

# Weekly Wright Report (2/19/18)

---

## HOLIDAY PAY Q & A

By [Greg Currey](#)

**Must an employer provide employees time off on holidays?** No. Private employers are not required by federal or state law (except in Massachusetts and RI) to provide time off, paid or otherwise, to employees on nationally recognized holidays. Holidays are typically considered as regular workdays and employees receive their normal pay for time worked if the employer does not offer holiday pay. That decision may win an employer no popularity contests, but in the eyes of the law, it is legal.

However, holiday pay is required for public employees and certain government contractors where the McNamara O'Hara Service Contract Act (SCA) or the Davis-Bacon Act (DBA) apply. The holidays are stated in the applicable wage determinations.

**Must the employer pay if the employee takes the day off?** No. The FLSA requires employers to pay only for time worked.

**Must an employer accommodate an employee's observance of a religious holiday?** Yes. An employer is required to provide reasonable accommodation for the religious practices of employees unless it can show that the accommodation would pose an undue hardship for the business. The courts have agreed that unpaid time off can serve as a reasonable accommodation for religious holidays. Many companies offer "floating holidays," requiring

only that the holiday be taken the year it is granted and with reasonable advance notice.

**Does an employer have to pay overtime on holidays?** No. Federal law views holidays as just another business day.

**What about taking a holiday as a vacation day?** Under the FLSA, an employer is not obligated to pay an employee for time not worked – this includes vacation days as well as holidays. An employee's entitlement to vacation pay will be based on an agreement with the employer.

**May an employer attach conditions to receiving holiday pay?** Yes. An employer may, for example, require that to receive holiday pay, employees must have worked a certain length of time for the company, or worked or been on approved leave the day before or after a holiday. Holiday pay for PT employees may be pro-rated.

**Must an employer provide the same holiday benefits to all?** No. An employer can offer different benefits to different groups of employees *as long as* the basis for the differences in treatment is not discriminatory (i.e. based on age, gender or any other protected classification). For example, holiday pay can be given to employees who are FT and not PT, or to staff that is in-house and not remote.

## **2018 National Defense Authorization Act – Impact on Procurement Regulations**

By [Mike Stover](#)

On December 12, 2017, the President signed into law the 2018 National Defense Authorization Act (“NDAA”)(<https://www.govtrack.us/congress/bills/115/hr2810/text>). In addition to funding the military several significant changes were mandated to defense procurement regulations. Subtitle B of the NDAA – Amendments to General Contracting Authorities, Procedures, and Limitations, directs the Secretary of Defense to revise the Defense Supplement to the Federal Acquisition Regulation (“DFARS”) to implement numerous procurement changes. Among the significant procurement changes is Section 818 of the NDAA, which provides that bidders who did not receive the contract award can submit additional follow-up questions within two business days after the post-award debriefing. The government must answer the post-debriefing questions in writing within five business days of receipt. In addition to allowing the submission of additional questions, the NDAA provides that a debriefing is not considered to be concluded and the deadline for submitting a bid protest does not begin to run until the day the agency delivers its written response to the follow-up questions. Thus, the post-debriefing questions can effectively operate as an extension to the protest deadline. This new extension period will afford bidders additional time to review their grounds for protest, procedural options and time to marshal the appropriate facts and information to challenge the contract award.

Section 827 of the NDAA mandates the creation of a limited pilot program regarding reimbursement of DoD costs by a protester for failed protests. The pilot program will not be implemented until 2019 and will end 2022 and it will only apply to protesters with revenue in excess of \$250 million. The NDAA provides that if a protest is filed during the pilot program by a protester with revenue in excess of \$250 million and the protest is denied by the GAO the protester is required to reimburse the DoD for “costs incurred in processing covered protests.” The significance of this provision is that it could be a prelude to more broad based cost reimbursement provisions. At the end of the pilot program, the DoD is required under Section 827 of the NDAA to report to Congress on the feasibility of making the program permanent. Look for these and other procurement regulation changes mandated by the NDAA in supplements to the DFARS.