



## **Rhode Island Society for Human Resource Management State Chapter**

Statement of

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On behalf of the Rhode Island Society for Human Resource Management State Chapter

Submitted to the House Committee on Labor

### **H 7530 -- AN ACT RELATING TO HOLIDAYS AND DAYS OF SPECIAL OBSERVANCE -- WORK ON HOLIDAYS AND SUNDAYS**

March 4, 2024

To the Honorable Members of the House Committee on Labor:

My name is Francesco A. DeLuca, Esq. I am a member of the law firm of Epstein Becker & Green, P.C., where I practice labor and employment law. Since 2023, I have had the honor of serving in the role of Director of Legislative Affairs for the Rhode Island Society for Human Resource Management State Chapter ("RI SHRM").

RI SHRM is an affiliate of the Society for Human Resource Management, the world's largest HR professional society representing more than 300,000 members in more than 165 countries. RI SHRM is a volunteer organization representing the interests of more than 500 human resource professionals throughout the State of Rhode Island. Our members are a cross-section of the Rhode Island economy, coming from such diverse sectors such as education, government, healthcare, hospitality and customer service, manufacturing, non-profit, professional services, small business, and technology. Through our exceptional programming and our legislative advocacy efforts over the years, we have become the trusted voice of the Rhode Island HR and business communities.

On behalf of our members, I am grateful for the opportunity to provide the House Committee on Labor with this written testimony in opposition to **H 7530 -- An Act Relating to Holidays and Days of Special Observance -- Work on Holidays and Sundays.**

The realities of our modern economy require many businesses to remain open on Sundays and holidays. In imposing increased costs on businesses for providing services to the public on those days, Rhode Island is an outlier as it is the *only* state in the nation that does so. (Paycor, *Is Holiday Pay Mandatory in Your State?* (Jan. 9, 2024), <https://www.paycor.com/resource-center/articles/is-holiday-pay-mandatory-in-your-state/>.) While Massachusetts required retailers to pay employees a premium rate for working on a Sunday or holiday, it phased out that requirement effective January 1, 2023. (Com. of. Mass., Office of the Attorney General, *Working on Sundays and Holidays* ("Blue Laws"), <https://www.mass.gov/guides/working-on-sundays-and-holidays-blue-laws>.)

laws.) **Rhode Island should not expand its antiquated Sunday and holiday pay requirement when the only other state that recently had a similar law eliminated it last year.**

Separately, it is difficult for employers to discern their precise obligations under H 7530 for at least four reasons:

**1. It is unclear to whom H 7530 applies.** Currently, the Work on Holidays and Sundays Law requires premium payments to “employees.” (R.I. Gen. Laws § 25-3-3.) The law contains a reasonably clear definition of the term “employee.”<sup>1</sup> (*Id.* § 25-3-1(3).) Instead of using that term, H 7530 purports to apply to “laborers, mechanics, and workers engaged in duties requiring principally physical exertion.” But H 7530 does not define the terms “laborers, mechanics, and workers.” This creates unnecessary confusion and makes it difficult for employers to know their obligations. For example, the definition of “employee” does not include “[a]ny individual employed in agricultural or maritime trades.” (*Id.* § 25-3-1(3)(i).) So, those individuals are not entitled to premium pay for the work they perform on a Sunday or holiday under existing law. It is unclear if H 7530 intends to change that and require employers to pay these individuals premium pay for Sunday and holiday work if the employees are “engaged in duties requiring principally physical exertion.”

