

Avoiding the Massachusetts “Blue Laws” Blues

Complying with the Complex Statutes Governing Sunday and Holiday Work

By C. J. Eaton

The term *blue laws* refers to laws that restrict certain activities on Sundays and, in some states such as Massachusetts, holidays. In Massachusetts, those laws are set forth in a complex statutory framework that can be difficult to interpret and that causes much confusion among employers. Among the questions that employers struggle with are, “Can I open on Sunday?” “Do I need to provide some sort of payment above normal overtime?” and “Are there special laws that apply to holidays?” Similarly, the statutory provisions regarding days of rest are arcane and confusing, and employers are often unsure whether employees are entitled to a day of rest or of the specific requirements imposed by the day of rest laws. This article will assist employers in avoiding the “blue laws” blues by explaining the Massachusetts Sunday and holiday closure law, the exemptions to that law, special requirements placed on retail employers, and the related day of rest laws.

SUNDAY AND HOLIDAY WORK

A brief history lesson. Often, employers believe that the law is a premium pay law and that the only issue to resolve is whether the employer’s business falls under a premium pay requirement (i.e., time-and-a-half pay). Instead, the blue laws are in essence closure laws, and

the first issue that an employer must address is whether it is allowed to operate on Sunday. Understanding the original purpose of the blue laws may resolve some of the confusion regarding this issue.

While the origin of the term *blue laws* itself is disputed—some have suggested that the laws were originally printed on blue paper, while others have opined that the word *blue* is intended to be a disparaging reference to the rigidly moral nature of the laws (similarly to the term *bluenose* for one who advocates a rigorous moral code)—it is known that blue laws have a long history in America, dating back to 1610. Over time, some of the Massachusetts restrictions on Sunday activity eased—for example, it became legal to operate an ice cream parlor on Sunday in 1902, to engage in unpaid gardening in one’s yard in 1930, and to dance at a Sunday wedding in 1955—but Massachusetts maintains a broad prohibition against operating a business on Sundays and certain holidays that, to many, seems out of sync with the modern world.

Default “closure rule” and exemptions. The blue laws therefore originated to restrict Sunday activities. Hence, the default rule imposed in Massachusetts pertaining to Sunday work states that “[w]hoever on Sunday keeps open his shop, warehouse, factory or other place of business, or sells foodstuffs, goods, wares, merchandise or real estate, or does any manner of labor, business or work, except works of necessity and charity” shall

be in violation of the blue laws. Over the last century, the Commonwealth gradually has narrowed these prohibitions by enacting numerous piecemeal exemptions to the blue laws, and there are now 55 exemptions that allow businesses to operate legally on Sunday. The first question that an employer therefore must ask itself is whether it falls within one of these exemptions. While the exemptions are too numerous to list here, some of the most commonly relied upon exemptions include the following:

- Operation of a retail store or shop
- Any manner of labor, business or work not performed for material compensation
- A store or shop that sells food at retail, provided that no more than three individuals, including the owner, are employed at any one time on Sunday and throughout the week
- Any public service which is necessary for the maintenance of life, such as the operation of hospitals and clinics
- Operation of a bank
- Repairs to public roads and bridges and the conduct of public services
- Operation of radio and television stations and the preparation, printing, publication, sale and delivery of newspapers
- Showing, sale, or rental of noncommercial real property to be used for residential purposes
- Operation of libraries and art galleries
- Operation of any secular place of business operated by a person who observes the Sabbath on Saturday
- Operation of an automotive service facility, including the retail sale of gasoline
- Rental, sale, and operation of equipment and vehicles for pleasure and entertainment
- Transport of goods in commerce
- Operation of inns, hotels, and restaurants
- Work incidental to a religious exercise
- Retail sale of drugs and medicines
- Retail sale of alcoholic beverages not to be drunk on the premises

on Sundays by licensed retail establishments

- Cutting and styling of hair, manicuring, and the furnishing of related cosmetological and beauty services

Additional exemptions—including rarely relied upon gems such as the exemption for the transport of ice, bees, or Irish moss, “when circumstances require that such work be done on Sunday”—can be found in Mass. Gen. Laws ch. 136, § 6. If an employer does not qualify for an exemption, it may not legally operate in Massachusetts on Sundays.

