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***Your Employment Law Bulletin from***

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**KRUCHKO &  
FRIES**

**November 21, 2011**

**Holiday Turkey - Gift or Wage Supplement?**

A recent survey by the Bureau of National Affairs ("BNA") found that only 12% of employers plan to give their employees a gift for Thanksgiving. At 12%, Thanksgiving holiday gift giving is down sharply from a high of 23% in 2004. Perhaps more discouraging for employees is that nearly three in ten employers (29%) will require at least some employees to work on Thanksgiving Day.

Gift certificates are the Thanksgiving holiday gift of choice for employers, followed closely by the holiday turkey. The BNA survey found that 6% of surveyed employers will be giving employees gift certificates this Thanksgiving while the traditional turkey will be offered by 3% of employers. An interesting (perhaps only to labor lawyers) but esoteric issue is whether the value of such holiday gifts to employees should be included in the calculation of an employee's regular rate for overtime purposes under wage and hour laws. The answer is that the value of turkeys or hams given to employees is not significant enough to be considered a part of wages.

Holiday gifts of a more substantial nature, such as a Christmas bonus, could be construed as a supplemental payment that must be included in the regular rate calculation if payment of the bonus is based on hours worked, the quantity of work produced, the quality of work produced or the efficiency of the employee. Normally, however, a holiday bonus that is provided to all employees as a reward for service will be considered a gift and not a supplemental wage payment.

Kruchko & Fries hopes everyone has a very happy Thanksgiving. And, by the way, our offices will be closed for the holiday.

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[www.KruchkoandFries.com](http://www.KruchkoandFries.com)

**Suite 560  
1750 Tysons Boulevard  
McLean, VA 22102  
(703) 734-0554**

**Suite 400  
502 Washington Avenue  
Baltimore, MD 21204  
(410) 321-7310**

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Kruchko & Fries | 502 Washington Avenue | Suite 400 | Baltimore | MD | 21204