

OGC HAS REVIEWED.

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MEMORANDUM FOR: Chief, Fiscal Division
Chief, Finance Division

SUBJECT : Leave and Night Differential Pay for
Employees Excused From Duty Due to
Emergency Conditions

1. Questions have been asked concerning leave charges and the right of employees assigned to a night shift but who did not actually report for work to receive night differential pay, for Monday, 12 December 1960 when employees of the Agency (except for designated key individuals) were excused from reporting to work because of the heavy snow storm.

2. Section 301(a) of the Pay Act, as amended provides in part:

"Any regularly scheduled work between the hours of six o'clock postmeridian and six o'clock antemeridian (including periods of absence with pay during such hours due to holidays, and such hours within periods of leave with pay if such periods total less than eight hours during any pay period) shall be considered nightwork,"

According to the legislative history of the above quoted section, its purpose was to provide for continuance of the night differential during holiday hours (on which no actual service was performed) and for short periods of leave. The provision confers a right on the employee to night differential for a holiday with pay when the employee is not required to work; however, as explained in paragraph 3, below, excusing employees from work because of snow emergency conditions on Monday, 12 December 1960 did not constitute a "holiday" within the meaning of the legislative provision for night differential.

3. The Agency's policy for excusing employees in the Washington Metropolitan Area under emergency conditions is based upon and conforms to the policy set forth in a memorandum on the subject addressed to all Federal agencies from Special Assistant to The President, dated 4 January 1960.

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This memorandum was supplemented on 15 December 1960 in order to clarify certain points, as follows:

- a. Monday, 12 December 1960 was not declared to be a "legal holiday". Those employees who did report for work according to instructions of the agencies are not eligible for additional compensation.
- b. Employees who were not required to report for work were excused without charge to annual leave.
- c. Employees who were in an annual or sick leave status on Monday, 12 December 1960, shall be charged annual or sick leave for that day.

4. It must be concluded from the foregoing that employees who were excused from reporting to work on 12 December 1960 will not be charged leave unless they were in a leave status on that date. Those employees assigned to a tour of duty including night differential hours and who were excused from duty for 8 hours on 12 December 1960 are not entitled to any night differential for 12 December 1960, because the excused absence with pay was not due to a holiday and the period of absence totaled at least 8 hours, disregarding any other leave taken during the pay period. Night differential shall be paid for any employee whose scheduled tour of duty on 12 December 1960 was less than 8 hours and whose other leave taken during the period 11 through 24 December when added to the hours scheduled for 12 December 1960 would not result in 8 hours total absence.

5. Adjustments as necessary to the pay and leave records of employees concerned should be made as promptly as possible in accordance with this memorandum.

E. R. SAUNDERS
Comptroller

CONCUR:

/s/ Emmett D. Echols

Director of Personnel

13 JAN 1961

Date

/s/ **Lawrence R. Houston**

General Counsel

7 MAR 1961

Date

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