

TITLE 260 – DEPARTMENT OF LABOR AND TRAINING

CHAPTER 30 – WORKFORCE REGULATION AND SAFETY

SUBCHAPTER 05 – LABOR STANDARDS

PART 2 – Payment of Wages, Employer Exemptions from Weekly Pay, and Exemptions for Work on Holidays and Sundays

2.1 Authority

- A. R.I. Gen. Laws § 28-14-19 authorizes the Director of the Department of Labor and Training to ensure compliance with R.I. Gen. Laws Chapters 28-14 and 28-12. The Department is authorized to investigate any violations, institute actions for the collection of wages and institute action for penalties or other relief as provided for within and pursuant to those Chapters, and hold hearings.
- B. R.I. Gen. Laws Chapter 28-12 entitled "Minimum Wages" authorizes the Director to promulgate Regulations to define and delimit the employees designated in R.I. Gen. Laws § 28-12-4.3 titled "Exemptions."
- C. R.I. Gen. Laws § 25-3-6 authorizes the Director to promulgate any Regulation necessary for the implementation of R.I. Gen. Laws Chapter 25-3 titled "Work on Holidays and Sundays."

2.2 Incorporated Materials

These Regulations hereby adopt and incorporate 29 C.F.R. §§ 541.1, 541.2 and 541.3 (2004) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these Regulations.

2.3 Definitions

- A. "Department" means the Department of Labor and Training.
- B. "Director" means the Director of the Department of Labor and Training.
- C. "Retail business" for the purpose of calculating overtime pay as cited in R.I.G.L. § 28-12-4.1 means an establishment engaged primarily in the sale of goods or services directly to the general public. It operates at the end of the distribution chain, selling in small quantities to the ultimate consumer in a manner consistent with other consumer goods and services. A retail business does not engage primarily in resale, wholesale transactions, or manufacturing but instead provides products or services recognized as retail within the particular industry. This

definition includes direct-to-consumer sales and aligns with the Merriam-Webster definition of retail as "to sell small quantities directly to the ultimate consumer." Excluded from this definition are businesses that primarily prepare and sell food for immediate consumption, as well as wholesale operations that serve other businesses rather than individual consumers.

2.4 Payment of Wages

2.4.1 Purpose

The purpose of § 2.4 of this Part is to regulate the requirements and methods of payment employers must comply with and use in recompensing employees for all hours worked.

2.4.2 Exemptions

- A. If an employee works both in an activity which is exempt from the payment of wages at time and one half (1/2) and in work for which wages at time and one half (1/2) are mandated by law pursuant to R.I. Gen. Laws Chapter 25-3, then the employer shall pay wages at time and one half (1/2) for the total hours worked by that employee in both activities, unless all hours for each activity are separately stated by the employer.
- B. If an employee works for an employer, doing more than one (1) task, or at a location different from his regular place of employment, whether owned by the employer or in which the employer shares a common ownership, all hours worked by that employee shall be recompensed at time and one half (1/2).
- C. Department hereby adopts the definition and delimiting of the terms "Any employee employed in a *bona fide* executive, administrative or professional capacity," incorporated above at § 2.2 of this Part in order to define employees who are exempt from minimum wage and overtime requirements.
- D. If an employee is prevented from working a normal shift by reason of events beyond the control of the employer or by "Acts of God" so-called, then such employee shall not be entitled to three (3) hours minimum wages under R.I. Gen. Laws § 28-12-3.2.
- E. If an employee is required by an employer to attend a seminar, conference, training session or other such meeting, which is job-related, then the time spent by the employee in so attending shall be considered and recompensed as work time, even if it occurs outside of the employee's usual work time.
- F. If an employer requires an employee to report to work at any of the employer's places of business and then to travel to another location in order to commence the employee's normal work shift, then the time spent in so traveling shall be considered and recompensed as work time.

2.5 Employer Exemptions from Weekly Pay Requirements

2.5.1 Purpose

The purpose of § 2.5 of this Part is to set forth procedures for employers to follow in order to obtain employer exemptions from the weekly pay requirements set forth in R.I. Gen. Laws § 28-14-2.2.

