

October 31, 2024

**VIA E-FILING ONLY**

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**VIA E-FILING ONLY**

Paul Enger  
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**Re: *In the Matter of the Proposed Rules Governing Holiday Pay, Certification of Worker Organizations, and Notice Posting Requirements For Nursing Home Workers; Minnesota Rules, Part 5200.2000 to 5200.2050***  
**OAH 28-9001-40213; Revisor R-4870**

Dear Rule Requestors:

Enclosed herewith and served upon you please find the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.389 AND MINN. R. 1400.2410**. With the approval of these expedited rules, the Office of Administrative Hearings has closed this file and is returning the rule record to the Board so that the Board can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365.

Please ensure that the Board's signed order adopting the rules is filed with our office. The Office of Administrative Hearings will request the finalized rules from the Revisor's office following receipt of that order. The Office of Administrative Hearings will then file the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes and one copy to the Minnesota Department of Labor and Industry. **Pursuant to Minn. Stat. § 14.389, subd. 3 and Minn. R. 1400.2410, subp. 5, the Board is responsible for filing a copy of the expedited rules with the Governor.**

The Board's next step is to arrange for publication of the Notice of Adoption in the State Register. The Board should request copies of the Notice of Adoption from the Revisor's Office. One copy should be placed in the official rulemaking record. Two copies of the Notice of Adoption should be sent to the State Register for publication. Please note that if the final expedited rule is different from the rule originally published, an agency must publish a copy of the changes in the State Register. An expedited rule becomes effective upon publication of the Notice of Adoption in the State Register in accordance with Minn. Stat. § 14.389, subd. 3.

If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, [william.t.moore@state.mn.us](mailto:william.t.moore@state.mn.us) or via facsimile at (651) 539-0310.

Sincerely,

A handwritten signature in black ink that reads "Nichole Sletten". The script is cursive and fluid, with the first name "Nichole" and last name "Sletten" clearly distinguishable.

NICHOLE SLETTEN  
Legal Assistant

Enclosure

cc: Legislative Coordinating Commission  
Office of the Revisor of Statutes

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE NURSING HOME WORKFORCE STANDARDS BOARD

In the Matter Adoption of Expedited  
Permanent Rules Governing Certification  
Criteria, Notice Posting Requirements,  
and Holiday Pay Rules for Nursing Home  
Workers; Minnesota Rules, Part  
5200.2000 to 5200.2050

**ORDER ON REVIEW  
OF RULES UNDER  
MINN. STAT. § 14.389  
AND MINN. R. 1400.2410**

On October 25, 2024, the Nursing Home Workforce Standards Board (Board) filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.389 (2024) and Minn. R. 1400.2410 (2023).

Based upon a review of the written submissions by the Board, and the contents of the rulemaking record, and for the reasons stated in the attached memorandum,

**IT IS HEREBY DETERMINED THAT:**

1. The proposed rules were adopted in compliance with the procedural requirements of Minn. Stat. § 14.389 and Minn. R. 1400.2410.
2. The Board has the statutory authority to adopt these proposed rules using the expedited rulemaking process pursuant to Minn. Stat. §§ 181.213 – 215 (2024).
3. The proposed rules meet the standards of Minn. R. 1400.2100, items A and C - H (2023).

**IT IS HEREBY ORDERED THAT:**

The proposed rules are **APPROVED**.

Dated: October 31, 2024



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JOSEPH C. MEYER  
Administrative Law Judge

## **MEMORANDUM**

Proposed rules must be disapproved if they conflict or do not comply with their enabling statute or other applicable law, or are otherwise unconstitutional or illegal.<sup>1</sup> The proposed rules do not run afoul of any applicable law, and are not unconstitutional or illegal. That said, several arguments raised in the rulemaking record merit additional analysis. Specifically, commenters argued that the proposed rules are illegal because they (1) are preempted by the National Labor Relations Act (NLRA);<sup>2</sup> (2) violate the United States and Minnesota Constitutions by impairing contracts; and (3) violate the United States and Minnesota Constitutions by prioritizing Christmas over non-Christian holidays.

