



Montana Association of Counties

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STATE ADMINISTRATION

Exhibit No.

Date

No.

3

3/11/2013

HB 325

Testimony: HB 325, Revising legal holiday laws

Attached is a packet containing items for your review:

1. MACo Resolution 2012-10, regarding legal holidays and adopted by our membership at our Annual Conference on September 26, 2012
2. The Montana State Government Holidays Observed in 2010
3. Montana Administrative Rules Repeal (Section regarding legal holidays)
4. Montana Operations Manual (Section regarding holidays)
5. July 2015 Calendar

We requested that this bill be brought forward because in December 2010, 53 county courthouses closed on Friday to recognize the Christmas Holiday, without knowing that on this particular year, their authority to do so had been eliminated.

As counties are defined under MCA 2-18-601 as an "agency", our Association has historically issued the MT Department of Administration's notices regarding the observation of legal holidays, in compliance with administrative rules and Attorney General Opinions.

In 2010 Christmas fell on a Saturday (handout 2), so the Counties closed their offices on Friday, as they had so many times before. They were unaware that the Administrative Rule, which had given the state the authority to close on a Friday if the holiday is on a Saturday, had been repealed in March 2010 and moved to the Montana Operations Manual (handout 3 – top of page 2)—which is the State's operational handbook, and does not apply to county operations. The rule repealed was 2.21.602 (handout 4).

We haven't run into this problem since December 2010, but we will face it again in 2015 when Independence Day falls on a Saturday (handout 5). County courthouses will remain open when all other forms of government are closed, including the federal government, the state, schools, cities, towns, and counties with self-governing powers.

In the House, it was questioned if this bill creates an additional benefit. I want to clarify that HB 325 absolutely **does not** create an additional benefit. The ARM that was repealed in 2010 applied to all public employees and was required. With the repeal of the ARM, that requirement ceased to exist. We need to now look to statute so county employees do not become lesser employees than other public employees because they have one less holiday. This simply keeps it the same by correcting the inadvertent consequence of the repeal.

We are asking that Counties with general government authority receive this same benefit by putting it into statute under 1-1-216.

Thank you for your time and consideration.

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RESOLUTION 2012 - 10

LEGAL HOLIDAYS

It is the intent of the Montana Association of Counties to seek legislation to clarify that the preceding Friday will be the observed day of a legal holiday if the legal holiday falls on a Saturday.

WHEREAS, counties with general government powers need legislative authority to establish the days in which legal holidays are observed; and

WHEREAS, all other forms of government, including the federal government, the state, schools, cities and towns and counties with self governing powers observe the preceding Friday as a legal holiday if the legal holiday falls on a Saturday;

WHEREAS, counties do not have the authority under Montana Statutes to observe the preceding Friday as a legal holiday should the legal holiday fall on a Saturday.

NOW, THEREFORE, BE IT RESOLVED, the Montana Association of Counties will seek legislation to clarify that the preceding Friday will be the observed day of a legal holiday if the legal holiday falls on a Saturday.

SPONSOR:	MACo Staff
RECOMMENDATION:	Do Pass
REFERRED TO:	MACo Resolutions & Legislative Committee
ADOPTED:	Annual Conference, Great Falls, MT, September 26, 2012

Montana State Government Holidays Observed 2010

The following is a list of legal holidays and the dates most state offices will observe them. For more information regarding the administration of state employees' holiday benefits, see policy number 03-0325 of the Montana Operations Manual and sections 1-1-216 and 2-18-603, MCA.

Legal Holidays per section 1-1-216, MCA	Observed
New Year's Day	Friday, January 1
Martin Luther King Jr. Day	Monday, January 18
Lincoln's and Washington's Birthday	Monday, February 15
Memorial Day	Monday, May 31
Independence Day	Monday, July 5*
Labor Day	Monday, September 6
Columbus Day	Monday, October 11
General Election Day	Tuesday, November 2
Veterans' Day	Thursday, November 11
Thanksgiving Day	Thursday, November 25
Christmas Day	Friday, December 24**

**July 4, 2010 – the legal public holiday for Independence Day – falls on a Sunday. For most State of Montana employees, Monday, July 5, 2010, will be treated as a holiday for pay and leave purposes.*

***December 25, 2010 – the legal public holiday for Christmas Day – falls on a Saturday. For most State of Montana employees, Friday, December 24, 2010, will be treated as a holiday for pay and leave purposes.*



Montana Administrative Register Notice 2-21-426

No. 5
03/11/2010

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
2.21.617, 2.21.618, 2.21.619, 2.21.620,)
2.21.626, 2.21.627, 2.21.628, 2.21.636,)
2.21.641, and 2.21.646 pertaining to)
holidays and holiday pay)

TO: All Concerned Persons

1. On January 14, 2010, the Department of Administration published MAR Notice No. 2-21-426 regarding the proposed repeal of the above-stated rules at page 1 of the 2010 Montana Administrative Register, Issue Number 1.