Businesses that are not generally allowed to open on Sundays may, however, obtain a single-day permit, generally for a small fee, if it has reason to operate on a given Sunday. To obtain a permit, an employer submits a written request to the chief of police of the town or city in which the business is located within 60 days prior to the day on which the permit will be used, and the chief of police issues, or denies issuance of, a permit within 15 days of the application.

Application of Sunday law to holidays. The Massachusetts Legislature also extended the Sunday closure requirements to six statutory holidays: New Year’s Day, Memorial Day (last Monday in May), Independence Day, Labor Day (first Monday in September), Columbus Day (second Monday in October), and Veteran’s Day (November 11). If New Year’s Day or Independence Day fall on a Sunday, as Independence Day did this year, then the holiday is observed on the following Monday, and the closure law applies on that day. Businesses prohibited from operating on Sunday pursuant to the Massachusetts blue laws are also prohibited from operating on these holidays. Conversely, businesses permitted to operate on Sunday typically may stay open on holidays.

SPECIAL RULES FOR RETAIL EMPLOYERS

Premium pay requirement. The premium pay requirement of the Massachusetts blue laws applies to only one of the 55 exemptions.

Specifically, only retail businesses that employ more than seven persons throughout the week, including the owner, are required to provide premium pay. Those employers must compensate non-exempt employees who work on Sunday at one and one-half times their regular rate of pay. Employers do not have to provide premium pay to exempt employees. In addition, Massachusetts law does not require compounding or “pyramiding” of overtime pay with premium Sunday pay, and an employer may reduce or “offset” its obligation to pay Sunday premium pay by the amount of overtime pay paid to an employee for hours worked in excess of 40 during the same work week. For example:

- An employee who works total of 48 hours in a week, eight of them



on Sunday, is entitled only to eight hours of one-and-a-half times pay

- An employee who works 50 hours, eight of them on Sunday, is entitled to total of 10 hours of one-and-a-half times pay
- An employee who works 30 hours, eight hours on Sunday, is entitled to eight hours of one-and-a-half times pay.

Voluntariness of work requirement.

The blue laws also contain a voluntariness provision for employers who fall under this retail exemption. Retailers who operate on Sundays may not require employees to work on those days and may not discipline or penalize employees for refusing to work. An employee is free to revoke his assent to work on Sundays after the time of hire, and an employer may not take action against an employee for refusing to work on Sundays, even if the employee previously agreed to do so.

Premium pay and voluntariness on holidays. The provisions regarding premium pay and voluntariness of work that apply to retail employers operating on Sunday also apply to retail employers operating on the statutory holidays listed above. As mentioned above, if New Year's Day or Independence Day falls on a Sunday, the holiday is observed on the following Monday. For retail employers, this means that the premium pay and voluntariness requirements also apply to that Monday. Because the Sunday laws are still in effect as well, these requirements will therefore apply to two consecutive days if the employer chooses to operate both days.

Certain holidays have additional requirements unique to retail employers. Retail employers may only operate after 12:00 PM on Columbus Day and Veteran's Day, and they may not open at all on Thanksgiving or Christmas without a permit from the Massachusetts Department of Labor, which will only issue such permits on a statewide basis for all retailers. Historically, the agency has not authorized the issuance of such permits and has taken the position that retailers may not open for business on those days.

Am I a retailer? Employers covered by multiple exemptions. In today's

world, a business does not always fall clearly into one specific exemption to the closure law. Rather, an employer may fall within more than one exemption, one of which is the retail exemption requiring premium pay. For example, a business may sell goods at retail within a restaurant. Must such an employer pay premium pay and follow the voluntariness of work requirement? The answer is not entirely clear. The scope and interrelationship of the various exemptions within the blue laws are unclear, and there is little administrative or judicial guidance on these issues. However, the authorities available strongly suggest that an employer that engages in the sale of goods at retail, even though conducting other business subject to another exemption from the blue laws, is subject to statutory premium pay obligations and must pay employees working on Sundays or designated holidays time and one-half their regular rate. The Massachusetts Appeals Court has expressly rejected the argument that an employer may avoid premium pay obligations if it is legally authorized to conduct business under some other exemption to the Sunday and holiday closure laws and also sells goods at retail.