### **NLRA Preemption**

The proposed rules, among other things, provide for nursing home workers to earn “time-and-one-half” of their regular wage for days worked on eleven identified holidays. A concern was raised that, with respect to nursing home workers covered by collective bargaining agreements, the NLRA has preempted the proposed rules because the proposed rules’ requirements could conflict with holiday schedules that are the subject of collective bargaining.

The United States Supreme Court, however, has said that “[w]hen a state law establishes a minimal employment standard not inconsistent with the general legislative goals of the NLRA, it conflicts with none of the purposes of the [NLRA].”<sup>3</sup> “States possess broad authority to regulate the employment relation to protect workers within the State” through, among other things, enacting “minimum and other wage laws.”<sup>4</sup>

The holiday wage provisions of the proposed rules are a “minimal employment standard.” Those provisions set a wage requirement that applies to union and non-union employees alike. In proposing such a standard, the Board is acting well-within the States’ broad authority to protect workers and is doing so in a manner that the United States Supreme Court has recognized is not preempted by the NLRA.

### **Contract Impairment**

It has similarly been argued that, because the holiday wage laws will provide compensation greater than what has been established in collective bargaining agreements, the proposed rules’ holiday wage provisions have impaired contracts in violation of the United States and Minnesota Constitutions.

The United States Supreme Court has made clear that “States must possess broad power to adopt general regulatory measures without being concerned that private

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<sup>1</sup> Minn. R. 1400.2100(D and E).

<sup>2</sup> 29 U.S.C. § 141, *et. seq.*

<sup>3</sup> *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 757 (1985).

<sup>4</sup> *Id.* at 756.

contracts will be impaired, or even destroyed, as a result.”<sup>5</sup> To be sure, this power is not unlimited. “[L]aws intended to regulate existing contractual relationships must serve a legitimate public purpose.”<sup>6</sup> That said, “courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.”<sup>7</sup>

Similar to the preemption analysis, a broad measure setting minimum wage standards for holiday pay is within the regulatory power of the State. Assuredly, establishing labor standards to protect the health and welfare of nursing home employees is a legitimate public purpose. The Minnesota Legislature delegated to the Board the authority to determine the necessity and reasonableness of the employment standards for nursing home workers.<sup>8</sup> In exercising that authority by establishing holiday wage standards for nursing homes, the Board has not unconstitutionally impaired contracts.

### **Prioritization of Christmas**

One of the eleven holidays subject to the holiday wage provisions in the proposed rules is Christmas day. Concerns have also been raised that, by including a holiday associated with Christianity in the provisions, the Board has violated the Minnesota and United States Constitutions by favoring Christianity over other religions.

A federal court has dismissed a challenge to Christmas being designated a national holiday, concluding that “[b]y giving federal employees a paid vacation day on Christmas, the government is doing no more than recognizing the cultural significance of the holiday” and that though this “may accommodate Christians who wish to engage in religious celebrations of Jesus Christ’s birth [it] does not mean that the holiday has an impermissible religious effect.”<sup>9</sup> Minnesota also recognizes Christmas as a state holiday.<sup>10</sup> If the United States and Minnesota governments do not run afoul of their respective constitutions by treating Christmas as an official holiday, then the Board does not do so by treating Christmas as a holiday in the context of its holiday wage provisions.

For these reasons, and because the proposed rules otherwise comply with the requirements of Minn. Stat. § 14.389 and Minn. R. 1400.2410, the proposed rules are **APPROVED**.

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<sup>5</sup> *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 23.

<sup>8</sup> Minn. Stat. § 181.213, subd. 1.

<sup>9</sup> *Ganulin v. U.S.*, 71 F.Supp.2. 824, 834–35 (S.D. Ohio 1999).

<sup>10</sup> Minn. Stat. § 645.44, subd. 5(a) (2024).