

# HR Insights

## Tis the Season! What You Need to Know About Holidays and Holiday Pay

To all our clients, subscribers, and friends, we wish you a very happy and safe holiday season for 2020 and throughout 2021! This issue of *HR Insights* provides a summary of the Massachusetts and federal laws regarding holidays and holiday pay in Q&A format.

### Q1. What are the MA and federal holidays?

The table below lists the MA state and federal holidays and when observed for the remainder of 2020 and 2021. If a holiday is not checked in the Federal column, it is not a federal holiday.

Holiday	Date	MA	Federal
Christmas Day	F 12/25/20	✓	✓
New Year's Day	F 1/1/21	✓	✓
MLK Jr.'s Birthday	M 1/18/21	✓	✓
Washington's Birthday/ Presidents Day	M 2/15/21	✓	✓
Evacuation Day (Suffolk County only)	W 3/17/21	✓	
Patriots Day	M 4/19/21	✓	
Memorial Day	M 5/31/21	✓	✓
Bunker Hill Day (Suffolk County only)	TH 6/17/21		
Juneteenth*	SAT 6/19/21	✓	
Independence Day	M 7/5/21	✓	✓
Labor Day	M 9/6/21	✓	✓
Columbus Day	M 10/11/21	✓	✓
Veterans Day	TH 11/11/21	✓	✓
Thanksgiving Day	TH 11/25/21	✓	✓
Christmas Day	F 12/24/21	✓	✓
New Year's Day	F 12/31/21	✓	✓

\*On July 24, 2020, Governor Baker made Juneteenth (June 19) an annual state holiday to help “recognize the continued need to ensure racial freedom and equality.” Juneteenth is the oldest known U.S. celebration of the end of slavery (June 19, 1865).

### Q2. Am I required to close my business on holidays?

It depends. The federal holidays are holidays observed by the U.S. government. Most government offices and banks are closed on federal holidays. However, private employers have the option of staying open unless required to close under MA law. Whether a business must close for state holidays depends on whether the employer is a public employer or a private employer in the retail, non-retail, or manufacturing business.

### Q3. On what MA holidays must a public employer be closed?

Public employers must be closed on all the state holidays listed in the table in Q1 with the exception that only public offices in Suffolk County may be closed on Evacuation Day and Bunker Hill Day.

### Q4. As a private employer, can I open for business on a MA holiday?

The MA Blue Laws control which private employers can open for business on a holiday. Different requirements apply based on whether a business is a retail establishment, non-retail establishment, or a manufacturer.

### Q5. What MA requirements apply to a retail establishment?

A retail establishment must obtain a permit from the local police chief to open for business on the following **restricted** holidays:

- Columbus Day before 12:00 pm\*
- Veterans day before 1:00 pm\*
- Thanksgiving Day
- Christmas Day

\*Note: Whether or not a permit is granted, a retail establishment must pay their employees premium pay for any work performed on Columbus Day before 12:00 pm and on Veterans Day before 1:00 pm. In addition, a

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retail establishment cannot require an employee to work on these holidays before noon and 1:00 pm respectively, that is, whether an employee works before then must be voluntary.

Work can be performed without a permit on the following **unrestricted holidays**. Premium pay and the voluntary employment requirements do not apply to these holidays.

- Martin Luther King Jr.'s Birthday
- Presidents Day
- Evacuation Day
- Patriots Day
- Bunker Hill Day

Work may also be performed without a permit on the following **partially restricted holidays**. In general, premium pay and the voluntary employment requirements apply. For the holidays asterisked below, however, premium pay only applies if the retail establishment employs more than seven employees including the owner.

- New Year's Day
- Memorial Day\*
- Juneteenth Independence Day\*
- Independence Day\*
- Labor Day\*
- Columbus Day after 12:00 noon
- Veterans Day after 1:00 p.m.

## Q6. Are the MA premium pay requirements being phased out?

Under the Grand Bargain legislation signed into law by Governor Baker in 2018, the premium rates for employees working on Sundays and certain holidays are gradually being phased out. The table that follows shows the premium pay rates for holidays.

Please note that the reduction in the premium rate of pay for certain holidays does not change an employer's responsibility to pay overtime at 1.5 times an employee's regular rate of pay for all hours worked in

excess of 40 during a workweek. For example, if an employee works five hours on a Sunday and those hours represent overtime (having already worked 40 hours that week), the employee must receive 1.5 times their regular rate of pay for those five hours, rather than 1.3 times.

Year Effective	Premium Pay: Memorial Day Juneteenth Independence Day Labor Day	Premium Pay: New Year's Day Columbus Day Veterans Day
2020	1.3 x regular rate	1.5 x regular rate
2021	1.2 x regular rate	1.5 x regular rate
2022	1.1 x regular rate	1.5 x regular rate
2023	Eliminated	1.5 x regular rate

## Q7. What MA requirements apply to a non-retail establishment?

In general, most non-retail businesses may open on the following holidays without a permit or restrictions:

- New Year's Day
- Martin Luther King Day
- Presidents Day
- Evacuation Day
- Patriots Day
- Bunker Hill Day
- Juneteenth Independence Day
- Columbus Day after 12:00 noon
- Veterans Day after 1:00 p.m.

Most non-retail businesses cannot operate on any other holidays, unless they fall within one of the exemptions in M.G.L. c. 136, secs. 4, 6 and/or 14. See also M.G.L. c. 140, sec. 181.

## Q8. What MA requirements apply to manufacturers?

Manufacturers may open for business without a permit on the following **unrestricted holidays**. The premium pay requirements do not apply to these holidays.

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- New Year's Day
- Martin Luther King Day
- Presidents Day
- Evacuation Day
- Patriots Day
- Bunker Hill Day
- Juneteenth Independence Day
- Columbus Day after 12:00 noon
- Veterans Day after 1:00 p.m.

Manufacturers cannot open for business on the following **restricted holidays** unless they obtain a permit from the local police.

- Memorial Day
- Independence Day
- Labor Day
- Columbus Day before 12:00 noon
- Veterans Day before 1:00 p.m.
- Thanksgiving Day
- Christmas Day

Although manufacturers may open for business on holidays (assuming permits are obtained when necessary), employees cannot be required to work on those days with one limited exception. They can require work on holidays only when the work is absolutely necessary **and** can lawfully be performed on Sunday.

## Q9. Must we pay employees for holidays they do not work?

The Fair Labor Standards Act (FLSA) does not require employers to pay employees for time not worked, including holidays. Paid holidays are viewed as a benefit under an agreement between an employer and employees (or their representatives). Similarly, nothing in MA law requires private employers to give employees paid time off for any holiday. However, see Q10 regarding making deductions from an exempt employee's pay for a holiday not worked.

## Q10. May we reduce an exempt employee's salary for a holiday they are not yet eligible for?

No. Reducing an exempt employee's salary for a holiday observed by the employer would violate the FLSA salary basis requirement. FLSA allows employers to dock an exempt employee's pay for a workweek under very limited and specific circumstances, and holidays is not one of them. Docking an exempt employee's salary for a holiday not worked would place the employer at risk for losing the employee's exempt status.

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