

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

November 22, 1965

MEMORANDUM #66

TO : AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29
CFR, SUBTITLE A, PART 5.

FROM : E. Irving Manger *EM*
Associate Administrator *m*

SUBJECT: Opinions on application of the Davis-Bacon and related
Acts.

Reference is made to previous covering memoranda, subject as above, enclosing copies of opinions for your information and guidance in carrying out your responsibilities for enforcement of the cited Acts.

A copy of a recent opinion on the same general subject is enclosed which we hope will be of further interest and assistance.

Enclosure: DB-49

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

NOVEMBER 9, 1965

Mr. Ray J. Dolan, Director
Labor Relations Branch
Public Housing Administration
Housing and Home Finance Agency
Washington, D. C. 20413

Dear Mr. Dolan:

This is in reference to your letter of September 22, 1965, in which you request our opinion with respect to the application and enforcement of fringe benefits predetermined by this Department as a part of the prevailing wage rate.

Your inquiry is prompted by several questions posed by your field offices concerning this matter. The questions and our answers are set forth below.

Question

Is a contractor who is employing some union workers, but does not have a collective bargaining agreement with the union, required to make fringe benefit payments to the union fund, or can he choose to pay the fringe benefits to the worker in cash?

Answer

The Davis-Bacon Act provides that a contractor or a subcontractor may discharge his minimum wage obligations for the payments of straight time wages and fringe benefits by making payments in cash, by making or incurring cost for "bona fide" fringe benefits of the types contained in the wage determination or by a combination thereof. See section 5.31 of our Regulations (29 CFR Part 5). As far as the Department is concerned, the contractor would meet his wage determination obligations by paying the fringe benefits to the worker in cash.

Question

If a contractor pays the fringe benefits to the worker in cash should the apprentice training benefit be paid to the worker, as this fringe benefit is not a personal benefit to the individual worker but is for the benefit of the trade training program?

If such fringe benefit is not paid to the worker, and the contractor is not a party to a collective bargaining agreement, then where should such a benefit be paid?

Answer

Section 1(b) of the Davis-Bacon Act defines the term "Wages", "Scale of Wages", "Wage Rates", "Minimum Wages", and "Prevailing Wages" to include defraying costs of apprenticeship training programs. Therefore, unless the contractor contributes to or incurs cost for such programs, the amount of the fringe benefits contained in the applicable wage determination must be paid to the employees.

Question

If a holiday designated as a paid holiday falls on a non-work day, such as Saturday or Sunday, does the worker receive holiday pay on another day such as Friday or Monday?

Answer

Generally, the employee would receive the holiday pay in addition to his pay for those hours worked during the workweek, however, the terminology in the collective bargaining agreement which reflects the local prevailing wage patterns would govern such situations. The meaning in any given circumstance would be that assigned by the bargaining parties.

Question

If a holiday falls on a regular work day, such as Monday through Friday, is the holiday counted as a day worked in computing the 40 hour workweek under the Contract Work Hours Standards Act?

Answer

If the employee did not actually perform work on the designated holiday, these hours are not counted in computing the 40 hour workweek. Only those hours actually worked can be considered as hours worked in computing overtime under the Contract Work Hours Standards Act.

Question

If the workers are required to work on a day designated as a paid holiday do the workers receive straight time for the holiday, plus straight time for the work performed? Would this count as two days worked in computing the 40 hour workweek?

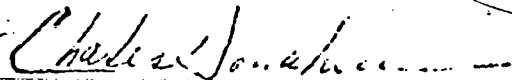
Answer

An employee who works on the holiday would be entitled to receive wages for the hours worked at not less than the predetermined hourly rate. Whether the pay he would receive if he did not work on the holiday should also be paid him

in these circumstances depends on the intent of the agreements reflecting the prevailing practice on which the fringe benefit determination is based. Under some such agreements idle holiday pay is provided only to employees who do not actually work on the holiday; holiday work may be specially provided for, as by establishing premium rates for such work. Under other agreements idle holiday pay may be payable regardless of whether the employee works on the holiday, and if he does work he receives such pay in addition to his wages for working. In regard to computing those hours worked in excess of 40 hours in a workweek, our answer immediately above would apply.

We trust that you will find the answer helpful. If I can be of further assistance, please let me know.

Yours sincerely,



Charles Donahue
Solicitor of Labor