

Appointments—Acceptance Requirement—Holiday Prior to First Workday

An appointment alone not establishing an employment relationship, the entitlement of a new appointee to compensation for a holiday on which no service is performed dependent on whether at the time of the holiday the appointee holds a position with the United States requires acceptance of the appointment by verbal affirmation, taking the oath of office, assumption of the duties of the position, or by some other overt act; therefore, under appointments effective Sunday, the day preceding a holiday, appointees who do not report for duty or take the oath of office until the Tuesday following the holiday may be paid for the holiday if evidence establishes the actual acceptance of the appointment, either verbally or otherwise on Sunday, notwithstanding the employee did not take the oath of office and report for duty until Tuesday.

To the Administrator, Federal Aviation Agency, April 28, 1966:

On March 30, 1966, you requested our decision concerning the authority for an appointing official of your Agency to suspend the pay status of new appointees until the Tuesday following a Monday holiday in cases where such employees have been appointed to the positions effective Sunday, the day preceding the holiday, but did not report for duty or take the oath of office until the Tuesday following the Monday holiday.

The entitlement of a new appointee (under the circumstances related above) to pay for a holiday on which he performs no service is dependent, in the first instance, upon whether at the time of the occurrence of such holiday he in fact holds a position under the United States. The appointment alone does not vest him with the position. Before an employment relationship is established there must have been an acceptance of the appointment. The acceptance may be made by verbal affirmation; taking the oath of office; assumption of the duties of the position or by some other overt act.

While the first paragraph of your letter says the employees indicated their acceptance of the appointment on Sunday, the manner of such acceptance is not specified.

If in fact there is evidence which establishes that any particular employee actually accepted the tendered appointment, either verbally or otherwise on Sunday, then he would be entitled to pay for the Monday holiday notwithstanding that he did not take the oath of office and report for duty until Tuesday and there would be no administrative discretion to deny him pay for the Monday.