

# Elections in the Time of COVID: Employer Obligations on Federal Election Day and COVID-19 Considerations

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By Daniel Wong,

On September 20<sup>th</sup>, 2021, Canadians will head to the polls to elect their next Prime Minister and members to Parliament. This will be the first time in the history of the country that citizens will cast their federal ballot during a pandemic.<sup>[1]</sup> While many employers have begun to welcome their employees back to the office, others continue to work from home. Regardless of the employee's working situation, an employer's obligations under the *Canada Elections Act*<sup>[2]</sup> remain the same. With less than five weeks until the election, now is a great time for employers to review those obligations.

Under section 132 of the *Canada Elections Act*,<sup>[3]</sup> every employee who is eligible to vote is entitled to three consecutive hours, during polling hours, to cast their vote. If these hours are not available outside of work hours, an employer **must** afford their employees enough time off to allow them three consecutive hours to vote. However, employers have the right to determine what time during the work date the employee will have off, based upon what is convenient for them.<sup>[4]</sup>

For example, if the polls are open from 9:30 a.m. to 9:30 p.m., and the employee works from 9:00 a.m. to 5:00 p.m., the employer is **not** obligated to provide time off because the employee has three free consecutive hours to vote after their shift ends (5:00 p.m. to 9:30 p.m.). The same holds true if the employee works from 1:00 p.m. to 9:00 p.m., because that employee has three consecutive hours available to vote prior to starting work (9:30 a.m. to 1:00 p.m.).

However, if the employee works from 11:00 a.m. to 7:00 p.m., the employer **must** provide the appropriate amount of time off. One option is to have the employee start later at 12:30 p.m. Another is to let the employee leave early at 6:30 p.m. Or, if the employer finds it acceptable, the employer could provide the employee with three consecutive hours off work during the workday.

## Offences Under the Act

Employers should be aware that failing to provide an employee with three consecutive hours to vote is an offence under the *Canada Elections Act*.<sup>[5]</sup> Furthermore, it is also an offence to deduct an employee's pay or impose a penalty upon them for the time they were given off to vote.<sup>[6]</sup> Doing so could result in fine of up to \$2,000, up to three months in jail, or both.

Employers also need to be aware that interfering in the granting time off work to allow an employee three consecutive hours to vote by intimidation, undue influence or *any other means* could result in a fine of up to \$50,000, five years in jail, or both.<sup>[7]</sup>

The only employees exempt from these rules are those whose company transports goods or passengers by land, air or water and who are employed outside of their polling division while operating a means of transportation, if the additional time required to vote would interfere with the transportation service.<sup>[8]</sup>

## COVID-19 Considerations

With the threat of a fourth COVID-19 wave caused by the Delta variant, companies will also want to ensure that they have adequate [pre-screening measures](#) in place to protect against workplace COVID-19 outbreaks caused by employees' exposure at voting locations and other social gatherings. Such measures are especially important for Toronto employers who wish to reduce the risk of being [named publicly as an outbreak hot spot](#).

For further information about employer obligations on election day, or to ensure that you are in compliance with the requirements under the *Canada Elections Act*, please feel free to contact [WeirFoulds' Employment and Labour Law Group](#).

[1] With federal elections in 1917 and 1921, Canada narrowly avoided a federal election during the height of the 1918 influenza pandemic.

[2] SC 2000, c 9.

[3] *Ibid*, s 132(1).

[4] *Ibid*, s 132(2).

[5] *Ibid*, s 489.

[6] *Ibid*, s133(1), s 489.

[7] *Ibid*, s 134, s 489(3), s 500(5).

[8] *Ibid*, s 132(3).

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

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