
COLLECTIVE BARGAINING CLARIFICATION LETTER

NO. 10-08-01

To: All Labor Relations Officers and Personnel Officers
From: Michael Duco, Deputy Director
Date: August 24, 2010
Subject: **OCSEA Article 26.04 and SEIU/1199 Article 11.02 HOLIDAY PAY ELIGIBILITY¹**

This clarification letter replaces letter 02-06-26 for the OCSEA & SEIU/1199 agreements only.

During recent contract negotiations the State modified the language regarding an employee's eligibility to receive holiday pay. In 2006 language was added to minimize the number of employees who attempt to extend their holiday absence by using sick leave instead of more appropriate forms of leave which require prior approval; or provide the ability for the employee to obtain holiday compensation not otherwise due. This language was modified in the 2009 negotiations to account for three situations: 1) the extension of holiday absences by calling off sick generally only occurs and impacts the agencies during major holidays; 2) call offs around holidays are only issues in agencies that require the payment of overtime to cover an absence; and 3) there are times where employees will call off sick their scheduled work day due to actual illness but work an intervening shift between their scheduled shift and the holiday thus putting them at work before or after a holiday.

The new language provides as follows:

The following provision shall only apply to the following holidays: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. Employees in classifications identified by the Employer as normally requiring overtime to cover an absence and who are scheduled to work and call off sick the scheduled day before, the day of, or the scheduled day after a holiday shall forfeit their right to holiday pay for that day, unless there is documented, extenuating circumstances which prohibit the employee from reporting to duty. If the employee works a shift between his/her scheduled shift before or after the holiday, the employee does not forfeit his/her holiday pay.

Employees who are scheduled to work and call off sick on the day before or the day after a holiday, and then work as required/scheduled on the holiday will be paid for the actual hours worked (see Article 26.03 and Article 11.03 respectively). Therefore, employees will be compensated at their discretion either at the rate of one and one-half (1 1/2) times their regular rate of pay or granted compensatory time. Employees who call off and their absence requires the calling of overtime and occurs on one of the five (5) major holidays listed **will not** receive straight time compensation for the actual holiday as they failed to meet the eligibility standard set forth in the new language. Further, employees may not substitute leave for the holiday in order to supplement their pay.

¹ *Holiday pay eligibility for OEA, FOP, and OSTA are different than that for OCSEA and 1199. For holiday eligibility clarification for these bargaining units, please see clarification letter 10-07-02.*

Employees who are not scheduled to work the holiday and call off sick on the day before or the day after one of the five (5) listed holidays and require overtime to cover the absence will not receive holiday pay. Agencies have the discretion to determine whether extenuating circumstances exists. Agencies also have discretion in the situation of when an employee comes into work the day before, the day of, or the day after a holiday, and then goes home sick. Such decisions should be made on a case by case basis based on the totality of facts. Further as above, employees may not substitute leave for the holiday in order to supplement their pay.

Moreover, employees who call off sick and under the contract language that would forfeit holiday pay could still be entitled to holiday pay if they provide documentation showing extenuating circumstances prevented them from reporting to work. Additional guidance on what constitutes proper documented extenuating circumstances can be found in Arbitrator Nels Nelson's award (Award #1917) for grievance number 27-02-20060628-2326-01-03 located at <http://das.ohio.gov/Divisions/CollectiveBargaining/tabid/81/Default.aspx>

Additional clarification is included in the 2009-2012 OCSEA Annotated contract located at <http://das.ohio.gov/Divisions/CollectiveBargaining/LaborRelationsandContractAdministration/BargainingContracts/tabid/173/Default.aspx>

As always, please contact your OCB Labor Relations Specialist with questions.