

NEWSLETTER – SEPTEMBER AND OCTOBER 2008

EMPLOYER OBLIGATIONS ON ELECTION DAY

As you almost certainly know, a federal election will be held on Tuesday, October 14, 2008. That raises the question of what, if any, obligations employers have to their employees on election day.

Are employees entitled to time off for the purpose of voting?

In terms of section 132(1) of the *Canada Elections Act* (the “Act”), employees who are eligible to vote (i.e. all Canadian citizens who will be 18 years of age or older on election day) are entitled to have three consecutive hours free from work on election day for the purpose of casting their ballots.

Take, for illustrative purposes, an employee who lives in an electoral district in which voting hours are from 7:00 a.m. to 7:00 p.m., and whose hours of work are from 9:30 a.m. to 5:30 p.m. This employee is entitled to be provided with time off so he or she has the opportunity to cast his or her ballot.

The employer can choose to allow the employee to:

- arrive at work later than usual (at 10:00 a.m.);
- leave work earlier than usual (at 4:00 p.m.); or
- take three consecutive hours off at some point during his or her usual work day.

It is the employer that makes the choice about when to provide the three consecutive hours for voting. Section 132(2) of the Act makes it clear that “[t]he time that the employer shall allow for voting ... is at the convenience of the employer”.

There may be no need for an employer to provide any time off to an employee who is eligible to vote.

Consider the following example. If an employee lives in an electoral district in which voting hours are from 7:00 a.m. to 7:00 p.m., and the employee’s hours of work are from 8:00 a.m. to 4:00 p.m., the employer is not required to provide time off for voting. The employee will already have three consecutive hours available to him or her to exercise the right to vote.

When are polling stations open on election day?

In order for an employer to comply with its obligations under the Act, it is important for the employer to know voting hours on election day.

Voting hours are established under section 128 of the Act and vary by time zone. In B.C., if the electoral district is in the:

- Pacific time zone, polling stations are open from 7:00 a.m. to 7:00 p.m.; and
- Mountain time zone, polling stations are open from 7:30 a.m. to 7:30 p.m.

If there is any uncertainty in your mind about voting hours on election day, it is advisable for you to contact Elections Canada by telephone at 1-800-463-6868 or to visit Elections Canada's website at www.elections.ca.

No loss of pay

Pursuant to section 133 of the Act, employers are not permitted to make any deduction from the pay of their employees in respect of time off provided on election day.

In other words, an employee must be paid what he or she would have been paid had:

- the employee worked his or her usual work day; and
- time off for voting as required by the Act not been provided to the employee.

Offences under the Act and related penalties

It is an offence under the Act for an employer to:

- fail to provide its employees with three consecutive hours free from work as required by the Act; or
- impose a financial penalty on its employees because they took time off in accordance with the Act.

The maximum penalty for committing this offence is a fine of up to \$1,000, three months' imprisonment, or both of these things.

It is also an offence for an employer, by intimidation, undue influence or any other means, to "interfere with the granting to an elector in [its] employ of the three consecutive hours for voting, as provided for in section 132".

An employer that commits this offence is liable to a maximum penalty of up to \$5,000, five years' imprisonment, or both of these things.

Miscellaneous

(a) *Transportation companies*

The right to have three consecutive hours free from work on election day, without any loss of pay, is not a right available to all employees.

Section 132(3) of the Act, headed "Transportation companies", states:

"[Section 132] and section 133 do not apply to an employee of a company that transports goods or passengers by land, air or water who is employed outside his or her polling division in the operation of a means of transportation, if the additional time referred to in [section 132(1)] cannot be allowed without interfering with the transportation service."

(b) *Collective agreement provisions*

If you operate in a unionized environment, it is advisable to review any provision of your collective agreement that speaks to your obligations on election day as you may have obligations over and above those under the Act.

You may, for example, have to provide your employees with four consecutive hours free from work for the purpose of voting. We are aware of at least one collective agreement containing such a provision.

If you have questions regarding the issues raised in this newsletter and how they may affect you or your company, please do not hesitate to contact any lawyer at our firm.

Lawyer contact information can be obtained by telephoning us at (604) 806-0922 or visiting our website at www.ropergreyell.com.

* Every effort has been made to ensure accuracy in respect of this newsletter. The comments, however, are necessarily of a general nature. Clients and other interested parties are urged to seek specific advice on matters of concern and not to rely solely on the text of this newsletter. *