

Memo

Date: Dec. 10, 2024

To: Nursing home employers

From: Nursing Home Workforce Standards Board

RE: How to, holiday pay rules

The implementation date of the holiday pay rules is Jan. 1, 2025. This memo provides information about:

- what the rules are;
- how to modify the standard list of holidays and times;
- important notes;
- FAQs; and
- background about the Nursing Home Workforce Standards Board (NHWSB).

Holiday rules

NHWSB drafted rules that are in the rulemaking process to ensure 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, Jan. 1;
- Martin Luther King's Birthday, the third Monday in January;
- Washington's and Lincoln's Birthday (Presidents Day), 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, Nov. 11;
- Thanksgiving Day, the fourth Thursday in November; and
- Christmas Day, Dec. 25.

Each holiday is a 24-hour period from midnight to midnight.

Optional: How to modify the standard holidays and times

Nursing homes do not need to alter the list of holidays to meet the standards. However, the rules are drafted understanding some facilities may want an altered list of dates and times based on employee and business needs. There are some ways to accomplish that; the 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 you usually used 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 an agreement is usually ratified. The same would be true if management wanted to have Christmas start at 6 p.m., Dec. 24, and end at 6 p.m., Dec. 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 Dec. 31, 2025, and a copy of the agreement would need to be retained until Jan. 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, circulate a petition or in some other way obtain and record 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 Dec. 31, 2025, and a copy of the agreement would need to be retained until Jan. 1, 2030.

Notes

Here are a few clarifications about 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 holidays listed, and more.
2. This rule applies to nursing home workers who are working on a holiday. It does not obligate employers to give 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 workers get paid double for working Christmas, this rule does not allow an employer to only pay time and a half.

FAQs

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

A: No, the worker only gets paid if they work on the holiday.

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

A: No, the rules mandate workers be paid at least time and a half when working on the 11 state holidays.

Q: Who is considered a worker under this rule?

A: The definition in Minnesota Statutes section 181.211, subdivision 9, Nursing home worker, is "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.

This includes non-management registered nurses, certified nursing assistants, trained medication aides, 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, the rule for time and a half if they work on a holiday would apply. 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 (FLSA) and laws dealing with overtime pay are not applicable; a nursing home worker who is overtime exempt under FLSA is still entitled to holiday pay.

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

A: First, determine who on your staff qualifies as nursing home workers under the rules. A majority would be 50% 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, a petition in the break room or any other reasonable way for workers to let their voices be heard. Just keep in mind you will need to keep a record of the agreement for a minimum of three years after the observation of the modified holiday. That could be 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. the day of the holiday, to 6 p.m. the night before the holiday to 5:59 p.m. the day of the holiday. We are not unionized. How do we determine how to arrive at agreement about this with a majority of affected nursing home workers?

A: First, determine who on your staff qualifies as nursing home workers under the rules. A majority would be 50% 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, a petition in the break room or any other reasonable way for workers to let their voices be heard. Just keep in mind you will need to keep a record of the agreement for a minimum of three years after the observation of the modified holiday. That could be 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 or the timing of the shifts from being midnight to midnight to being 7 p.m. to 7 p.m. and we are unionized. How do we come to an agreement?

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

Q: Can we have different lists of holidays for different bargaining units?

A: Yes, assuming you have reached an agreement with the bargaining units to have different lists of holidays, it is up to you and the bargaining units, as long as you meet the minimum number of holidays being paid at least time and a half.

Q: We have a campus with multiple facilities, but only one meets the definition of a nursing home under the NHWSB Act. Some workers work in multiple sites. Do we have to pay time and a half for our workers whether they are working in the nursing home or at a different building on the campus?

A: No, the NHWSB standards only apply to work done in the nursing home.

Q: Our current policy is that only those required to work on a holiday get holiday pay. If someone volunteers to work the holiday, they do not get holiday pay. Is that permissible?

A: No, if a nursing home worker works on a holiday, they must be paid at a minimum of time and a half.

Background about NHWSB

The Minnesota Nursing Home Workforce Standards Board 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, visit the [Nursing Home Workforce Standards Board webpage](#).