



BULLETIN #92/2020

JUNE 19, 2020

INDEPENDENCE DAY HOLIDAY RULES REMINDER

GOV. BAKER NAMES TESLER RMV REGISTRAR

RIGHT TO REPAIR GROUP FILES FINAL INITIATIVE PETITION SIGNATURES

HOUSE 4754, *SLEEPY'S* BILL, UPDATE

LIVE NADA WASHINGTON CONFERENCE CANCELLED – TO BE VIRTUAL MEETING IN SEPTEMBER

U.S. HOUSE DEMS UNVEIL INFRASTRUCTURE BILL

Independence Day Holiday Rules Reminder

This year Independence Day, July 4, falls on a Saturday. Under state law, a holiday that falls on a Saturday is recognized on that Saturday. Further, Independence Day is considered a partially restricted holiday. This means:

- Dealership may be open – no permit required.
- Employees cannot be required to work.
- Employee cannot be punished or penalized for choosing not to work the day.
- Based on job description, holiday premium pay may be owed to employee who works the day. This year the premium pay rate for any hours worked on the day is set at 1.3 times the employee's regular rate of pay.
- Review your holiday policies under your Employee Handbook, including providing paid time off if closed for the holiday.

Reminder on the Impact of *Sleepy's*: Since May 8, 2019, the SJC's decision in *Sullivan v. Sleepy's* 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 separate 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 dealership must also comply with its own policies. If your Employee Handbook or past practice says that, for example, Independence Day is a "paid holiday," then you are required to pay employees for that day even if they are not regularly scheduled workdays. In addition, if an employee works on the day, 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



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.

Jamey Tesler Named Registrar of Motor Vehicles - Tesler Has Served as Acting Registrar Since June 25, 2019

On June 17, 2020, Governor Charlie Baker appointed Jamey Tesler as Registrar of the Massachusetts Registry of Motor Vehicles. Tesler had been serving as the Acting Registrar since June 25, 2019. Here is the statement released by the Baker-Polito Administration regarding Registrar Tesler's appointment:

Massachusetts Department of Transportation (MassDOT) Secretary and CEO Stephanie Pollack has announced the appointment of Jamey Tesler to the position of Registrar of the Massachusetts Registry of Motor Vehicles (RMV). Tesler, who has implemented a series of safety-focused reforms at the RMV and Merit Rating Board (MRB) since being named Acting Registrar on June 25, 2019, has more than 16 years in the public sector in senior management roles.

"Jamey Tesler's experiences in the course of his career in the public sector give him a unique lens to look at Registry operations and make improvements so that the Registry is in compliance with statutes and policies, was quickly able to change its service model in response to the pandemic and can continue to deliver quality service to customers," said Governor Charlie Baker. "I am pleased the Registry will continue to have Jamey's leadership as the agency continues to fulfill both its safety-related and customer service functions."

"The many steps Jamey has taken in the last year have demonstrated his ability to make changes in collaboration with the workforce which better position the Registry to meet its goals including serving the public as efficiently as possible," said Lieutenant Governor Karyn Polito. "I am confident Jamey will continue to prioritize operational improvements to streamline transactions and take measures which carry out the Registry's responsibilities pertaining to protecting public safety."

"After stepping up to lead the Registry of Motor Vehicles at a difficult time, Jamey has re-prioritized and re-oriented the RMV and MRB around public safety responsibilities and functions, while transforming the RMV's service model in the midst of a pandemic," said Secretary Pollack. "He has built a strong leadership team and excellent relationships with the workforce while demonstrating the ability to identify and implement changes in longstanding practices that failed to ensure that the Registry met its core safety and credentialing functions. I am delighted that Jamey has finally agreed to stay on in a permanent capacity to build on nearly a year of change management and complete the job he began last June."

Over the last year, Tesler has overseen the hiring of new senior managers, including a Deputy Registrar for Safety, Chief Compliance Officer and Director of Policy & Risk, has enhanced training and improvements in key departments, including the Merit Rating Board, and has made other organizational changes to reprioritize the RMV's public safety mission and functions. There has been an increased focus on accuracy and timeliness of updating driver records and improving the reliability of state-to-state data sharing and communications concerning violations by Massachusetts



licensed drivers.

