

PROVIDING TIME OFF TO VOTE: THE SCOPE OF AN EMPLOYER'S OBLIGATION

The May 2, 2011 federal election raises an important issue for employers regarding how to deal with employee requests for time off work to vote.

The *Canada Election Act* makes the law clear: every employee has a right to three continuous hours off, without penalty, to cast his or her ballot while the polls are open on election day. For the majority of employers and their employees, no special time off will be necessary as these three hours will be available before, or after, their normal work day.

In Ontario, polls will be open from 9:30am to 9:30pm on election day. This means that if an employee finishes work by 6:30pm or earlier on the day of polling, there is no requirement to provide time off as the worker will have three continuous hours in the evening to vote. The same is true if an employee starts work after 12:30pm on the day of the election, as he or she will have the time required to vote in the morning.

However, in instances where an employee's non-working hours are insufficient, an employer will be required to provide additional time off so that three continuous hours are available. For example, an employee who would normally finish a 12 hour shift at 7:00pm would not have sufficient time to vote in accordance with the statute. To meet its obligation, an employer may permit this employee to leave work a half-hour earlier than otherwise scheduled. Keep in mind that employers are permitted to schedule required time off in a way that best suits their own needs.

In addition to requiring employers to provide time off to vote, the *Canada Election Act* also protects employees from being penalized for missing work. As a result, any time off that is granted must be paid at whatever rate of remuneration the employee would have otherwise received. This is true regardless of whether the employee is paid on an hourly basis, or by salary.

It should be noted that different considerations apply to employers that transport goods or passengers. In these circumstances, where employees are employed outside of their polling division on election day, the requirements of the statute are waived.

This update is for general discussion purposes and does not constitute legal advice or an opinion. For legal advice regarding your particular circumstances, please contact us.

April 20, 2011