or her regular pay. Employees assigned to work on a holiday during their regularly scheduled tour of duty are entitled to a minimum of 2 hours of holiday premium pay. Part-time employees do not receive holiday premium pay for work on an “in-lieu-of” holiday provided for full-time employees.

### **Q10. Are all Federal employees entitled to holiday premium pay?**

A10. No. Members of the Senior Executive Service (SES), the Federal Bureau of Investigation and Drug Enforcement Administration SES, the Senior Foreign Service, Foreign Service officers, and certain other employees who are excluded from the premium pay provisions of 5 U.S.C. chapter 55, subchapter V, are not entitled to holiday premium pay. (See the definition of “employee” in 5 U.S.C. 5541(2).) In addition, employees receiving standby duty pay under 5 U.S.C. 5545(c)(1) and Federal firefighters compensated under 5 U.S.C. 5545b are not entitled to holiday premium pay.

### **Q11. How many hours of holiday premium pay are employees entitled to earn?**

#### **A11. *Full-Time Employees***

Full-time employees on standard work schedules (8 hours a day, 40 hours a week) receive holiday premium pay for up to 8 hours of work during their regularly scheduled

basic tour of duty on a holiday. Holiday premium pay is also applicable for full-time employees for work performed on the “in-lieu-of” holiday.

#### *Flexible Work Schedule*

Employees under flexible work schedules are entitled to holiday premium pay if they are required to work during the hours of their basic work requirement (i.e., nonovertime hours) on that day, not to exceed 8 hours. Holiday premium pay is also applicable for full-time employees for work performed on the “in-lieu-of” holiday.

#### *Compressed Work Schedule*

Employees under compressed work schedules are entitled to holiday premium pay if they are required to work during their basic work requirement on that day. The number of hours of holiday premium pay may not exceed the hours in an employee’s compressed work schedule for that day (e.g., 10 nonovertime hours). (See 5 CFR 610.407.) Holiday premium pay is also applicable for full-time employees for work performed on the “in-lieu-of” holiday.

#### *Part-Time Employees*

Part-time employees who are required to perform work during a regularly scheduled basic tour of duty on a holiday are entitled to receive holiday premium pay for up to 8 hours of nonovertime work (or up to the maximum number of nonovertime hours in their compressed work schedule) on a holiday. Holiday premium pay is not applicable for part-time employees for work performed on an “in-lieu-of” holiday provided to full-time employees.

### **Q12. How is holiday premium pay calculated?**

- A12. For each hour of holiday work, employees receive holiday premium pay. Holiday premium pay is equal to an employee’s rate of basic pay. Employees who are required to work on a holiday receive their rate of basic pay, plus holiday premium pay, for each hour of holiday work. (See 5 U.S.C. 5546(b).)

## Compensatory Time Off and Overtime Pay

**Q13. May an employee who is required to work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday earn compensatory time off instead of holiday premium pay for that work?**

A13. No. An employee must receive holiday premium pay for work performed during his or her regularly scheduled basic (i.e., nonovertime) tour of duty (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday.

Compensatory time off is provided in lieu of overtime pay for irregular or occasional overtime work (or, when permitted under agency flexible work schedule programs, in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work). (See 5 U.S.C. 5543 and 6123(a).) However, because a holiday is considered part of a full-time employee's regular 40-hour workweek (or 80 hours biweekly for employees on certain kinds of flexible or compressed work schedules), work performed during a regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday is not considered overtime work.

**Q14. What if an employee performs work outside his or her regularly scheduled basic (i.e., nonovertime) tour of duty (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday? How is he or she compensated for that work?**

A14. An employee who performs work outside his or her regularly scheduled basic tour of duty (i.e., overtime work) on a holiday is compensated at the applicable overtime pay rate or through compensatory time off (in appropriate circumstances). (See fact sheets on [Title 5 Overtime Pay](#) and [Compensatory Time Off](#).)

## Night Pay

**Q15. What pay will General Schedule (GS) employees receive if they perform work at night on a holiday?**

A15. GS employees are entitled to night pay for regularly scheduled work (i.e., work scheduled in advance of the administrative workweek) between 6:00 p.m. and 6:00 a.m. (See fact sheet on [Night Pay for General Schedule Employees](#).) Night pay for GS employees is equal to 10 percent of the employee's hourly rate of basic pay. Night pay is earned for regularly scheduled work at night even if an employee is also entitled to overtime pay or holiday premium pay for the same hours of work. (See 5 CFR 550.122(c).)

Employees also are entitled to night pay when they are excused from regularly scheduled night work during holiday hours. A GS employee who is excused from night work during holiday hours receives his or her rate of basic pay plus night pay. (See 5 CFR 550.122(a).)

## **Night Shift Differential for Federal Wage System Employees**

### **Q16. What pay will Federal Wage System (FWS) employees receive if they perform work at night on a holiday?**

- A16. Under the FWS, a [night shift differential](#) is basic pay for the purpose of computing holiday premium pay. The night shift differential is 7.5 percent for an FWS employee for whom the majority of regularly scheduled nonovertime hours are between 3:00 p.m. and midnight. The night shift differential is 10 percent for an FWS employee for whom the majority of regularly scheduled nonovertime hours are between 11:00 p.m. and 8:00 a.m.