**2. As written, the phrase “engaged in duties requiring principally physical exertion” is ambiguous.** The placement of the modifier “principally” in H 7530 makes it difficult for employers to determine the duties they must consider in determining whether a laborer, mechanic, or worker qualifies for Sunday or holiday pay. Does an employer consider the duties the worker primarily performs? Or does an employer decide based on the duties the worker performs on the Sunday or holiday at issue? The examples below demonstrate this ambiguity:

*Example 1: The owner of a boat repair facility requires a mechanic to come to work on a Sunday to help him prepare invoices and correspondence to insurance companies. The mechanic’s principal job duties involve physical labor, but on the Sunday at issue, he performs only clerical tasks. Is the mechanic, who normally performs physical duties, entitled to time and a half for the clerical work he performed on a Sunday?*<sup>2</sup>

*Example 2: The manager of a restaurant requires a hostess to report to work on Independence Day to set up chairs and tables outside so patrons can watch a fireworks display. The hostess’s regular job duties do not involve physical labor, but assuming setting up chairs and tables requires principally physical exertion, the work she*

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<sup>1</sup> The current definition of “employee” is not free from ambiguity. For example, it does not include “[s]upervisory employees as defined in 29 U.S.C. § 213(a)(1) and regulations issued pursuant to that section.” (R.I. Gen. Laws § 25-3-3(vi).) But 29 U.S.C. § 213(a)(1), which outlines the so-called “white collar” exemptions to the Fair Labor Standards Act’s minimum wage and overtime requirements, does not define or even refer to “supervisory employees.”

<sup>2</sup> Under current law, the mechanic would not be entitled to premium pay. (R.I. Gen. Laws § 25-3-1(3)(i).) This only further demonstrates the confusion the phrase “laborers, mechanics, and workers” creates considering there is an existing definition of “employee.”

*performs on Independence Day ostensibly does. Is the hostess, who normally does not perform duties requiring physical exertion, entitled to time and a half for the physical duties she performed on a holiday?*<sup>3</sup>

**3. H 7530 appears to allow employers to “require” laborers, mechanics, and workers to work on a Sunday or holiday when, under current law, most Sunday or holiday work must be voluntary.** Under current law, employers can “require” only certain employees, such as those who work for a manufacturer that operates seven days per week, to work on Sundays and holidays. (R.I. Gen. Laws § 25-3-3(a).) Other employees’ work on a Sunday or holiday must be voluntary. (*Id.* § 25-3-3(a)(1).) It is unclear whether H 7530 intends to create a new class of employees whom employers can require to work on a Sunday or holiday.<sup>4</sup>

**4. H 7530 seemingly misuses “notwithstanding.”** H 7530 appears to attempt to exempt existing “lawful collective bargaining agreements” from its scope by requiring premium pay “[n]otwithstanding any terms of” such agreements.<sup>5</sup> But “notwithstanding” does not mean “excluding;” it means “despite.” (Merriam-Webster’s Dictionary, *Notwithstanding*, <https://www.merriam-webster.com/dictionary/notwithstanding>.) So, instead of exempting lawful collective bargaining agreements from its coverage, H 7530 does the opposite.

**In sum, Rhode Island should not expand its Sunday and holiday pay law, particularly through a vague, ambiguous, and confusing bill such as H 7530.**

Thank you for your time and consideration, and please feel free to contact me to continue this important conversation.

Respectfully submitted by:

/s/ Francesco A. DeLuca

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<sup>3</sup> Like the mechanic in the first example, the hostess would not be entitled to premium pay under current law. (R.I. Gen. Laws § 25-3-1(3)(iv).) Again, this underscores the problems with using “laborers, mechanics, and workers” into when the Work on Holidays and Sundays Law already defines “employee.”

<sup>4</sup> Like H 7530’s other deficiencies, this issue stems, at least in part, from the uncertainty around to whom H 7530 applies given that the bill appears to use the phrase “laborers, mechanics, and workers” without regard for the existing definition of “employee.”

<sup>5</sup> Tellingly, the Notice of Meeting for this Honorable Committee’s hearing on H 7530 describes the bill as “[a]mend[ing] the current law so that, *aside* from any existing contract....” H. Comm. On Lab., Notice of Meeting (Mar. 1, 2024), <https://status.rilegislature.gov/documents/agenda-20057.aspx> (emphasis added).