2. The Department of Administration has repealed ARM 2.21.617, 2.21.618, 2.21.619, 2.21.620, 2.21.626, 2.21.627, 2.21.628, 2.21.636, 2.21.641, and 2.21.646 as proposed.

3. A hearing was held on February 5, 2010. No one appeared and no comments were received.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State March 1, 2010.

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For questions regarding the content, interpretation, or application of a specific rule, please contact the agency that issued the rule. A directory of state agencies is available online at <http://www.mt.gov/govt/agencylisting.asp>.

For questions about the organization of the ARM or this web site, contact sosarm@mt.gov.



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Rule Subchapter: 2.21.6

Subchapter Title: Holidays



2: ADMINISTRATION

2.21: STATE HUMAN RESOURCES DIVISION

2.21.6: Holidays



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Click on the rule number to see the detail of the rule.
Press **Ctrl-F** to search by text.

Rule No	Rule Title	Latest Version	Effective Date
2.21.601	DEFINITIONS	REP	12/18/1981
2.21.602	LEGAL HOLIDAYS	REP	12/18/1981
2.21.603	POLICY	REP	12/18/1981
2.21.604	CLOSING	REP	12/18/1981
2.21.605	SHORT TITLE	REP	12/25/1987
2.21.606	HOLIDAYS	REP	12/25/1987
2.21.607	HOLIDAY LEAVE ELIGIBILITY	REP	12/25/1987
2.21.608	CALCULATION OF HOLIDAY PAY FOR REGULARLY SCHEDULED EMPLOYEES	REP	12/25/1987
2.21.609	CALCULATION OF PAY FOR HOLIDAY LEAVE FOR INTERMITTENT EMPLOYEES	REP	12/25/1987
2.21.610	HOLIDAY WORK	REP	12/25/1987
Rules 2.21.611 through 2.21.615 reserved			
2.21.616	CLOSING	REP	12/25/1987
2.21.617	SHORT TITLE	REP	3/12/2010
2.21.618	POLICY AND OBJECTIVES	REP	3/12/2010
2.21.619	DEFINITIONS	REP	3/12/2010
2.21.620	HOLIDAYS	REP	3/12/2010
Rules 2.21.621 through 2.21.625 reserved			
2.21.626	HOLIDAY BENEFITS AND ELIGIBILITY REQUIREMENTS	REP	3/12/2010
2.21.627	HOLIDAY BENEFITS FOR FULL-TIME EMPLOYEES	REP	3/12/2010
2.21.628	HOLIDAY BENEFITS FOR PART-TIME AND JOB SHARE EMPLOYEES	REP	3/12/2010
Rules 2.21.629 through 2.21.635 reserved			
2.21.636	PAY FOR WORK PERFORMED ON A HOLIDAY	REP	3/12/2010
Rules 2.21.637 through 2.21.640 reserved			
2.21.641	SPECIAL SITUATIONS	REP	3/12/2010
Rules 2.21.642 through 2.21.645 reserved			
2.21.646	CLOSING	REP	3/12/2010

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Rule: 2.21.602

Rule Title: LEGAL HOLIDAYS

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Department: [ADMINISTRATION, DEPARTMENT OF](#)
Chapter: [STATE HUMAN RESOURCES DIVISION](#)
Subchapter: [Holidays](#)



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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

2.21.602 LEGAL HOLIDAYS (REPEALED)

[\(See the Transfer and Repeal Table\)](#)

History: Sec. [2-18-102](#) MCA; [IMP, 1-1-216](#) and [2-18-603](#) MCA; [NEW](#), 1978 MAR p. 718, Eff. 5/26/78; [REP](#), 1981 MAR p. 1776, Eff. 12/18/81.

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* please see pg. 2

	Montana Operations Manual Policy		Category	Human Resources/ Employee Benefits
			Effective Date	03/11/2010
			Last Revised	09/21/2012
Issuing Authority	Department of Administration State Human Resources Division			
Holiday Policy				

I. Purpose

It is the policy of the state of Montana to provide eligible employees with legal state holidays.

II. Scope

This policy covers Montana's executive branch employees, except those employed by the Montana State Fund and the Montana university system, student interns, short-term workers, and other employees exempt from policy under 2-18-103, 2-18-104, and 2-18-601(6), MCA.

Any collective bargaining agreement providing a greater holiday benefit supersedes this policy.

III. Procedures

A. Holidays

1. The following days are legal state holidays (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. Veterans' Day, November 11;
 - i. Thanksgiving Day, the fourth Thursday in November;
 - j. Christmas Day, December 25; and
 - k. State General Election Day.



2. If a holiday falls on Sunday, the Monday following is the observed holiday. If the holiday falls on Saturday, the preceding Friday is the observed holiday.
3. State primary election days are not legal state holidays.