2.5.2 Petitions

- A. Any employer that has an average payroll that exceeds two hundred percent (200%) of the State minimum wage as defined in R.I. Gen. Laws § 28-12-3 may petition the Director to pay wages less than weekly to demonstrate that the employer meets the requirements set forth in R.I. Gen. Laws §§ 28-14-2.2(b)(1) through (3). For purposes of these Regulations, “other sufficient demonstration of security” shall mean a letter of credit from a financial institution.
- B. Any employer whose average payroll is less than two hundred percent (200%) of the State minimum wage as defined in R.I. Gen. Laws § 28-13-3 and demonstrates good cause may petition the Director to pay wages less than weekly to demonstrate that the employer meets the requirements set forth in R.I. Gen. Laws §§ 28-14-2.2(c)(1) through (5).
- C. Any employer who petitions the Director under either §§ 2.5.2(A) or (B) of this Part above, must submit:
 - 1. A completed, signed and notarized application along with the requested supporting documentation
 - a. The application may be accessed through the Department’s website.
 - b. All applications shall contain original signatures.
 - (1) By signing the application, the employer agrees to continued compliance with the requirements of R.I. Gen. Laws § 28-14-2.2 and this Part.
 - (2) Employer shall have the burden of notifying the Department, in writing within thirty (30) days, if circumstances supporting approval no longer apply.
- D. Upon receipt of the above-referenced application, the Director shall either grant the petition, deny the petition, or request additional information.
 - 1. If the Director approves the petition, the employer must notify the affected employees subject to the petition of the pay change fourteen (14) calendar days in advance of the pay change.

- E. Permission to pay less than weekly shall not be valid until the employer receives written approval from the Department.
- F. Affidavit of Continued Compliance
 - 1. Every four (4) years from the original date of approval to pay less than weekly, each employer must sign and submit an Affidavit of Continued Compliance.
 - 2. The Affidavit of Continued Compliance will be available on the Department's website and must be notarized.
 - 3. An employer's permission to pay less than weekly is valid for an indefinite period of time, unless the employer is deemed to not be in continued compliance pursuant to R.I. Gen. Laws § 28-14-2.2 and is specifically notified by the Department, in writing, of its noncompliance.
 - a. The Department shall notify an employer sixty (60) days prior to submittal date of its obligation to submit the Affidavit of Continued Compliance.
- G. Surety Bond or "Other Sufficient Demonstration of Security"
 - 1. "Other sufficient demonstration of security" means a letter of credit from a financial institution.
 - 2. The obligation to obtain a surety bond or "other sufficient demonstration of security" within R.I. Gen. Laws § 28-14-2.2 and this Part is perpetual in nature and must be maintained and satisfied for the duration of the exemption from the weekly pay requirement.

2.5.3 Appeals

- A. An employer, whose initial application for exemption has been denied or who has been found to not be in continued compliance, may, within ten (10) days from the date of the Director's notice, request an appeal hearing before the Director or the Director's designee.
- B. All appeals of final administrative determinations hereunder shall be subject to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-15.

2.5.4 Violations

Any employer found in violation of R.I. Gen. Laws § 28-14-2.2 and/or this Part shall, after notice and hearing, be subject to rescission of the employer's exemption from the weekly pay requirement for a period of one (1) year from the date of final administrative determination. Subsequent violations shall be subject

to rescission for a period of two (2) years from the date of final administrative determination.

2.6 Premium Pay Exemptions for Work on Holidays and Sundays

2.6.1 Purpose

The purpose of § 2.6 of this Part is to identify classes of employers, either because of the nature of their operations or their size, that are exempt from the requirement that work performed by employees on Sundays and holidays must be paid for at least one and one half (1 1/2) times the normal rate of pay for the work performed.

