

employment and labour relations bulletin

October 1, 2008

Vote Early and Vote Often: An Employer's Obligations on Election Day

While Al Capone may not have had the nation's best interests at heart when making the above statement, it is once again election time and employers should be aware of their obligations to allow employees the time to exercise their right to vote on October 14, 2008.

Section 132 of the *Canada Elections Act* (the "CEA") provides that an employee who is eligible to vote is entitled to have three consecutive hours in order to vote. If an employee's hours of employment do not permit for three consecutive hours off while the polling stations are open, the employer is required to allow the necessary time in order to provide three consecutive hours off. The employer has the discretion to select the period of time that the employee is to have off.

Section 133 of the CEA further provides that the employer cannot make any deductions from an employee's pay, or levy any penalty against the employee, for taking the time off. This means that the employer cannot force an employee to take vacation time, sick time or any other type of leave in order to exercise the right to vote, and is required to pay the employee for the time off.

Voting hours are determined by time zone. In most of Ontario, polling stations will be open from 9:30 a.m. to 9:30 p.m. For example, if an employee is regularly scheduled to work from noon to 8:00 p.m., the employee would be entitled to an extra half-hour past noon before coming in to work to permit for three consecutive hours. Alternatively, the employer could permit the employee to leave at 6:30 p.m. in order to provide for the three consecutive hours.

The obligation to provide time off does not apply to certain transportation companies, where: (1) the employer is involved in providing transport services of goods or passengers, (2) the employee is employed outside of the employee's polling station, and (3) permitting employees to take time off would interfere with the operation and provision of the transport service. All other employers are required to provide time off.

The CEA also contains penalties to dissuade an employer from not providing the necessary time to its employees. Under the CEA, it is an offence for an employer to fail to provide time off for voting, or to reduce an employee's pay when the employee has been provided with time off. The maximum penalty for either offence is a fine of up to

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\$1,000, three months imprisonment, or both. An employer is also forbidden from using intimidation, undue influence or any other means to interfere with the granting of time off to vote. The maximum penalty for this latter offence is a fine of up to \$5,000, five years imprisonment, or both.

It should be noted that unlike the *Ontario Elections Act*, the CEA does not require an employee to request the time off. Employers should therefore keep their scheduling needs and their employees' rights in mind when scheduling hours of work for October 14, 2008.

Written by Dave J.G. McKechnie

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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The members of the Employment and Labour Relations Group have the expertise and experience to deal efficiently and effectively with all matters rising out of employment and labour law, as well as planning for legislative changes, structuring of business activities, and any other related matters.

If you have any questions about your obligations to employees on Election Day, please do not hesitate to contact any member of the Employment & Labour Relations group.

David Elenbaas	416.865.7232	david.elenbaas@mcmillan.ca
Darryl Hiscocks	416.865.7038	darryl.hiscocks@mcmillan.ca
Dave McKechnie	416.865.7051	dave.mckechnie@mcmillan.ca
Karen Shaver	416.865.7292	karen.shaver@mcmillan.ca
Cheryl Thacker	416.865.7893	cheryl.thacker@mcmillan.ca
Lyndsay Wasser	416.865.7083	lyndsay.wasser@mcmillan.ca
Dilani Wright	416.865.7242	dilani.wright@mcmillan.ca

www.mcmillan.ca



McMillan LLP

Toronto | t 416.865.7000 | f 416.865.7048
Montreal | t 514.987.5000 | f 514.987.1213

Barristers & Solicitors