

LEGAL BULLETIN #147/2020

December 31, 2020

MASSACHUSETTS 2021 LEGAL HOLIDAYS & PERMIT RESTRICTIONS

Summary: This bulletin contains the information for 2021 holidays, permit opening rules, and holiday premium pay for non-exempt individuals. This information is supplemented by our 2018 Wage-Hour Guide. It is also available on our website - www.msada.org.

Full Bulletin

I. LEGAL HOLIDAYS

Massachusetts law restricts the type of work that may be performed on certain holidays as well as the kind of business and commercial establishments that may remain open. In addition, state law governs when and to whom premium pay must be given on those certain holidays.

According to the Office of the Massachusetts Attorney General, an automobile dealership is predominantly retail. As such, it is a "store or shop which sell(s) goods at retail" pursuant to Chapter 136, §6 (50) of the Massachusetts General Laws. Therefore, for the purposes of our discussion, an automobile dealership is deemed a retail establishment.

The following chart lists all legal holidays that are observed in Massachusetts:

HOLIDAY	DATE 2021	FEDERAL HOLIDAY	STATE HOLIDAY
New Year's Day	January 1, Friday	x	x
Martin Luther King Day	January 18, Monday	x	x
Presidents Day	February 15, Monday	x	x
Patriots' Day	April 19, Monday		x
Memorial Day	May 31, Monday	x	x
Juneteenth Independence Day	June 19, Saturday		x
Independence Day	July 4, Sunday	x	x
Labor Day	September 6, Monday	x	x
Columbus Day	October 11, Monday	x	x
Veterans' Day	November 11, Thursday	x	x
Thanksgiving Day	November 25, Thursday	x	x
Christmas Day	December 25, Saturday	x	x
New Year's Day (2022)	January 1, Saturday	x	x

REMEMBER: Under state law, all holidays falling on Sunday must be observed on the subsequent Monday. Saturday holidays are observed on Saturday. In 2021, Independence Day falls on Sunday, July 4. Juneteenth Independence Day (June 19) and Christmas (December 25) fall on Saturdays in 2021. [NOTE: Juneteenth Independence Day was added as an official state holiday in the FY21 state budget, which was enacted and signed into law in July 2020.]

II. HOLIDAY PERMIT RESTRICTIONS

Under Massachusetts law, a business is required to obtain a permit in order to be open for business on certain holidays. The holidays that require such a permit are Columbus Day (for opening prior to 12 noon), Veterans' Day (for opening prior to 1 p.m.), Thanksgiving Day, and Christmas Day.

How to Obtain a Permit

The permit discussed above is issued by the following entities:

- The police commissioner of the City of Boston for an establishment located in Boston;
- The head of the police department of any other city or town; or
- The chairman of the board of selectmen of any town that has no police department.

The municipality may deny the permit request. Before the municipality issues a holiday permit, permit approval is also required by the Massachusetts Department of Labor and Workforce Development. The permit is valid for one day only. The application for the permit must be made no later than 60 days prior to the day on which the permit is to be used, and the permit must be issued or denied within 15 days of application. The mayor of the city or the board of selectmen of the town sets the fee for the permit, but the fee cannot be greater than \$10. For additional information, contact your police department or board of selectmen.

III. PREMIUM PAY REQUIREMENTS

Massachusetts law does not have state-mandated "paid holidays." In other words, if an employee does not work on a legal holiday, there is no requirement that he or she be paid for the holiday. If, however, an employee does work on certain legal holidays, Massachusetts law requires that the employee be paid at the holiday premium rate. The same is true if an employee works on a Sunday.

Sunday Work: The Massachusetts Blue Laws prohibit most retail employers from forcing an employee to work on a Sunday; further, the Blue Laws prohibit an employer from penalizing an employee for refusing to work on a Sunday. The laws also require most retailers to pay Sunday premium pay to all employees (other than exempt executive, administrative, and professional employees) who work on a Sunday. An employee such as a technician who is exempt from overtime is entitled to premium pay if he works on a Sunday.

In 2018 the Massachusetts Legislature enacted a gradual phase-out of the Blue Laws' Sunday premium pay requirement. Effective January 1, 2021, such premium pay need only be paid out at the rate of 1.2 times an employee's "regular rate of pay" (as opposed to 1.3 times, at which it was set for 2020). [Please note - This rate will continue to decrease by 0.1 on January 1 of each subsequent year, until it is completely phased-out effective January 1, 2023.] Also keep in mind, this reduction in Sunday pay does not impact any OT premium pay that may be due, which is separate and apart from the Sunday premium pay requirement, and which still must be paid out at 1.5 times an eligible employee's "regular rate of pay."

Holiday Work: Retail employers may require employees to work on certain legal holidays recognized in Massachusetts, but may not require them to work on other holidays. If an employee works on a holiday or on another day on which the employer observes the holiday, he or she may be entitled to holiday premium pay for the hours worked, set at either 1.2 times or 1.5 times the employee's regular rate of pay depending on the particular holiday.