B. Eligibility

To be eligible for holiday benefits, an employee must be in a pay status the last regularly scheduled working day before the holiday and the first regularly scheduled working day following the holiday. If, however, the observed holiday falls on the employee's regularly scheduled day off, the employee must be in a pay status on the last regularly scheduled working day immediately before or the first regularly scheduled working day immediately after the holiday (2-18-603, MCA).

C. Holiday Benefits

1. An eligible employee shall receive holiday benefits for legal state holidays.
2. The holiday benefit is described below:
 - a. The employee receives the holiday off with pay at the employee's regular rate.
 - b. Management may require an employee to work on a holiday or the day it is observed. If required to work on the holiday, the employee will be compensated as provided in the "Work on a Holiday" section below.
 - c. An employee scheduled for a day off on a day observed as a legal holiday shall receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same workweek or as requested by the employee and approved by the employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off (2-18-603, MCA).
3. Holiday benefits shall not exceed eight hours per holiday.
 - a. A full-time employee shall receive eight hours of holiday benefit.
 - b. A part-time employee shall receive the holiday benefit on a prorated basis, based on:
 - i. The part-time employee's regular schedule at the time the holiday occurs; or
 - ii. The average amount of time the employee is in a pay status in the pay period in which the holiday falls by dividing the number of hours worked by ten (the number of working days in a pay period), when

management cannot determine or has not assigned a regular schedule.

4. Holiday benefits are calculated based on an employee's regular schedule. For purposes of this policy, changes to an employee's schedule extending beyond one pay period are changes to the regular schedule. An employee's regular schedule may be changed:
 - a. by management; or
 - b. 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.
5. Holiday benefits are received for the holiday or the observed holiday but not both.
6. Holiday pay is paid to an employee on a qualified Family Medical Leave Act (FMLA) leave if the employee is in pay status when the holiday occurs.

D. Work on a Holiday

1. Non-exempt employees:
 - a. An employee who is designated as non-exempt under the Fair Labor Standards Act (FLSA) and who is required by management to work on a holiday or the day a holiday is observed shall be paid according to one of the two options outlined below at management's discretion. The employee may either:
 - i. Receive the regular rate for all hours actually worked on holiday, bank the holiday benefit hours actually worked (up to the maximum of eight) and receive equivalent time off at the regular rate, to be paid as outlined in Paragraph 3 below; or,
 - ii. Receive one and one half times the regular rate for the hours actually worked on the holiday and receive holiday benefit hours paid at the regular rate.
 - b. Requests to take banked holidays must be made to and approved by an employee's supervisor. Management may deny the request if the state's interest requires the employee's attendance.
 - c. If a banked holiday for a year ending with the final pay period for the year is not taken by March 31 in the following year, the employing agency shall cash it out. The payment will be included in the pay period that includes March 31, by paying the employee's regular rate for each hour

banked. Banked holiday benefit hours are cashed out as a lump-sum payment as supplemental income and taxed accordingly. Banked holiday hours recorded before December 31, 2010, are not affected by this policy.

- d. Hours worked on a holiday may result in more than 40 hours in a pay status during the workweek. An employee may not receive both one-and-one-half-time pay and overtime pay for the hours worked on a holiday. The holiday benefit pay will be paid at the regular rate, whether banked or paid out.

2. Exempt employees:

- a. An employee who is exempt from the FLSA and who works on a holiday or an observed holiday shall receive the holiday pay and book the hours worked on the holiday as exempt compensatory time.
- b. Exempt employees may not bank holiday hours after December 31, 2010. Banked holiday hours recorded before December 31, 2010, are not affected by this policy.

E. Special Situations

1. If the employee would be eligible to receive more than 40 hours of pay because of the holiday, the agency may require the employee to take off an equivalent number of hours without pay in the same workweek to maintain 40 hours of pay for a week.
2. If the employee would receive less pay than usual because of the holiday, the agency may allow the employee to work additional hours in the same workweek or allow the employee to take annual leave or accrued compensatory time to maintain the employee's usual hours of pay for a week.
3. When an employee transfers between agencies without a break in service prior to a holiday, the agency to which the employee transfers shall pay for the holiday.
4. An agency must cash out all banked holiday hours by paying the employee at the employee's regular hourly pay when an employee transfers to another agency.

V. Definitions

All definitions under 2-18-101, MCA, apply to this policy. For purposes of this policy, the following definitions also apply:

Banked holiday: The hours the payroll system records for work performed on a holiday for the employee to take at a later time as paid time off or as pay.

Pay Status: The employee is being paid for hours worked or for annual leave, sick leave, sick-leave fund, or other paid leave.

July 2015

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
27				1	2	3	4
28				8	9	10	11
							<i>Independence Day</i>
12				15	16	17	18
29							
19				22	23	24	25
30							
26				29	30	31	
31							