~~2.6.2 Petition for Exemption~~

~~A. Any Rhode Island employer, as defined by R.I. Gen. Laws § 25-3-1(4), may petition the Director for an exemption by filing with the Director a written statement containing the following:~~

- ~~1. A description of the class of employers which the petitioner seeks to exempt from holiday and Sunday premium wage laws;~~
- ~~2. A description of the employer class' operational requirements necessitating Sunday and holiday staffing;~~
- ~~3. The approximate number of petitioner's employees who typically work on Sundays and holidays and who would be affected by the exemption; and~~
- ~~4. A statement of the economic necessity, as defined by R.I. Gen. Laws § 25-3-1, justifying the exemption.~~

~~B. Upon receipt of a petition for exemption pursuant to R.I. Gen. Laws § 25-3-7, the Director shall either:~~

- ~~1. Grant the request for an exemption for a particular employer class and notify the petitioner of the Department's intent to promulgate Regulations for that class pursuant to R.I. Gen. Laws § 42-35-1 et seq. or~~
- ~~2. Notify the petitioner that the request has been denied.~~
 - ~~a. An employer whose petition for exemption has been denied, may, within ten (10) days from the date of the Director's notice of denial of the petition, request an appeal hearing before the Director or the Director's designee to present evidence or other information concerning the request.~~
 - ~~b. The Director shall then review the information provided and may either grant the petition or deny the petition.~~

2.6.23 Collective Bargaining Agreements

When applicable, if a collective bargaining agreement provides for the payment of any premium wage on Sundays or holidays to certain employees who are otherwise exempted by these Rules from receiving premium wages on Sundays or holidays, the employer shall pay the premium wage as required by the collective bargaining agreement.

2.6.34 Exempt Classes of Employers

- A. The following classes of employers are exempt from paying employees Sunday and holiday premium pay:
1. Manufactures of monoclonal antibodies using mammalian cells requiring continuous operations and maintenance for the production of such monoclonal antibodies when those employees work directly on the production, maintenance and quality control testing of monoclonal antibodies using mammalian cells.
 2. Fueling operators at Rhode Island Airport Corporation airports providing operation, quality assurance and maintenance services for the storage, receipt and distribution of aviation fuels and other related airline industry fuels and fluids, such as Glycol de-icing fluids.
 - a. This exemption is limited to employees who provide oversight of daily fueling procedures, performance of quality checks, fuel related record keeping, direct receipt and testing of fuels, fuel inventory functions, environmental functions or dispersal services for commercial aviation fuel or related fuels and fluids or provide mandatory maintenance in line with Federal Aviation Administration (FAA) or Rhode Island Airport Authority protocols concerning aviation industry fuels and fluids or related fuels and fluids.
 3. Employers of Federally Certified Maintenance Technicians that repair or inspect aircraft and specific ground service equipment at T.F. Green Airport, and who are certified by the Federal Aviation Administration.
 4. Motorist service facilities located on, or approximate to, major interstate highways that operate twenty-four (24) hours a day, seven (7) days a week and provide gasoline and/or diesel fuel sales and vehicle servicing in combination with restaurant operations, convenience stores, or other travel amenities.
 5. All churches and other houses of worship for employees whose work is performed on the day of worship, during the worship service, and that work is solely related to the operation of conducting religious worship services.

- a. The exemption from premium pay shall be limited to and applicable to work that is performed on the day of worship, during the worship service, and that work is solely related to the operation of conducting religious worship services.
 - (1) Such employment positions include, but are not limited to: choir directors who direct the choir during worship services, worship technologists who manage and operate light, sound, and audio-visual systems during worship services, youth directors who provide youth supervision and youth programs during religious services, and building and custodian maintenance staff who maintain the facilities during worship services.
- 6. All non-profit educational institutions of higher education located within Rhode Island, and other educational institutions that operate twenty-four (24) hours a day, seven (7) days a week and provide housing and food service.
- 7. Private security guard businesses licensed under R.I. Gen. Laws § 5-5.1-1 *et seq.*
- 8. All employers that provide a twenty-four (24) hour, seven (7) day a week telephonic call center or internet based dispatch system that motorists use to obtain motor-vehicle roadside assistance services are exempt for employment positions in the call center, or that provide ancillary services related to the call center operations, including, without limitation, emergency roadside service technicians or tow truck drivers.
 - a. Motor-vehicle roadside assistance services include aiding stranded motorists by transporting them to a position of safety, safely removing disabled vehicles from the road, or providing emergency repair services, such as, without limitation, fuel delivery, lockout, extrication, winching, tire change, battery boost, or all other services provided to place a disabled vehicle back into driving condition.
- 9. Employers of rescues, shelters and kennels who own, operate, or maintain facilities under R.I. Gen. Laws Chapter 4-19 that house or contain animals twenty-four (24) hours, seven (7) days a week.