

The lesser of two evils and the Three Hour Rule: An overview of employer obligations on Election Day in Ontario

June 4, 2018

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While many employers eagerly await the outcome of the Ontario general provincial election on Thursday June 7, 2018 and its potential ramifications for their businesses, employers in Ontario should be aware of the obligations owed to their employees under Ontario's *Election Act*, R.S.O. 1990, c. E.6.

Canadian citizens 18 years of age or older who reside in Ontario are eligible to vote in the Ontario general provincial election. Eligible voters who choose to vote on election day (instead of voting via mail or advance voting) can do so in person at their assigned voting location between 9 a.m. to 9 p.m. (Eastern time)^[1].

The [Election Act](#) entitles employees in Ontario who are qualified to vote to three consecutive hours to vote during polling hours without any deduction in pay or penalty.

However, this does not necessarily mean that employees are entitled to take three hours off work to vote. If an employee's work schedule allows the employee to have three consecutive hours during polling hours that fall outside of work hours, the employer is not required to provide paid time off from work. For example, consider the hours of work for the following employees:

- Employee A: 10:00 a.m. to 6:00 p.m.
- Employee B: 11:00 a.m. to 7:00 p.m.

Employee A would have three consecutive hours to vote from 6:00 p.m. to 9:00 p.m., and therefore the employer is not required to provide Employee A with any additional time off for voting. However, Employee B is entitled to request additional time for voting (i.e. one hour off work), as the employee's hours of work do not provide her with three consecutive hours to vote.

Any time off to allow an employee to have three consecutive hours for the purpose of voting shall be granted at the time of day that best suits the convenience of the employer. Therefore, if Employee B requests time off work so that she has three consecutive hours to vote, the employer can choose whether it will provide the employee with one hour off work at the beginning or end of her shift.

The *Election Act* also requires employers to grant an employee, who is a returning officer or has been appointed by a returning officer to be a poll official, unpaid time off to perform his or her duties. Employees must provide at least seven days' notice before the leave is to begin. The employer cannot dismiss or otherwise penalize employees who exercised the right to be granted leave, and cannot deduct time taken as unpaid leave from the employee's vacation entitlement.

Employers who do not comply with its obligations under the *Election Act* can be liable for fines of up to \$5,000.00 for each violation.

For more information about the obligations of employers in Ontario on election day, or to ensure that you are in compliance with the requirements under the *Election Act*, please contact WeirFoulds' Employment Law Group.

[1] For electoral districts that are "entirely west of the meridian of 90° W. longitude" e.g. in the Central Time Zone, voting hours are from 8 a.m. to 8 p.m.

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