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HOLIDAYS

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These rules supersede the previously published Holidays and Holiday Pay policy dated 5/15/92.

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2.21.610 HOLIDAY WORK (IS HEREBY REPEALED) (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1981 MAR p. 1776, Eff. 12/18/81; REP, 1987 MAR p. 1848, Eff. 12/25/87.)

Rules 11 through 15 reserved

2.21.616 CLOSING (IS HEREBY REPEALED) (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1981 MAR p. 1776, Eff. 12/18/81; REP, 1987 MAR p. 1848, Eff. 12/25/87.)

2.21.617 SHORT TITLE (1) This sub-chapter may be cited as the holiday policy. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 1848, Eff. 12/25/87.)

2.21.618 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to provide an eligible employee with holiday benefits for legal state holidays.

(2) It is the objective of this policy to establish:

(a) eligibility requirements an employee must meet to receive holiday benefits;

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(b) uniform procedures for calculating holiday benefits, and

(c) uniform procedures for calculating pay and paid time off, for work performed on the day a holiday is observed. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 1848, Eff. 12/25/87.)

2.21.619 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Full-time employee" means, as provided in 2-18-601, MCA "an employee who normally works 40 hours a week."

(2) "Holiday" means a legal state holiday as provided in 1-1-216, MCA. A holiday begins at midnight and ends at 11:59 p.m.

(3) "Holiday benefits" means pay at the regular rate up to eight hours or equivalent paid time off up to eight hours paid to an eligible employee when the state observes a legal state holiday.

(4) "Normally works" means the employee works a regular schedule which is anticipated to last longer than one pay period. A regular schedule is a work schedule set by the agency for which an employee is either expected to work or use approved leave.

(5) "Part-time employee" means, as provided in 2-18-601, MCA "an employee who normally works less than 40 hours a week."

(6) "Premium pay" means compensation paid to an employee covered by the Fair Labor Standards Act (FLSA) at 1 1/2 times the regular rate only for hours worked on a holiday. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 1848, Eff. 12/25/87; AMD, 1992 MAR p. 1004, Eff. 5/15/92; AMD, 1997 MAR p. 1444, Eff. 8/19/97.)

2.21.620 HOLIDAYS (1) "The following are legal state holidays," as provided in 1-1-216, MCA:

(a) New Year's Day, January 1;

(b) Martin Luther King Jr. Day, the third Monday in January;

(c) Lincoln's and Washington's Birthdays, the third Monday in February;

(d) Memorial Day, the last Monday in May;

(e) Independence Day, July 4;

(f) Labor Day, the first Monday in September;

(g) Columbus Day, the second Monday in October;

(h) Veteran's Day, November 11;

(i) Thanksgiving Day, the fourth Thursday in November;

(j) Christmas Day, December 25; and

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(k) State General Election Day.

(2) "If any holiday . . . falls upon a Sunday, the Monday following is a holiday," as provided in 1-1-216, MCA. When a holiday falls on a Saturday, the holiday shall be observed on the preceding Friday, except as provided for in ARM 2.21.620(3).

(3) The employee shall receive holiday benefits and pay for work performed on the day the holiday is observed, unless the employee is scheduled or required to work on the actual holiday. If the employee is scheduled or required to work on the actual holiday, the actual holiday shall be considered as the holiday for purposes of calculating holiday benefits and pay for work performed on a holiday. The employee will receive either holiday benefits for working on the day the holiday is observed or for working on the actual holiday, but not both.

(4) State primary election days are not state holidays. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-214, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 1848, Eff. 12/25/87; AMD, 1992 MAR p. 1004, Eff. 5/15/92.)

Rules 21 through 25 reserved

2.21.626 HOLIDAY BENEFITS AND ELIGIBILITY REQUIREMENTS

(1) An eligible employee shall receive holiday benefits for legal state holidays. This benefit is paid time off or pay at the regular rate. Holiday benefits shall not exceed eight hours per holiday.

(2) Holiday benefits are calculated based on an employee's regular schedule. For purposes of this policy, changes to an employee's schedule which extend beyond one pay period are changes to the regular schedule. An employee's regular schedule may be changed in ways including:

(a) a change initiated by management, or

(b) a change initiated by an employee and approved by management, including, but not limited to, requests to work fewer hours on an ongoing basis, or requests to use leave without pay by itself or in combination with accrued paid leave.

(3) An employee must be in a pay status either the last regularly scheduled working day before or the first regularly scheduled working day after a holiday is observed to be eligible to receive holiday benefits.

(4) An employee shall not be eligible to receive holiday benefits if:

(a) the employee is a new employee to state government and begins work on the day after a holiday is observed; or

(b) the employee is reinstated or re-employed following a reduction in force, returns to work following a leave of absence

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without pay of more than one pay period or a disciplinary suspension, or is called back to seasonal or temporary employment on the day after a holiday is observed.

(5) A short-term worker, as defined in 2-18-101, MCA is not eligible to receive holiday benefits. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 2369, Eff. 12/25/87; AMD, 1997 MAR p. 1444, Eff. 8/19/97.)