“I am grateful for the opportunity to continue to work with the RMV’s strong and resilient workforce who day-in and day-out continue to meet the demands for changing and improving how we do both critical back-office safety work and our front-line business,” said Tesler. “I admire the dedication of these employees who have informed, developed and launched many important initiatives in the last year, and who have been relentless through the pandemic to focus on the challenges ahead. The RMV is proving it can reinvent operations to be a nimble, responsive organization that prioritizes the public health and safety of everyone, especially RMV customers and those who use Massachusetts’ roads.”

The RMV is committed to building on the safety and customer service-based improvements that have been made since June 2019, including:

- Prioritizing ‘one driver, one record’ by ensuring RMV records of Massachusetts drivers are as up to date and accurate as possible based on the information available to Massachusetts from law enforcement, the courts, and other states and external partners, through primarily electronic and automatic data-sharing means. Continually refining and updating the process for regularly checking all 5.2 million Massachusetts’ driver records against the National Driver Registry (NDR) and establishing other data-sharing agreements with states as done with New Hampshire.
- Advocating for a federal CDLIS-like system that automates state-to-state communications for non-commercial drivers and bolster Commercial Driving License (CDL) administration.
- Leveraging the Commonwealth’s investment and opportunity in the RMV’s new ATLAS technology system, which became fully operational in the fall 2019, and has allowed for the implementation of multiple, significant changes across the agency, including enhanced state-to-state communications, automatic voter registration, a non-binary gender option for Massachusetts’ credential holders, an appointment-only reservation system and online learner’s permit test, and external business partnerships that reduce the demand for in-person services while offering more customer-friendly, web and phone-based transactions.

Tesler has worked for more than 16 years in the public sector, including roles as General Counsel to the Massachusetts State Treasurer, Deputy Legal Counsel in the Office of the Governor, Deputy General Counsel for the Massachusetts Bay Transportation Authority, MassDOT Assistant Secretary for Procurement and Contract Management, Acting Chief of Staff for the Secretary of Transportation, and then as Chief Operating Officer at MassDOT. In April 2019, Tesler left state government for the position of Chief of Staff at Suffolk Construction and then returned to work for the Commonwealth as Acting Registrar on June 25, 2019.

Tesler received his bachelor’s degree in Economics and International Relations and his Juris Doctor from the University of Michigan.

RTR Group Files Additional Signatures in Effort to Get on November Ballot

The coalition behind a ballot initiative that some independent car mechanics say is critical to protecting their ability to repair more technologically sophisticated vehicles said it had collected enough signatures to qualify for the November ballot.



Ballot campaigns had until the close of business on Wednesday, June 17, to turn in an additional 13,374 signatures to secure a spot on the 2020 ballot. The Right to Repair Coalition said Tuesday that it had collected more than 26,000 new signatures to clear this last hurdle.

Signature gathering for campaigns of all types, including candidates for public office, has become more complicated during the pandemic, and the courts have allowed the expanded use of electronic signatures.

The campaign has said passage of its ballot question is vital to protecting the rights of independent repair shops to access the data they need to fix vehicles of all makes and models. Voters in 2012 approved a "right-to-repair" law that the coalition now hopes to expand to cover telematics systems that can wirelessly transmit a vehicle's mechanical data to manufacturers.

Opponents, including your Association and car manufacturers, have said the update to the law is unnecessary and creates privacy and data security threats.

The ballot question campaign collected more than 100,000 signatures last fall to advance to this final stage of the ballot qualification process, which requires another round of signatures to secure ballot access in case the Legislature does not act on the proposal first.

The new signatures were turned in to local clerks by the close of business on Wednesday for verification, and must then be submitted to Secretary of State William Galvin by July 1 for final certification.

NOTE: The Joint Committee on Consumer Protection and Professional Licensure conducted the constitutionally-required public hearing on House 4302, the initiative petition, as well as 17 other RTR bills, on January 13, 2020. We submitted our strong opposition to the legislation at that time. Since the Legislature did not take up and pass the bill by the first Wednesday in May, the petitioners, as permitted by the state constitution, were allowed to obtain the additional signatures to have the initiative placed on the November 2020 ballot.

