

Memo

Date: MM/DD/YYYY

To: Nursing home employers

From: Nursing Home Workforce Standards Board

RE: How to, holiday pay rules

The Holiday Pay rules are moving toward a January 1, 2025 implementation date. In this memo, please find information on:

- What the rules are
- How to modify the standard list of holidays and times
- Notes
- Frequently Asked Questions (FAQs)
- Background on NHWSB

Holiday Rules

The Nursing Home Workforce Standards Board (NHWSB) drafted rules that are in the process of rulemaking that would ensure that nursing home workers who work on 11 state holidays are paid at least time and a half.

The 11 state Holidays are:

- New Year's Day, January 1;
- Martin Luther King's Birthday, the third Monday in January;
- Washington's and Lincoln's Birthday, the third Monday in February;
- Memorial Day, the last Monday in May;
- Juneteenth, June 19;
- Independence Day, July 4;
- Labor Day, the first Monday in September;
- Indigenous Peoples' Day, the second Monday in October;
- Veterans Day, November 11;
- Thanksgiving Day, the fourth Thursday in November; and
- Christmas Day, December 25.

The day includes all hours from midnight to midnight.

How to modify the standard days and times

The rules are drafted understanding that some facilities may want an altered list of dates and times based on employee and business needs. Here are some ways to accomplish that; however these rules were drafted to give flexibility to facilities in how they determine which holidays should be observed. A facility might use a different process than those listed below.

Facilities with an exclusive representative

If the facility has an exclusive representative such as a union, the facility's management and union can come to an agreement in the manner that you usually would in order to change a condition of a contract. For instance, if the facility management would like to have the day after Thanksgiving be considered a holiday instead of Memorial Day, management and the exclusive representative would come to an agreement and ratify it in the way that an agreement is usually ratified. The same would be true if management wanted to have Christmas start at 6pm on December 24 to 6pm on December 25.

The agreement must be reached before the calendar year that the altered schedule will occur and a copy of the agreement needs to be in writing, and retained for three years after the effective year of the agreement. For instance, if an employer wanted to have an altered schedule in 2026, the agreement between the exclusive representative and the employer would need to be made by December 31, 2025 and a copy of the agreement would need to be retained until January 1, 2030.

Facilities without an exclusive representative

If the facility does not have an exclusive representative, the facility's management can alter the dates or times of the holidays by reaching an agreement with a majority of affected workers. For instance, if a facility wanted the day after Thanksgiving to be considered a holiday instead of Memorial Day, management would need to either hold a vote or circulate a petition or in some other way obtain support from a majority of employees who are affected by the NHWSB rules for the change.

The agreement must be reached before the calendar year that the altered schedule will occur and a copy of the agreement needs to be in writing and retained for three years after the effective year of the agreement. For instance, if an employer wanted to have an altered schedule in 2026, the agreement between the exclusive representative and the employer would need to be made by December 31, 2025 and a copy of the agreement would need to be retained until January 1, 2030.

Notes

A couple of clarifications on this rule.

1. This is a minimum, not a maximum. An employer or a contract can offer more than time and a half pay on holidays, a larger list than the 11 days listed, and more. This is merely a minimum.
2. This rule applies to nursing home workers who are working on a holiday. It does not obligate employers to give all workers paid time off.

3. This rule cannot be used to pay workers less than what is already in an employment contract. For instance, if an existing contract dictates that workers get paid double for working Christmas, this rule does not allow an employer to only pay time and a half.

Questions?

Frequently Asked Questions (FAQ)

Question: If a worker does not work on the holiday, do these rules mandate the worker get paid?

Answer: No

Q: At our facility we have a policy for 5 holidays getting paid double pay. Do these rules mandate that we now pay the 11 state holidays double pay, since that is what our other holidays are paid?

A: No

Q: Who is considered a worker under this rule?

A: As for the definition of nursing home worker, here is the definition in statute: Minnesota Statutes, Section 181.211, Subd. 9. Nursing home worker. "Nursing home worker" means any worker who provides services in a nursing home in Minnesota, including direct care staff, non-direct care staff, and contractors, but excluding administrative staff, medical directors, nursing directors, physicians, and individuals employed by a supplemental nursing services agency.

So, this will include your non-management RNs, CNAs, TMAs, dietary aides, cooks, and more.

Q: What if the employee is "exempt?"

A: If you have someone who meets the definition of nursing home worker above, who is also exempt from overtime rules, this rule for time and a half if they work a holiday would still apply to them. If an employee meets the definition of nursing home worker, then they are conferred the benefits of the holiday pay rules. The holiday pay contemplated in these rules is not overtime pay, so the provisions of the Fair Labor Standards Act and Overtime Pay laws dealing with overtime pay are not applicable; a nursing home worker that is overtime exempt under FLSA is still entitled to holiday pay.

Q: I want to switch 4 holidays on the list for other holidays. We are not unionized. How do we determine how to arrive at agreement on this with a majority of affected nursing home workers?

A: First determine who in your staff qualify as nursing home workers under the rules. A majority would be fifty percent of those workers plus one. Then find a way to discuss and make a decision together. This could be a meeting with a vote at the end, a survey monkey, a petition in the break room, or any other reasonable way for workers to let their voices be heard. Just keep in mind that you will need to keep a record of the agreement for a

minimum of 3 years after the observation of the modified holiday. That could look like meeting minutes, records of vote numbers and when the vote was held, a copy of the petition or something similar.

Q: I want to change the timing of the holiday to be from midnight to 11:59 p.m. to 6:00 p.m. the night before to 5:59 p.m. the day of the holidays. We are not unionized. How do we determine how to arrive at agreement on this with a majority of affected nursing home workers?

A: First determine who in your staff qualify as nursing home workers under the rules. A majority would be fifty percent of those workers plus one. Then find a way to discuss and make a decision together. This could be a meeting with a vote at the end, a survey monkey, a petition in the break room, or any other reasonable way for workers to let their voices be heard. Just keep in mind that you will need to keep a record of the agreement for a minimum of 3 years after the observation of the modified holiday. That could look like meeting minutes, records of vote numbers and when the vote was held, a copy of the petition or something similar.

Q: We want to switch a couple of holidays and/or the timing of the shifts from midnight to midnight to 7:00 p.m. to 7:00 p.m. and we are unionized. How do we come to an agreement?

A: Work with the union in the typical way that you would any sort of alteration to the current working conditions. Just keep in mind that you will need to keep a record of the agreement for a minimum of 3 years after the observation of the modified holiday.

Background on NHWSB

The Minnesota Nursing Home Workforce Standards Act was passed as part of the Omnibus Jobs, Economic Development, Labor and Industry appropriations bill, SF 3035, Session Law Chapter 53 and codified as 2023 Minnesota Statutes sections 181.211 to 181.217. The statute lays out the building blocks for a board that will, through expedited rulemaking, set compensation standards for nursing home workers that are “reasonably necessary and appropriate to protect the health and welfare of nursing home workers” and ensure nursing home workers are trained about these standards.

For more information about the Board, please visit [Nursing Home Workforce Standards Board | Minnesota Department of Labor and Industry \(mn.gov\)](https://www.mn.gov/Departments/Labor-Industry/Workforce-Standards-Board)