

NEWS YOU CAN USE:

“Holiday Pay” Puzzlement

Staffing companies often have the unenviable task of navigating a complicated and burdensome web of federal, state, and local laws for themselves and sometimes their clients. Given the “briar patch” of laws and regulations imposed upon employers nowadays, it is no surprise questions routinely arise regarding “holiday pay” – what is required and who should get it. While the answers to these questions are simple, they may not necessarily be painless.

There are no federal laws that require employers in the private sector (like staffing companies) to issue “holiday” pay to employees. Unless there is a local law requiring otherwise, the issuance of “holiday” pay will be at the discretion of the employer. To avoid confusion in this area, it is best practice for an employer to issue a clear, unambiguous holiday pay policy (which usually is included in its employee handbook) setting forth the terms of eligibility and payment. Any changes to an existing holiday pay policy should be communicated to employees in writing and prospective in application. Some states also require sufficient advance notice of the change to employees before the change can be implemented.

Determining the terms of the policy is up to the employer. For example, a staffing company could decide to provide administrative employees with holiday pay, but not offer the same benefit to its employees on assignment. Employers generally are free to treat employees different on this issue so long as the motivation for the differing treatment is not unlawfully discriminatory (*e.g.*, based on race or sex). However, just because the law allows a particular course of action doesn’t mean it’s always the best option. Employers focused on issue-avoidance never turn a blind eye to employee morale. Staffing companies should consider how the denial of a holiday benefit to some may ultimately affect morale before deciding on the terms of its policy.

Another quandary often faced by staffing companies is whether staffing employees must be paid holiday pay when the client to which they are assigned is closed for a holiday. As set forth above, holiday pay generally is at the discretion of the staffing company – not the client. Assuming there is no agreement between the staffing company and client to pay and/or charge such pay to the client, the staffing company’s policy will dictate. It is best to make clear in your policy under what circumstances, if any, holiday pay is issued.

And don’t forget, under federal and most state laws, holiday pay need not be counted as “hours worked” for purposes of overtime. If you do have a holiday pay policy, make sure the language is clear that holiday pay is excluded from overtime calculations.

Best Practice Recommendation: Review your holiday pay policy. Does it clearly set forth your companies desired terms? Does it properly identify eligibility and exclusions? Does the written policy accurately reflect your actual practices? Self auditing now will save you time and resources later.

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