- **Martin Luther King Day, Presidents' Day, Patriots' Day, and Bunker Hill Day:** Employees may be required to work on these holidays, and employees do not have to be paid premium pay.
- **Memorial Day, Juneteenth Independence Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day:** Employees may not be required to work on these holidays and must be paid the premium pay rate for any hours worked on the day set at 1.2 times the employee's regular rate of pay. [NOTE: Juneteenth Independence Day was added as an official state holiday in the FY21 state budget, which was enacted and signed into law in July 2020.]
- **New Year's Day, Columbus Day, and Veterans' Day:** Employees may not be required to work on these holidays. Furthermore, as we have detailed in other writings on this topic, a legislative drafting error in the Grand Bargain omitted these three holidays from the gradual phase-out of the holiday premium pay requirement. Therefore, employees must be paid the premium pay rate for any hours worked on the day set at 1.5 times the employee's regular rate of pay.

Note Regarding the Impact of *Sleepy's*: Since May 8, 2019, the SJC's decision in *Sullivan v. Sleepy's* has created chaos in the manner in which retailers are allowed to pay overtime and Sunday/holiday premium pay hours earned by 100% commission-paid salespeople. Amongst other aspects of *Sleepy's*, dealers need to make sure not to use commissions to compensate these salespeople for any OT hours worked as well as for any Sunday/holiday premium pay hours worked in the week. Payments for OT, Sunday hours, and holiday premium pay should be paid separately from any commissions earned and paid to 100% commission-paid salespeople.

What Have You Written in Your Employee Handbook?

In addition to complying with the Massachusetts Sunday/holiday laws, a dealer must also comply with its own policies. If your Employee Handbook or past practice says that New Year's Day and/or Veterans' Day are "paid holidays," for example, then you are required to pay employees for those days even if they are not regularly scheduled workdays. In addition, if an employee works on one of these days, the employee would be entitled to holiday pay for the day plus the additional premium pay for the hours worked on the holiday, or another day off with pay, if the handbook so provides. As a result, dealers are urged to review their holiday pay policies carefully to ensure that they accurately reflect their actual practices.

Additional Notes

NOTE #1: Employees who are normally exempt from overtime may not be exempt from the Sunday/holiday premium pay requirement. Bona fide "executive", "administrative" and "professional" employees are exempt from overtime and are also exempt from the Sunday/holiday premium pay requirement. However, technicians, for example, who are normally exempt from overtime, are not exempt from Sunday/holiday premium pay.

The determination of whether an employee is a bona fide "executive," "administrative" or "professional" employee is a complicated analysis that is discussed in detail in MSADA's Wage-Hour Guide. However, dealers should be aware that an employee's job function, not his or her method of pay, determines "exempt" versus "non-exempt" status. Therefore, neither salaried nor commissioned employees are automatically exempt. Furthermore, employees who are normally exempt from overtime under federal law, as outlined in NADA's *Dealer Guide to Federal Wage-Hour Law and Equal Pay Act*, may still be entitled to holiday premium pay under Massachusetts law.

NOTE #2: As stated earlier, flat rate techs are not exempt from the Sunday/holiday premium pay requirement. As you may recall, for regular (non-holiday, non-Sunday) work hours, flat rate techs generally are exempt from the overtime rules only. They still, however, must receive as a floor for weekly compensation the Massachusetts minimum wage for all hours worked and must keep a time record.

As for Sunday/holiday premium pay, when an employee works the day the employer is required to pay their employees the premium pay rate for hours worked on that day, as described previously. The law does not describe how an employer is supposed to figure this premium pay beyond saying it must be at least 1.2 times the regular rate (in 2021). Since "regular rate" is generally defined as total weekly earnings divided by total hours worked in the week, you would wait until the end of the week, calculate the "regular rate" for the whole week (total flat rate earnings divided by total hours worked) and then pay 1.2 times that amount as the premium pay on top of the hourly rate for the hours worked on the Sunday or holiday.

MINIMUM WAGE REMINDER: Effective tomorrow (January 1, 2021), the Massachusetts minimum wage rate increases to \$13.50 per hour.

RESOURCES

MSADA's *Guide to Wage and Hour Compliance for Massachusetts Dealers (November 2018)* is available for download free of charge for members at www.msada.org or as a hard copy manual for purchase at the member price of \$25.

MSADA - YOUR DEALER ANSWER PLACE

If you have any questions regarding this bulletin, please contact Robert O'Koniewski, Esq., MSADA Executive Vice President, by e-mail at rokoniewski@msada.org, or Peter Brennan, Esq., MSADA staff attorney, by e-mail at pbrennan@msada.org, or either by phone at (617) 451-1051