FTR Now

Federal Election 2011: Employers' Obligation to Provide Paid Time Off to Vote

Date: April 7, 2011

A federal election has been called for **May 2, 2011**. Under the *Canada Elections Act*, all employees who are electors – Canadian citizens who are 18 years of age or older – are entitled to three (3) consecutive hours on election day during voting hours to cast their vote.

Under the *Canada Elections Act*, voting hours are determined by the time zone in which the electoral district lies:

Time Zone	Voting Hours
Eastern	9:30 a.m. to 9:30 p.m.
Central, Atlantic or Newfoundland	8:30 a.m. to 8:30 p.m.
Mountain	7:30 a.m. to 7:30 p.m.
Pacific	7:00 a.m. to 7:00 p.m.

Where an employee's hours of work prevent him or her from having the three consecutive voting hours required by the *Act*, the employer "shall allow the time for voting that is necessary to provide those three consecutive hours". The time off is paid.

Where an employee has three consecutive hours that fall within the voting hours, but fall outside of his or her work hours, there is no obligation to provide paid time off from work. A couple of simple examples will illustrate this principle.

Example 1: Employee A works in Toronto, which is located in the Eastern time zone. Her hours of work run from 9:00 a.m. to 6:00 p.m. The employer would have no obligation to provide time off work, as the voting hours continue for 3½ hours after the end of her work day (from 6:00 p.m. to 9:30 p.m.).

Example 2: Employee B works in Kenora, which is located in the Central time zone. His hours of work also run from 9:00 a.m. to 6:00 p.m. Since the voting hours in the Central time zone run from 8:30 a.m. to 8:30 p.m., Employee B does not have a voting period of at least three consecutive hours outside of his work hours. Therefore, his employer must provide sufficient paid time off work to provide a three-hour voting period.

Any required time off can be provided at the convenience of the employer. In Example 2 above, the employer could simply allow Employee B to leave work 30 minutes early, as this would provide him with a three-hour block of time to vote, from 5:30 p.m. to 8:30 p.m.

Where an employer must provide time off to an employee so that he or she can vote, the employer may not make a deduction from pay nor impose any form of penalty. Rather, an employee must receive full pay for the day regardless of the basis upon which he or she is paid. For example, if an employee is paid on a piece-work basis, the employer must pay the amount that the employee would have earned had he or she actually worked the full day. The *Act* also provides that employers are prohibited from interfering with the time off requirement by intimidation, undue influence or other means.

The requirement to provide paid time off does not apply to certain employees of transportation companies that transport goods or passengers by land, air or water. This will be the case where the employee is employed outside his or her polling division in the operation of a means of transportation, and the time off cannot be provided without interfering with the transportation service.

If you have any questions about your obligations in connection with the upcoming election, please feel free to contact your

regular Hicks Morley lawyer.

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