House 4754, Sleepy's-Related Legislation, Update

Last week, the Joint Committee on Labor and Workforce Development conducted a virtual public hearing, accepting only emailed testimony, on House 4754, *An Act Relative to Commissioned Employees*. This legislation would enable certain retailers to utilize an affirmative defense for following longstanding state guidance in wage and hour litigation, often class actions, commenced by plaintiffs' attorneys as a result of the May 8, 2019, Supreme Judicial Court's decision in *Sullivan v. Sleepy's LLC*. Your Association, along with 22 franchised auto dealership groups, submitted testimony in favor of the legislation.

House 4754 addresses two matters. First, Sections 1, 2, 3, and 5 prospectively would create a state exemption to overtime and Sunday/holiday premium pay requirements for so-called "inside salespeople," consistent with federal law. These sections would take effect when the legislation is enacted. The inside sales exemption has been long sought by the business community in Massachusetts.



The more pressing matter for defendants in *Sleepy's*-based litigation is addressed in Sections 4, 6, and 8 of the bill. Sections 4 and 6 would create an affirmative defense against a state law statutory claim for unpaid overtime or Sunday/holiday premium pay that an employer can present to a judge or jury if the employer can prove that the wages paid were equal to or greater than those required under state law and that the employer was acting, in good faith, in accordance with an official, written opinion letter issued by a department or agency of the Commonwealth (such as DLS) regarding pay for commissioned staff. Section 8 would apply Sections 4 and 6 retroactively (i.e., apply to pending cases) and would apply to any future actions.

Your Association team is lobbying legislators in order to achieve a successful passage of this language. We will continue to provide updates as they occur.

We offer our appreciation to those 22 dealership groups that submitted testimony in support of the legislation.

September 2020 NADA Washington Conference Will Be a Virtual Event

The following is the recent message of NADA President and CEO Peter Welch on the altered set-up for September's Washington Conference:

"During the past two months we have assessed the likelihood that NADA could conduct an in-person Washington Conference this year comparable to our previous events. For the reasons outlined below, we do not believe that would be possible, so we have decided to conduct a virtual Washington Conference.

"The logistical challenges of conducting an in-person event on the scale of NADA's Washington Conference will simply not be possible by September. During our discussions with the hotel, it became clear that the social distancing requirements would impair the core networking functions of the event and restrict the number of attendees. Additionally, the key reason for holding the conference is to blanket Capitol Hill. For the foreseeable future, access to the Capitol and the House and Senate office buildings will be limited. Some Hill offices are not taking any outside in-person meetings, and many staff members and members of Congress are working from home. Moreover, the House or the Senate may not be in session when our conference is scheduled. Finally, we know that many of you are reluctant to travel to D.C. under the current circumstances.

"Fortunately, we have a great opportunity to design and conduct a virtual Washington Conference that will enhance the grassroots engagement essential to NADA's continued success before Congress and the Executive Branch. Other major trade associations already have staged virtual events that have been well received by their members. We will be seeking input from the NADA and ATAE leadership to develop memorable content within a condensed timeframe and to explore ways to expand our grassroots reach virtually. Moreover, in future years when we are once again meeting in D.C., we could use this virtual template to leverage our in-person event by livestreaming content to dealers across the country.

"Watch for more details. See you in September!"



Cong. Neal, House Dems Roll Out \$1.5 Trillion Infrastructure Bill - Public Works Seen as Way of Plugging Jobs Gap

[Courtesy of *State House News Service*]

While their \$3 trillion COVID-19 relief bill remains before the Republican-controlled U.S. Senate, House Democrats heralded a sweeping \$1.5 trillion infrastructure plan Thursday that authors say could fuel a long-term recovery from the recession.

The proposal would direct hundreds of billions of dollars to transportation priorities, including funding for a passenger rail expansion connecting Boston and western Massachusetts.

It also reaches beyond transit, roads and bridges to suggest significant federal investment in affordable housing, education, internet access, clean energy and wastewater systems.

