

MANAGEMENT MOXIE Nimble News

It's The Holiday Season and Time for a History Lesson

The Commonwealth of Massachusetts is a state steeped in history, and the laws are no exception. Some might call the patchwork of rules known as the Blue Laws archaic. After all, the Blue Laws date back to the 17th century - to the founding of New England. The founders wanted to prevent unwholesome activity on Sundays, and over the years these laws were expanded to include certain holidays. You may be wondering how this impromptu history lesson applies to your workplace. This year, Christmas and New Year's Day fall on Sundays but, are legally observed on the following Monday, which means that employers receive a double dose of Blue Law headache.

So what are these Blue Laws?

Over the last century, the Commonwealth has gradually narrowed these prohibitions against operating on Sundays and holidays by enacting numerous piecemeal exemptions to the Blue Laws, and there are now **fifty-five exemptions**, that allow certain businesses to operate legally on Sundays and holidays. However, these existing rules still impose significant burdens on businesses that may include: closure, premium pay, and voluntariness of work requirements on December 26 and January 2.

When certain holidays, including Christmas and New Year's Day, fall on a Sunday, those holidays are legally observed on Monday. Below we will untangle what this will mean for our different clients. The answer will depend on the nature of your business..

Manufacturers

Massachusetts law prevents most manufacturers from operating on Sundays without a permit issued by the local police department. There is a limited exception to this rule that allows manufacturers to operate on Sundays without a permit if there are "manufacturing processes which for technical reasons require continuous operations." Manufacturers that fall within the exception or who obtain a permit are not required to provide premium pay, and employees can be required to work.

This same law will apply to manufacturers on Christmas (December 25) and New Year's

Day (January 1), both of which fall on Sundays.

Although December 26 and January 2 are considered legal holidays, manufacturers will be able to operate lawfully. However, non-exempt employees cannot be required to work on those days - all work must be voluntary. Again, there is only a very limited exception to the voluntariness requirement under the law if the work being performed is both (1) absolutely necessary and (2) can lawfully be performed on Sunday. As stated above, work on Sunday may only occur without a permit if the work for technical reasons requires continuous operation.

Employees may volunteer to work on legal holidays, and premium pay is not required.

Warehouses and Delivery Centers

An Act Relative to Job Creation and Workforce Development, signed by Governor Baker on August 10, 2016, amended the Blue Laws to allow warehouses and delivery centers to remain open on Sundays and holidays. The Act revised a section of the law that previously applied only to the transport of goods and commerce by motor truck or trailer. The section now includes the "delivery of goods in commerce," including the operations of facilities and warehouses related to the delivery.

This means that warehouses and delivery centers and transport operations may operate as usual on December 25, December 26, and January 1. As written, the law does not require these employers to provide premium pay, and the voluntariness requirement does not apply.

Retail Employers

Retail employers in Massachusetts may not open on Christmas Day (December 25). Retailers operating on December 26 must pay non-exempt employees who work on that day premium pay, defined as at least one and one-half times the employee's regular rate of pay. Retailers who open on January 1, and January 2 will also be required to pay non-exempt employees premium pay and all work must be voluntary. However, premium pay on December 26, January 1, and/or January 2 can be off set against any overtime worked in the same workweek. There will be no pyramiding of premium pay, which would require employers to pay overtime based on the premium rate.

Additionally, retailers cannot require employees to work on December 26, January 1, or January 2. All work on those days must be voluntary, and refusal to work cannot be grounds for discrimination, dismissal, discharge, reduction in hours, or any other penalty.

Non-Retail, Non-Manufacturer

Employers who are not retailers or manufacturers may not operate on December 25, December 26, and January 1 unless they are subject to one of the fifty-five exemptions in the Blue Laws, or obtain a permit from the local police department to operate. Non-retail employers that fall under one of the exemptions or receive a permit are not required to provide premium pay, and the voluntariness requirement does not apply (again, religious accommodation requirements must still be met).

These employers may open on January 2, even without an exemption or permit and the premium pay and voluntariness requirements do not apply.

A Word About Religious Accommodation

With holidays falling on Sunday employers should remain thoughtful of religious accommodations to avoid a claim of discrimination. Under Massachusetts law, "it is unlawful for an employer to impose upon an employee or prospective employee as a condition of obtaining or retaining employment any terms or conditions which would require the individual to violate or forego a practice required by his or her religion. This includes but is not limited to requiring an employee or prospective employee to work on any day or portion thereof that the employee observes as a Sabbath or holy day."

To obtain a religious accommodation, an employee or applicant must demonstrate that the observance of Sunday or the holiday is a required practice of his or her religion and must notify the employer at least ten days in advance of the requested absence and provide notice that the absence is for religious purposes. Once this is done, the employer is required to grant the accommodation unless it would impose an undue hardship.

These laws are enough to give anyone the Holiday "blues," but we are here to help!