

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Department of Labor and Training

**DIVISION:** Workforce Regulation and Safety

**RULE IDENTIFIER:** 260-RICR-30-05-2

**REGULATION TITLE:** Payment of Wages, Employer Exemptions from Weekly Pay, and Exemptions for Work on Holidays and Sundays

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Adoption

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

Public notice date of: July 13, 2018

Comment period ends: August 13, 2018

**SUMMARY OF PROPOSED RULE:**

By this rulemaking, the Department is proposing to:

1. Consolidate the Payment of Wages Regulations, Employer Exemptions from Weekly Pay Regulations, and Exemptions for Work on Holidays and Sundays Regulations into one regulation.
2. Revise to comply with the RICR formatting and codification guidelines.
3. Remove unnecessary "cross-reference" sections in §§ 2.2(A); 2.4.2; 2.5.2; 2.6.1.
4. Correct statutory citations.
5. Streamline and clarify content to avoid confusion in §§ 2.4.2; 2.5.2; 2.5.3; 2.6.5.
6. Reorganize content of regulation with revised headings in §§ 2.4.2; 2.5.2; 2.5.3; 2.6.5.

**COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **August 13, 2018** to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Mailing Address:** Sean M. Fontes, Executive Counsel, Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI 02920

**Email Address:** [sean.fontes@dlt.ri.gov](mailto:sean.fontes@dlt.ri.gov)

**WHERE COMMENTS MAY BE INSPECTED:**

**Mailing Address:** Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI, 02920.

**PUBLIC HEARING INFORMATION:**

**Public Hearing Date & Time:** July 27, 2018 from 1:00 pm to 2:30 pm

**Public Hearing Location:** Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI, 02920, Conference Room 73-1

THE PLACE OF THE PUBLIC HEARING IS ACCESSIBLE TO THE HANDICAPPED. IF COMMUNICATION ASSISTANCE (READERS/ INTERPRETERS/CAPTIONERS) IS NEEDED, OR ANY OTHER ACCOMMODATION TO ENSURE EQUAL PARTICIPATION, PLEASE CALL 401-462-8000 OR RI RELAY 711 AT LEAST THREE (3) BUSINESS DAYS PRIOR TO THE MEETING SO ARRANGEMENTS CAN BE MADE TO PROVIDE SUCH ASSISTANCE AT NO COST TO THE PERSON REQUESTING.

**FOR FUTHER INFORMATION CONTACT:**

Sean M. Fontes, Executive Counsel, Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI 02920, 462-8890, sean.fontes@dlt.ri.gov

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:**

It is beneficial for the public to be fully informed of the rules for wage and hour enforcement.

**Authority for This Rulemaking:** §§ 28-14-19, 25-3-6, R.I. Gen. Laws Chapter 28-12

**Regulatory Findings:**

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

**Concise Summary of Non-Technical Changes:**

1. Consolidate the Payment of Wages Regulations, Employer Exemptions from Weekly Pay Regulations, and Exemptions for Work on Holidays and Sundays Regulations into one regulation.
2. Revise to comply with the RICR formatting and codification guidelines.
3. Remove unnecessary “cross-reference” sections.
4. Correct statutory citations.

5. Streamline and clarify content to avoid confusion.
6. Reorganize content of regulation with revised headings.

Date Notice Was Posted: July 13, 2018

**The Proposed Adoption:**

**Department of Labor and Training** proposes to adopt the proposed rule as follows:

260-RICR-30-05-2

## 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 insure 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.

#### 2.4 Payment of Wages

##### 2.4.1 Purpose

The purpose of this § 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 ~~employer is engaged in a business where an~~ employee works both in an activity which is exempt from the payment of wages at time and one-half and in work for which wages at time and one-half are mandated by law pursuant to R.I. Gen. Laws Chapter 25-3, then the employer shall pay wages at time and one-half for the total hours worked by ~~such that~~ employee in ~~each such~~both activityactivities, unless all hours for each activity are separately stated by the employer.
- B. If an employee works for an employer, doing more than one 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 ~~such that~~ employee shall be recompensed ~~used in computing the total number of hours worked for purposes of payment of wages~~ at time and one-half.
- C. ~~The Labor~~ 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(A) of this Part in order to define employees who are exempt from minimum wage and overtime requirements. as contained in title 29 part 541.1, 541.2 and 541.3 of the code of federal regulations and any amendment thereto where not inapplicable or inconsistent with Rhode Island Law.
- 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 section R.I. Gen. Laws § 28-12-3.2. of the general laws of Rhode Island.
- 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 ~~RULES AND REGULATIONS RELATING TO~~ Employer Exemptions from Weekly Pay Requirements under r.i. gen. laws § 28-14-2.2