U.S. Rep. Peter DeFazio, an Oregon Democrat who chairs the House Transportation and Infrastructure Committee, called the bill "the most transformative and consequential infrastructure bill" in the country's history during a [press conference](#) with other House Democrats.

"Everything we have done so far, the three or four bills we've passed on COVID, they have all been mitigation for economic harm," he said. "What we need now is to begin to look forward to a brighter future. That is the recovery package. We're going to need a lot of jobs when we come out of this. A lot of jobs aren't coming back, and we're going to be in something that looks a lot more like the Great Depression than the Great Recession, so we're going to need these jobs."

President Donald Trump is [reportedly considering](#) his own \$1 trillion infrastructure proposal with the existing FAST Act set to expire at the end of September.

Infrastructure investments have been eyed throughout the Trump administration as an area where the president might find common ground with a divided Congress, and the new bill comes as members of both major parties are starting to juggle election-year considerations with their public policy duties in Washington.

The bill Democrats described attempts to use infrastructure investments as a vehicle to generate new economic activity amid a national recession. National unemployment rose to a record level in April due to widespread shutdowns aimed at limiting the spread of COVID-19 before the trend inched in the other direction in May.

"It's job creating in its essence, but it's also commerce promoting," House Speaker Nancy Pelosi said at Thursday's event, pledging to bring the bill to the House floor before lawmakers recess for the July 4 holiday.

According to a [fact sheet](#) published by the Ways and Means Committee, the \$1.5 trillion plan would include more than \$300 billion of spending on nationwide road and bridge maintenance, particularly aiming at the tens of thousands of structurally deficient bridges across the country.



The legislation would triple Amtrak's funding to \$29 billion and direct more than \$100 billion to other transit networks with a goal of deploying more zero-emission buses and encouraging commuters not to add to congestion-filled roadways.

Rep. Richard Neal, a Springfield native who chairs the House Ways and Means Committee, said his colleagues on the Transportation Committee included language he wrote "on rail transportation connecting Boston to Worcester to Springfield to Pittsfield."

Neal's office could not immediately provide details on how the legislation would support that long-sought rail project, which aims to bring passenger train service to swaths of the state west of Worcester where the MBTA does not run its commuter rail.

During the press conference, Neal said he used the New Haven, Connecticut to Springfield line, which was able to expand and run more trains with federal stimulus, as a model.

"Twelve more trains a day from Hartford to Springfield, 16 more trains a day from New Haven to Hartford -- that's what you can do with this sort of investment," he said.

Last week, Neal [said](#) he would unveil legislation soon to direct crucial federal dollars toward East-West Rail, which the state Department of Transportation estimates could cost between \$2 billion and \$25 billion.

House Democrats have proposed other infrastructure bills this session, including a five-year, \$494 billion version earlier this month. Neal's office said Thursday that the new, larger proposal "incorporates elements" from earlier packages "with an eye for our current situation in recovering from the COVID-19 pandemic."

The new bill, dubbed the Moving Forward Act, also calls for spending more than \$100 billion on affordable housing infrastructure, another \$100 billion to make broadband internet more available to underserved communities, \$25 billion toward clean drinking water, and \$40 billion for wastewater infrastructure.

The U.S. Postal Service would receive \$25 billion under the bill, while hospitals would get \$30 billion for upgrades to prepare for any future public health emergencies.

Another key component of the legislation is renewable energy. The federal government would invest more than \$70 billion to transition the electric grid toward renewable sources, while communities would receive funding to help prepare for the impacts of climate change and reduce greenhouse gas emissions.

Neal described the legislation as "the largest tax investment in combating climate change that Congress has ever made on the renewable front."

He also said Republican Gov. Charlie Baker has already voiced support for investing in green energy and creating employment opportunities in the field.



"I've always been a believer in incentivizing certain behaviors, and what better way to do that than through attacking climate change, embracing the renewables, and putting millions and millions of Americans to work," Neal said. "I've also been in conversation with my governor, who shares my point of view on this. We talked extensively about this last Sunday. I told him it was coming and to be ready to say some good things. He said he was going to do it because he's a believer."

[Daily Massachusetts COVID-19 Tracker](#)

The state's COVID-19 Dashboard with up-to-the-date data can be found [here](#).