DAY OF REST LAWS

One day of rest in seven. In addition to the blue laws, two Massachusetts statutory provisions mandate a day of rest for employees and impact employers who operate on Sundays. The "One Day of Rest in Seven" provision requires that manufacturers, mechanical establishments, and mercantile establishments (unless subject to one of the exceptions discussed below) give employees at least 24 consecutive hours of rest in every seven-day period. The 24 hours must include an unbroken period comprising the hours of 8:00 AM and 5:00 PM.

The statute defines these categories as follows: (1) "manufacturing establishments" are "any premises, room or place used for the purpose of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part thereof"; (2) "mechanical establishments" are "any premises, other than a factory . . . where machinery is

employed in connection with any work or process carried on therein"; and (3) "mercantile establishments" are "any premises used for the purposes of trade in the purchase or sale of any goods or merchandise, and any premises used for a restaurant or for publicly providing and serving meals and any premises used in connection with the service of cleansing, dyeing, laundering or pressing fabrics or wearing apparel." An employer might review this list of covered establishments above and quickly conclude that this law does not apply to it. However, while courts have provided little guidance as to which businesses constitute "manufacturing, mechanical, or mercantile" establishments, the one court that has addressed this issue interpreted the term "mechanical establishment" more broadly than a quick review of the definition might suggest. The court held that the computers an employee used in his job as a technology support engineer were "machines," and therefore the facility in which the engineer worked qualified as a "mechanical establishment."

Employers that are subject to this provision must post a list in the workplace indicating which employees are required or allowed to work on Sunday and designating a day of rest for each. Employees cannot waive their day of rest, and they are prohibited from working on their designated day.

Sunday work without a day off. A separate statutory provision, entitled "Sunday Work Without a Day Off," requires that an employer give an employee a 24-hour period off within the six days following a Sunday on which the employee works. This statute applies to two categories of employees: (1) those engaged in any commercial occupation or in the work of any industrial process who do not work in a "manufacturing, mechanical, or mercantile establishment"; and (2) those engaged in transportation or communication work. As with the Day of Rest in Seven Law, there are exceptions to this provision, which are discussed below. In addition, while "commercial occupation" is not defined in the statute, courts may interpret this term broadly, as with the term *mechanical*. Most employers, therefore, will

likely fall under at least one of the two day of rest statutes.

Unlike the One Day of Rest in Seven provision, employees may waive their rights under the Sunday Without a Day Off law. As with other waivers in the employment context, employers are advised to have employees sign a written acknowledgment that they are voluntarily waiving this right.

Exemptions to the One Day of Rest in Seven and the Sunday Work Without a Day Off provisions. Certain establishments that would otherwise be subject to these two provisions are exempt from compliance. These employers may allow employees to work seven or more days in a row with no legal obligation to give them a day off and with no obligation to provide a day off within the six days following work on a Sunday. In addition, employees performing certain types of work in an otherwise-covered establishment are exempt from these provisions.

Exempted establishments or activities covered by this exemption include:

- Establishments used for the manufacture or distribution of gas, electricity, milk, or water
- Hotels
- Transportation of food
- Sale or delivery of food by or in establishments other than restaurants

Employees whose duties include no work on Sunday other than the following are also exempted:

- Janitorial work
- Caring for machinery
- Caring for live animals
- Preparation, printing, publishing, selling, or delivering of newspapers
- Provision of farm or personal service
- Setting of sponges in bakeries
- Any labor called for by an emergency that could not reasonably have been anticipated
- Work of pharmacists employed in drug stores

Under special circumstances, the Attorney General may also grant an

exemption to the One Day of Rest in Seven statute for a period not to exceed 60 days.

CONCLUSION

In sum, while the blue laws and Day of Rest laws present a complex statutory framework that can be quite confusing, employers can avoid the “blue laws” blues by following the guidance set forth above. ■

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