### 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 so long as the employer meets the requirements set forth in R.I. Gen. Laws § 28-14-2.2(b)(1) through (3). ~~makes payment of wages regularly and on a predesignated date no less than twice a month, provides proof of a surety bond or other sufficient demonstration of security in the amount of the highest payroll exposure in the preceding year for the employees subject to the petition and if the involved employees are subject to collective bargaining, the employer provides the written consent of the collective bargaining representative for all involved employees.~~ 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 so long as the employer meets the requirements set forth in R.I. Gen. Laws § 28-14-2.2(c)(1) through (5). ~~has provided the Department with the following: information: (i) the method by which wages will be paid; (ii) the employer’s designated payday(s); (iii) the job classification of the employees involved; (iv) the salary range of the employees involved; and (v) the employer’s federal identification number. In addition, the employer must make payment of wages regularly on a predesignated date no less than twice per month, have no history of wage and hour violations, provide proof of a surety bond or other sufficient demonstration of security in the amount of the highest biweekly payroll exposure in the preceding year for the employees subject to the petition, and if the involved employees are subject to collective bargaining, the employer shall provide the Department with the written consent of the collective bargaining representative for all involved employees. For purposes of these regulations, “other sufficient demonstration of security” shall mean a letter of credit from a financial institution.~~
- C. Any employer who petitions the Director under either Rule §§ 2.5.2(A) or (B) of this Part~~1 or Rule 2~~ above, must submit:
1. a~~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 Partese regulations.

(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.

~~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.~~

~~G. By signing the application, the employer agrees to continued compliance with the requirements of R.I. Gen. Laws § 28-14-2.2 and these regulations. Employer shall have the burden of notifying the Department, in writing within thirty (30) days, if circumstances supporting approval no longer apply.~~

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 referenced in these regulations 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 Partese regulations 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.

~~For purposes of these regulations, “Director” refers to the Director of the Department of Labor and Training.~~

~~For purposes of these regulations, “Department” refers to the Department of Labor and Training.~~

## **2.6 RULES AND REGULATIONS RELATING TO Premium Pay Exemptions for Work on Holidays and Sundays**

### **2.6.1 Purpose**

The purpose of § 2.6 of this Part is to identify ~~the Director may exempt any~~ 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 classes' 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. ~~g~~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. ~~shall n~~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. ~~t~~The Director shall then review the information provided and may either grant the petition or deny the petition.

### **2.6.3 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.

### **2.6.4 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 ~~are exempt from paying employees Sunday and holiday premium pay~~ 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, ~~shall be exempt from paying employees Sunday and holiday premium pay.~~
  - a. This Exemption is limited to employees who must 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, ~~shall be exempt from paying employees Sunday and holiday premium pay.~~
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, ~~shall be exempt from paying employees Sunday and holiday premium pay.~~
5. All churches and other houses of worship ~~that employ 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, ~~shall be exempt from paying employees Sunday and holiday premium pay.~~
  - 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 ~~position~~ sees include, but are not limited to: choir directors who direct the choir during worship services, worship technologists who manage and operate light, sound, and audiovisual 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, ~~shall be exempt from paying employees Sunday and holiday premium pay.~~
7. Private security guard businesses licensed under R.I. Gen. Laws § 5-5.1-1 *et seq.*, ~~shall be exempt from paying employees Sunday and holiday premium pay.~~
8. All employers that operate in the fresh prepared foods industry preparing and distributing packaged food options for sale in retail outlets, such as grocery stores and convenience stores, and who must operate twenty-four (24) hours a day and seven (7) days a week in order to produce fresh, short shelf-life products, ~~shall be exempt from paying employees Sunday and holiday premium pay.~~
9. 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 ~~from paying Sunday and holiday premium pay to for those~~ employ mentees positions ~~who work~~ 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.