



May 08, 2020

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A Month of Sundays: What exactly is a “Business Day” These Days?

All contracts have deadlines. Frequently those are calculated as a specified number of “business days” from the triggering event until the corresponding deadline date.

But since businesses across the country are partially or fully closed right now under a variety of conflicting state, county, and city emergency orders, how can you be sure what currently constitutes a “business day” under your contract? After all, the calendar looks a whole lot different in 2020 than it did in 2019.

Naturally, the first place to look will be the contract itself. A well written conflict that uses the term “business days” should have a specific definition for that term. But those definitions can vary greatly. And sometimes, the term is simply not defined.

As a result, parties might find it impossible to agree on what was meant by “business days,” and state law confuses rather than clarifies the issue. Moreover, state and local government responses to the threat of coronavirus infection have made the definition even more malleable this year.

Depending on how your contract is worded, here are some of the issues you can expect to face:

1. If Business Days Exclude Holidays, What’s a Holiday?

The most common contractual definition of a “business day” is Monday through Friday, excluding holidays. OK, what’s a holiday? That depends. The California legislature has provided two different definitions, and COVID-19 may have created a third:

A. The Civil Code / Government Code definition: Civil Code section 7 defines “holidays” as “every Sunday and such other days as are specified or provided for as holidays in the Government Code.” Government Code section 6700 defines holidays as:

- Every Sunday
- January 1st

- Dr. Martin Luther King, Jr. Day (the third Monday in January)
- Lincoln Day (February 12th)
- Washington Day (the third Monday in February)
- Cesar Chavez Day (March 31st)
- Memorial Day (the last Monday in May)
- July 4th
- Labor Day (the first Monday in September)
- Admissions Day (September 9th)
- Native American Day (the fourth Friday in September)
- Columbus Day (the second Monday in October)
- Veterans Day (November 11th)
- Christmas (December 25th)

Neither Thanksgiving Day nor the day after Thanksgiving are included on that list, but they are identified as holidays for state employees in Government Code section 19853. Government Code section 6701 tweaks the section 6700 definition by stating “If January 1st, February 12th, March 31st, July 4th, September 9th, November 11th, or December 25th falls upon a Sunday, the Monday following is a holiday. If November 11th falls upon a Saturday, the preceding Friday is a holiday.”

President Donald Trump and Governor Gavin Newsom can add holidays since Government Code section 6700 also defines a holiday as “Every day appointed by the President or Governor for a public fast, thanksgiving, or holiday.” (I can’t remember the last time a President or Governor called for a public fast, but I suppose it could happen).

County officials can also add holidays since section 6701 provides that if any of the holidays listed in section 6700 falls on a Saturday, the board of supervisors of any county may by ordinance or resolution provide that an alternate day shall be a holiday for county employees. And finally, to make things really confusing, Government Code section 6700 includes as a holiday “Good Friday from 12 noon until 3 p.m.”; Good luck factoring that three-hour holiday into your calculation of business days.

B. The Code of Civil Procedure Definition, including “Judicial Holidays”: That Civil Code definition was a tad confusing. Does the definition provided by the Code of Civil Procedure make things easier? Not this year. Code of Civil Procedure section 10 defines holidays as “every Sunday and any other days that are specified as “judicial holidays” in Code of Civil Procedure section 135. That section 135 generally conforms to the definition found in Government Code section 6700, but excludes September 9th (Admissions Day), the fourth Friday in September (Native American Day), and any day appointed by the President but not the Governor as a day for a public fast, thanksgiving or holiday.

C. But Right Now, Isn’t Every Day a Court Holiday? In addition to the days listed in paragraph 1.B above, the Code of Civil Procedure section 135 also allows the Judicial Council to modify the definition of judicial holidays.

While that authorization is limited by the plain language of the statute to judicial holidays which fall on a Saturday or Sunday, an argument can be made for expanding that definition. Government Code section 68115 provides that during an epidemic (and yes, the statute specifically uses that word), the presiding judge of any court may request that the Chairperson of the Judicial Council declare additional judicial holidays and that the Chairperson may do so. In response to COVID-19 the presiding judges of virtually every county in California have made such requests over the past two months, resulting in court holidays stretching from late March until the end of May, and possibly longer, depending on which county you find yourself in.

Enterprising parties might try to use this to extend their contractual deadlines by weeks or months.

2. What if the Contract Defines Business Days as Days on Which a Specified Party is Open for Business?

In this case, the parties may find themselves arguing over whether they must make the business day calculation based on historic conditions or current conditions. A party wishing to condense the business day calculation to as short a period as possible will argue that “business days” means those days on which the party was

typically open for business at the time the contract was signed. A party wishing to extend a deadline and expand the business day calculation to as long a period as possible will seek to exclude from the calculation of business days any days on which the party was forced to close its business due to a government mandate or voluntarily did so to comply with government recommendations.

A rational solution might turn on whether the business closure had a material impact on the deadline (such as where the deadline involved the delivery of products and the party producing those products had been forced to close its production facility) or was irrelevant (such as deadlines involving a review of due-diligence documents in a purchase agreement or delivery of insurance policies in a commercial lease).

3. How About Where Business Days are Defined as Days on Which Banks are Open for Business in California?

Definitions such as this are often used where one of the contracting parties is headquartered in California, and the other is located in a different state. If you are lucky enough to have this provision in your contract, calculation of “business days” should be easy, as banks have been deemed essential businesses in California and have not curtailed the number of days in which they are open for business.

4. Finally, What if the Contract Provides No Definition?

If the contract contains no definition at all, then it is probably safest to rely on the definition of “business days” found at Civil Code section 9. That section defines business days as all days other than “holidays” as defined in Civil Code section 7. That should be pretty straightforward since you can simply refer to the list of days mentioned in paragraph 1.A above without worrying over the slightly conflicting list in paragraph 1.B above or the issue of judicial holidays discussed in paragraph 1.C above. As long as the period in question doesn’t include Good Friday, the calculation of business days should be easy. Just remember to include any state or national days of fasting.

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