

1978 WL 34595 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
November 3, 1978

***1 RE: Cash payment for hours worked by a state employee on a legal holiday**

Dr. Jack S. Mullins
Director
State Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Dr. Mullins:

You have recently asked the opinion of this Office as to whether the legislature intended that employees who work on a legal holiday be compensated by cash or by compensatory leave.

It is the opinion of this Office that in the absence of a statute providing that an employee who works on legal holidays may receive cash for the hours worked, there is no authority to pay cash to such an employee. [Section 8-11-50 of the 1976 Code of Laws of South Carolina](#) provides:

A State employee, except an employee of an academic institution, who is required to work on a legal holiday shall be given compensatory time for the number of hours worked within ninety days of such holiday. (Emphasis added).

As used in statutes 'shall' is usually mandatory or imperative. Blacks Law Dictionary, revised fourth edition at p. 1541.

Each year the legislature appropriates a given amount of money to state agencies. In order to forecast how much money is required to pay salaries it must be known how much cash is required to compensate employees for a given number of work days. In order to make this prediction the legislature requests that employees disclaim one non-national holiday each year. Act 614 of the 1978 Act and Joint Resolutions which amends [§ 53-5-10 of the 1976 Code](#). The legislature has also enacted laws concerning sick leave ([§ 8-11-40 of the 1976 Code](#)) and annual leave ([§§ 8-11-610 et seq., of the 1976 Code](#)), so that with some degree of certainty, money for salaries can be allocated to state agencies.

In conclusion, based on generally accepted principles of statutory construction and in the absence of a statute allowing employees to be paid with cash for working on holidays, it is the opinion of this Office that an employee who works on a legal holiday is entitled to receive compensatory leave rather than cash.

Sincerely,

Barbara J. Hamilton
State Attorney

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