2.21.627 HOLIDAY BENEFITS FOR FULL-TIME EMPLOYEES (1) A full-time employee whose regular schedule calls for the employee to work on the day a holiday is observed shall receive 8 hours of holiday benefits. The employee usually receives the holiday off; however, management reserves the right to require an employee to work on the day a holiday is observed. The employee shall be compensated for work performed on a holiday, in addition to holiday benefits, as provided in ARM 2.21.636.

(2) A full-time employee whose schedule calls for a day off on the day a holiday is observed, as provided in 2-18-603, MCA, "shall be entitled to receive a day off with pay on the day preceding the holiday or on another day following the holiday in the same pay period" or as requested by the employee and approved by the supervisor, "whichever allows a day off in addition to the employee's regularly scheduled days off . . ." If a day off cannot be provided, the agency may provide 8 hours of pay at the regular rate. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 2369, Eff. 12/25/87; AMD, 1997 MAR p. 1444, Eff. 8/19/97.)

2.21.628 HOLIDAY BENEFITS FOR PART-TIME AND JOB SHARE EMPLOYEES (1) As provided in 2-18-603, MCA, "part-time employees receive holiday benefits on a prorated basis . . ."

(2) Holiday benefits shall be an average of the employee's hours regularly scheduled to work in the pay period. To find the average, the number of hours regularly scheduled to work in a pay period in which the holiday falls shall be divided by 10 (the number of working days in a pay period). Holiday benefits shall not exceed 8 hours.

(3) If the pay period in which the holiday falls is not characteristic of the employee's regular schedule, the agency has the discretion to approximate the employee's schedule for purposes of determining holiday benefits.

(4) The employee usually receives the holiday off; however, management reserves the right to require a part-time employee to work on the day a holiday is observed. The employee shall receive holiday benefits as provided in this rule and

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shall be compensated for work performed on a holiday as provided in ARM 2.21.636.

(5) If the agency cannot determine an employee's regular schedule, the number of hours in a pay status divided by 10 may be used to determine the holiday benefit. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 2369, Eff. 12/25/87.)

Rules 29 through 35 reserved

2.21.636 PAY FOR WORK PERFORMED ON A HOLIDAY (1) An employee who is designated as non-exempt under the Fair Labor Standards Act (FLSA) and who works on the day a holiday is observed shall be paid for all hours actually worked. In addition to the holiday benefit provided for in ARM 2.21.626, the employee shall receive either a paid day off at the regular rate or premium pay as described below, at management's discretion.

(a) If the holiday benefit is a paid day off to be taken at a later date, the employee shall receive pay at the regular rate for every hour worked on the holiday.

(b) If the holiday benefit is to be pay, but no day off, the employee shall receive premium pay (regular rate time 1 1/2) for every hour worked on the holiday.

(2) If an employee does not work a regular schedule and is called in to work on the holiday, the employee shall receive pay at the regular rate for every hour worked on the holiday.

(3) Hours worked on a holiday may result in more than 40 hours in a pay status during the workweek. An employee shall not receive both premium pay and overtime pay for the hours worked on a holiday. If the agency provides pay at the regular rate for hours worked on the holiday or paid time off on an hour-for-hour basis, the employee shall receive overtime or nonexempt compensatory time for the hours over 40 in a workweek, in compliance with the overtime and nonexempt compensatory time policy, ARM 2.21.1701 et seq. (Also found at policy 3-0210, Montana operations manual, volume III.)

(4) An employee who is exempt from the FLSA and who receives approval to work on the holiday will receive paid time off equivalent to the number of hours worked.

(5) Equivalent paid time off for work performed on a holiday may be taken at a later date upon request by the non-exempt employee and approval of the supervisor. When an employee requests to take the hours off and where the interest of the state requires the employee's attendance, the state's interest overrides the employee's. (History: Sec. 2-18-102 and

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2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 2369, Eff. 12/25/87; AMD, 1997 MAR p. 1444, Eff. 8/19/97.)

Rules 37 through 40 reserved

2.21.641 SPECIAL SITUATIONS (1) The method used to calculate holiday pay for an employee who works four, 10-hour days, part-time, or in a job share situation may result in the employee's total earnings for the pay period being more or less than normal. Holiday benefits shall not exceed eight hours per holiday.

(a) If the employee would be eligible to receive additional pay due to the holiday, the agency may require the employee to take off an equivalent number of hours without pay in the same workweek to maintain a consistent paycheck.

(b) If the employee would receive less pay than usual, at the agency's discretion, the employee could work additional hours in the same pay period to make up the difference or could take annual leave or accrued compensatory time.

(2) When a transfer between agencies is effective immediately prior to a holiday, the agency to which the employee transfers shall pay for the holiday. (Eff. 12/25/87.)

Rules 42 through 45 reserved

2.21.646 CLOSING (1) This policy shall be followed unless it conflicts with negotiated labor contracts, or specific statutes, which shall take precedence. (Eff. 12/25/87.)

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Questions regarding the implementation of this policy should be referred to your department's personnel office. Your personnel officer will contact the State Personnel Division, Department of Administration if additional assistance is needed in interpretation of the policy.