An FWS employee who is entitled to holiday premium pay and who performs nonovertime work on a holiday is entitled to his or her rate of basic pay (including any applicable night shift differential) plus premium pay at a rate equal to the rate of basic pay (including night shift differential). The term “majority of hours” means the number of whole hours greater than half of a shift (e.g., 5 hours of a scheduled 8-hour shift). An FWS employee is entitled to pay (including night shift differential) for overtime work on a holiday under the same rules that apply to overtime work on regular workdays. (See 5 CFR 532.505.)

## **Credit Hours under a Flexible Work Schedule**

### **Q17. May an employee on a flexible work schedule earn credit hours for working on a holiday?**

- A17. No. Employees may not earn credit hours in lieu of receiving holiday premium pay when they perform work during normal working hours. However, an employee on a flexible work schedule may earn credit hours, if permitted under an agency’s flexible work schedule policy, for work the employee elects to perform on a holiday that is in excess of his or her basic work requirement (typically 80 hours biweekly).

## **Employees Called Back to Work**

### **Q18. Are employees entitled to overtime, night, and/or holiday premium pay if they are called back to work?**

- A18. When an employee is required to return to a worksite to perform irregular or occasional overtime work, he or she is entitled to receive a minimum of 2 hours of overtime pay. An employee who is called back to work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday is entitled to receive a minimum of 2 hours of holiday premium pay. (See 5 U.S.C. 5546(c).) However, an employee who is called back to perform irregular or occasional overtime work at night is not entitled to receive night pay.



## Holiday Premium Pay and Travel

### **Q19. Are employees entitled to holiday premium pay for the time they spend in work-related travel on a Federal holiday?**

A19. Employees generally are not entitled to holiday premium pay for the time they spend in work-related travel during holiday hours of their tours of duty. Holiday premium pay is paid only to employees who perform work on a holiday. (See 5 U.S.C. 5546(b).) The criteria in 5 U.S.C. 5542(b)(2) must be used to determine whether travel time is hours of work for holiday premium pay purposes. (These are the same criteria used to determine travel time as hours of work for title 5 overtime pay purposes. The criteria are also found in 5 CFR 550.112(g).)

Time spent in a travel status is not hours of work for the purpose of paying premium pay, including holiday premium pay, unless it meets one of the criteria in 5 U.S.C. 5542(b)(2)(B) for crediting irregular or occasional hours of work for travel. The criteria state that time spent in a travel status away from the official duty station is not hours of employment unless the travel —

- involves the performance of work while traveling (e.g., employment as a truck driver);
- is incident to travel that involves the performance of work while traveling (e.g., “deadhead” travel performed by a truck driver to return an empty truck after unloading);
- is carried out under arduous and unusual conditions (e.g., on unpaved roads); or
- results from an event that could not be scheduled or controlled administratively by any individual or agency in the executive branch of the Government (e.g., training scheduled solely by a private firm or a job-related court appearance required by a court subpoena).

Note 1: This guidance applies to both Fair Labor Standards Act (FLSA) exempt and nonexempt employees. The provisions on travel time as hours of work for FLSA overtime pay purposes under 5 CFR 551.422 do not apply to the payment of holiday premium pay. Although most employees do not receive holiday premium pay for time spent traveling on a holiday, they continue to be entitled to pay for the holiday in the same manner as if the travel were not required.

Note 2: Under 5 U.S.C. 5542(b)(2)(A), time spent traveling away from the official duty station is also hours of employment if the time spent is within the days and hours of an employee’s regularly scheduled administrative workweek. However, this does not apply to travel time on a holiday for holiday premium pay purposes because an employee’s regularly scheduled administrative workweek includes only periods of time in which an employee is regularly scheduled to work. Travel time during holiday hours generally is not work time and, therefore, does not fall within an employee’s regularly scheduled administrative workweek. (See the definition of “regularly scheduled administrative workweek” in 5 CFR 610.102.)

## **Compensatory Time Off for Travel**

**Q20. If an employee is required to travel on a Federal holiday, is the employee entitled to receive compensatory time off for travel?**

A20. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Although most employees do not receive holiday premium pay for time spent traveling on a holiday, an employee continues to be entitled to pay for the holiday in the same manner as if the travel were not required. Thus, an employee may not earn compensatory time off for travel during basic (i.e., nonovertime) holiday hours because the employee is entitled to his or her rate of basic pay for those hours. However, if an employee travels outside of normal work hours (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday, he or she is entitled to earn compensatory time off for travel if the travel time is not compensable under any other legal authority. (See 5 U.S.C. 5550b and 5 CFR 550, subpart N.)

## **Sunday Premium Pay**

**Q21. If an employee's "in-lieu-of" holiday is designated as Sunday, December 22, 2019, will he or she receive Sunday premium pay for not working on the "in-lieu-of" holiday?**

A21: No. An employee must actually work on Sunday as part of his or her regularly scheduled nonovertime tour of duty to receive Sunday premium pay. (See section 624 of the Treasury and General Government Appropriations Act, 1999, within Public Law 105-277, October 21, 1998.)

[This question does not apply to part-time or intermittent employees, since they cannot have an "in-lieu-of" holiday.]