



Retail Detail

Holiday Blues for Employers in New England

The holiday season brings an extra surprise for New England employers this year: two additional “holidays” that impose premium pay and voluntariness of work requirements for certain employees working December 26 or January 2. Employers doing business in Massachusetts and Rhode Island may already be familiar with “Blue Laws” imposing certain requirements for work performed on Sundays and certain holidays. When certain holidays, including Christmas and New Year’s Day, fall on a Sunday – as they do this year – those holidays legally are observed on the following Monday. For those two weeks, the Blue Laws apply to both the actual holiday (because it is a Sunday) and the following Monday (because it is a legal holiday). What does this mean for employers in those states? As explained below, the answer varies based on the state and nature of the employer’s business.

Massachusetts

Retail Employers

Retail employers in Massachusetts may not open on December 25, and retail employers operating on December 26, January 1, and January 2 must follow unique requirements regarding premium pay and voluntariness of work. Retail businesses must pay non-exempt employees who work on those days premium pay of least one and one-half times their regular rate of pay. This premium pay can be off set against any overtime worked in the same workweek. For example, if an employee works a total of 48 hours during the week of December 25, and 8 of those hours are on December 26, the employee is due a total of 40 hours of pay at his regular rate and 8 hours of pay at one and on-half times his regular rate.

In addition, retailers cannot require employees to work on those days, and refusal to work cannot be grounds for discrimination, dismissal, discharge, reduction in hours, or any other penalty.

Non-Retail Employers

Unless subject to one of the 55 exemptions in the Blue Laws, non-retail employers are prohibited from operating on December 26, January 1, and January 2. Non-retail employers that fall into an exemption allowing them to legally operate on the days above are not required to provide premium pay, and the voluntariness requirement does not apply (though religious accommodation requirements must still be met). Non-retail businesses need a local police permit to operate on Christmas Day, regardless of whether they may generally open on Sundays and holidays.

Rhode Island

Rhode Island has even more comprehensive holiday pay requirements that apply to the upcoming holidays. As in Massachusetts, businesses may not operate on Christmas and Thanksgiving, and when a holiday falls on a Sunday, it is observed on the following Monday. Blue Law requirements thus apply on December 26, January 1, and January 2. Both retail and non-retail employers must pay non-exempt employees who work on those days at least one and one-half times their regular rate of pay. In addition, work performed by an employee on those days must be voluntary, and refusal to work cannot be grounds for discharge or any other penalty. Finally, Rhode Island has a unique Blue Law requirement that applies only to retail employers: each employee who works on a holiday must be guaranteed a minimum of four hours employment.

As in Massachusetts, retail employers can offset premium pay against any overtime worked in the same workweek (see example above). However, the Rhode Island Department of Labor takes the view that non-retail employers *cannot* offset premium pay and overtime. For example, if an employer's workweek runs from Sunday through Saturday, and a non-retail employee works a total of 48 hours during the week of December 25, with 8 of those hours worked on December 26, the employee is due a total of 32 hours of pay at his regular rate and 16 hours of pay at one and one-half times his regular rate (8 hours of holiday premium pay and 8 hours of overtime).

Employees working in certain businesses or occupations in Rhode Island are exempt from the premium pay requirement. Exempt employees include health care workers and employees working in restaurants, hotels, summer camps, resorts or other recreational facilities (except health clubs).

Conclusion

Employers should note that, in both Massachusetts and Rhode Island, these provisions also apply when Independence Day (July 4) or Veterans Day (November 11) fall on a Sunday. In 2012, Veterans Day is a Sunday, and premium pay and voluntariness of work requirements will also apply to November 12.

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