

# And on the 7th day they rested

Day-of-rest laws, guaranteeing employees a day of rest on “the seventh day,” have been around for a long time. Under the old blue laws, that usually meant Sunday. But what does it mean now, when workweeks can begin and end on any day of the week?

*Added wrinkle:* employees who work from home any day, any time.

Two state court cases illustrate the dilemma of trying to apply 19th century law to 21st century workplaces.

**Case No. 1: Employees can sue for Sunday work.** Massachusetts law requires retailers to pay employees who work on Sundays at one-and-one-half their regular rates of pay, regardless of whether that Sunday work is overtime work.

Employees alleged that they worked on Sunday, without being paid time-and-a-half. *Employer:* Only the state can sue to enforce the Sunday premium pay law. A state trial court disagreed, and ruled for the employees.

*Court:* Massachusetts’ wage payment law requires prompt payment of all wages earned by employees, including higher wages paid for Sunday work. Employees, therefore, can sue to enforce all of an employer’s legal obligations to pay wages, including work on Sunday. (*Basset v. Triton Technologies*, No. 168CV03475, Mass. Supr. Ct., 2017)

**Case No. 2: Rest after more than six days of work in seven.** California law requires that employees who work six days have the seventh day off.

*Twist:* State law exempts from the day-of-rest-requirement employees who don’t work longer than 30 hours a week or six hours a day.

On several occasions, two employees were asked to fill in for other employees. *Result:* They worked more than six consecutive days. During each of those periods, some, but not all, of their shifts lasted six hours or less. They sued, arguing that since they worked six days in seven, they were entitled to a day of rest. *Employer:* Employees aren’t entitled to a day of rest, because the guaranteed day of rest can be determined on a rolling basis, as any six consecutive days. In addition, the day-of-rest law doesn’t apply to these employees because they worked fewer than six hours on at least one day of the workweek.

A federal trial court ruled for the employer, but then asked the California Supreme Court to interpret these two provisions of the law. That court rejected the trial court’s interpretation of state law.

*California Supreme Court:* Employees are entitled to a day of rest after they’ve worked six days out of seven in a workweek (i.e., 168 consecutive hours), not on a rolling basis of any six days. The court also ruled that the day-of-rest exemption for employees working shifts of six hours or less applies *only* to those whose shifts never exceed six hours of work each day of a week. (*Mendoza v. Nordstrom, Inc.*, No. 12-57130/12-57144, Calif. Sup. Ct., 2017)

**ANTIQUATED, BUT STILL THE LAW:** It’s difficult to apply day-of-rest laws to modern workplaces, where many

employees work autonomously. It's even harder if you have business operations in more than one state. *Worse:* These laws can be tailored to only certain businesses. *Remember:* You have to accommodate employees whose religious traditions require a different day off than Sunday.

The chart below summarizes state day-of-rest laws. *Heads up:* Because many state laws contain numerous exemptions, visit your state labor department's website to get the full story.

Click the image to download.

**Payroll Legal Alert**

*All-states chart on day-of-rest requirements*

State	Day of Rest	Special Provision Pay	State	Day of Rest	Special Provision Pay
AK	No law	No law	MI	No law	No law
AL	No law	No law	MO	No law	No law
AR	No law	No law	MS	Employee can refuse to work on their Sabbath	No law
AZ	No law	No law	ND	No law	No law
CA	1 day in seven per workweek	1.5 x regular rate for the first 8 hours, 2 x regular rate for work in excess of 8 hours	NE	No law	No law
CO	No law	No law	NH	No law	No law
CT	Employee cannot be compelled to work more than six days in a calendar week	No law	NJ	Employee work is prohibited unless employer can show that employee was allowed 24 consecutive hours off during the last 8 days	No law
DC	No law	No law	NM	No law	No law
DE	No law	No law	NV	No law	No law
FL	No law	No law	NY	1 day of rest in 7 for employees working in a factory, manufacturing establishment, hotel, restaurant or freight or passenger carrier, motor bus, theater	No law
GA	Employee must maintain record of all employees of all religions	No law	OH	No law	No law
HI	No law	No law	OK	Employee work is prohibited for employees in retail, manufacturing, and mechanical jobs, home repair, public utility, except certain professions	No law
IA	No law	No law	OR	No law	No law
ID	No law	No law	PA	No law	No law
IL	24 consecutive hours of rest every calendar week	No law	RI	Employee may not be required to work on Sunday	1.5 x regular rate of pay for hours worked on Sunday
IN	No law	No law	SC	Work before 7:30 a.m. on Sunday is prohibited; employee may voluntarily agree to Sunday work	No law
KS	No law	No law	SD	No law	No law
KY	Employee may be fined for Sunday work	1.5 x regular rate for all hours worked on the 7th day of the week plus 1/2 day of pay for hours worked on the 7th day	TN	No law	No law
LA	No law	No law	TX	No law	No law
MA	24 consecutive hours in 7 days for employees working in manufacturing or mechanical or mercantile establishments or working; Sunday work prohibited unless employee receives 1 day of rest in 7 for employees engaged in maintenance or industrial operations or in transportation or communication	1.5 x regular rate of pay for work on Sunday and certain holidays	UT	No law	No law
MD	Employee in retail establishments may claim Sunday or other Sabbath as a day of rest	No law	VA	No law	No law
ME	Sunday work prohibited, except for health or essential management or security between 9am and 6:00 p.m. on Sundays being between Thanksgiving Day and Christmas Day; Memorial Day, July 4th, Labor Day, Veterans Day, Christmas Day, Thanksgiving Day	No law	VT	No law	No law
			WA	No law	No law
			WI	24 consecutive hours every 7th day for employees who work in mercantile establishments	No law
			WV	No law	No law
			WY	No law	No law

March 2018 www.PayrollLegalAlert.com

