

# EMPLOYERS' ALERT

SPECIAL ISSUE • FAMILY DAY : FEBRUARY 16, 2009

## WHAT'S NEW at RUBIN THOMLINSON LLP

### WELCOME SHARAF SULTAN!

In a world becoming more and more of a global marketplace, Sharaf offers a unique perspective. He has valuable international experience with two prestigious organizations, both based in Geneva: The International Labour Organization and the Aga Khan Foundation.



Sharaf had his first international experience in the middle of studying Commerce at the University of Toronto. He spent a year abroad, studying at the American University of Cairo, where he learned firsthand that the world of business now transcended local, regional and national boundaries.

He returned to Canada to complete his studies, and then headed directly to Geneva with his Masters of

Development Economics (MDE) in hand. There he worked with the Aga Khan Scholarship Program, conducting research for various Aga Khan Foundation initiatives.

While based in Geneva, he was recruited as a consultant to the International Labour Organization, spending two years involved in projects such as the development of an international labour standards manual and a study on forced labour. He learned about the many different labour standards, policies, codes and systems used in different countries around the world.

It was this experience that ignited Sharaf's interest in employment law. Economics had taught him that there are two components essential to running an efficient economy: labour and capital. He decided to focus on labour, specifically on work-related issues, and made a deliberate shift from policy to advocacy. He returned to Canada to study law at the University of Ottawa.

Sharaf articulated with a leading employment law firm in Ottawa, where he was involved in terminations, arbitrations, mediations, human rights issues and collective bargaining negotiations. He was called to the Bar in June 2008.

As a valued member of the Rubin Thomlinson team, Sharaf supports both employee and employer clients with legal counsel and research on a wide variety of employment law issues.

You can reach Sharaf at [Sharaf@rt-law.ca](mailto:Sharaf@rt-law.ca) or (416) 847-1814 x111.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered, and without seeking the advice of legal counsel. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.

February 16, 2009 marks the second Family Day since its recognition as a public holiday in Ontario. When Family Day was first announced last year, we produced an Employers' Alert to address questions put forward by our employer clients. As Family Day is this upcoming Monday, we wanted to provide you with some updated information. The following provides updated information to questions put forward by some of our employer clients:

## Family Day - Updated Information

### Question One: Does Family Day apply to all employees in Ontario?

Answer: No.

Family Day is only applicable to provincially regulated employees because it is a holiday created by a provincial statute, the *Employment Standards Act* ("ESA"). Federally regulated employers such as banks, airports, and telecommunications companies, are not required to give employees the day off.

### Question Two: Do employees who already have more holidays than what is allowed under the ESA benefit from Family Day?

Answer: It depends.

Many employment contracts and collective agreements provide for more holidays than the nine public holidays which are currently provided for under the ESA. The ESA specifically provides for the following public holidays:

1. New Year's Day
2. Good Friday
3. Victoria Day
4. Canada Day
5. Labour Day
6. Thanksgiving Day
7. Christmas Day
8. Boxing Day
9. Family Day

Should an employment contract provide for more than nine public holidays (i.e. Easter Monday), then the ESA public holiday provisions do not apply. For this position to apply, the number of holidays must be greater than but not only equal to the number of public holidays provided in the ESA. Employers should always review the specific language of the contract when deciding whether the ESA applies and how to treat Family Day.

### Question Three: Can employees be required to use a "floater day" on February 16th as their Family Day, if they are given "floater days" in addition to statutory holidays?

Answer: It depends.

Decisions by the Labour Relations Board in the past regarding other statutory holidays suggest that an employee can be required to take a floater day for a new statutory holiday provided the employee is provided with a greater right or benefit than what is required under the ESA. In other words, they must have no less paid time off from work than the statutory holidays provided under the ESA.

However, it is important to note that employers should seek legal advice before taking this approach as the specific terms of their policy may not permit such an interpretation. One such example would be where the employer's policy states that employees receive paid days for

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## Family Day - Updated Information

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“all statutory holidays plus” a prescribed number of floater days.

### Question Four: **Can employees be compelled to work on Family Day?**

Answer: No.

Generally speaking, employers must allow employees a day off for Family Day. The *ESA* provides an exception for those employed in areas such as a hospital, a continuous operation, or a hotel, motel, tourist resort, restaurant or tavern. In these areas an employer can require an employee to work on a public holiday if it falls on a day that an employee would normally have worked as long as the employer provides a substitute day off with pay, or if they provide the required premium owed.

For those who have the right to refuse to work on a public holiday, an employee can nevertheless agree in writing to work. If this is the case, the employee is entitled to wages at his or her regular rate for all hours worked on the public holiday plus another regular working day off with public holiday pay. Alternatively, the employee is entitled to public holiday pay plus premium pay, set at 1 ½ times the employee's regular rate for all hours worked on the public holiday. In the second scenario the employee is not provided a substitute day off.

### Question Five: **What rate of pay applies to those who work on Family Day?**

All employers who require an employee to work on Family Day must provide the regular rate of pay and one and one-half times their regular rate of pay for each hour worked on that day. Holiday pay is calculated based on the employee's earnings in the previous four weeks of work.

### Question Six: **In which workplaces does Family Day apply?**

In addition to the *ESA*, which provides that Family Day is a holiday for most employers, the *Retail Business Holidays Act* (“*RBHA*”) lays out which retail businesses are able to remain open on any statutory holiday. The *Act* considers Family day to be a “holiday”, meaning that retail businesses are not legally permitted to sell any goods or services or to admit members of the public on Family Day. Therefore, unless an exemption applies, retail businesses cannot open for business on Family Day.

### **Where can I get more information? Further information on these issues can be found:**

- In the *Employment Standards Act, 2000* located at <http://www.e-laws.gov.on.ca>;
- By Calling the Employment Standards Information Centre at **1-800-531-5551**;
- By going to the Ministry of Labour's website at: <http://www.labor.gov.on.ca/english/es/> ; or
- By calling us! ●

## UPCOMING EVENTS

### **April 2**

James Heeney will be speaking at the Canadian Institute's 9th Annual “Winning HR practices of the Best Employers in Canada” on April 2. James will be discussing best practices for accommodating employees.

### **May 4 and 5**

The seventh session of **Conducting Internal Workplace Investigations** will take place on May 4 and 5. We are accepting registrations for this session. If you are interested in attending please contact us at (416) 847-1814 or [seminars@rt-law.ca](mailto:seminars@rt-law.ca) to register.

### **Webinars Now Available!**

The HRPAs has a collection of webinars that are now available online. We have assisted the HRPAs in producing several of these webinars for human resources professionals. They include, “When Overworked Means Overtime: Staying Out of Legal Trouble” and “Personal Harassment: What it is and How Do You Respond”. Feel free to check them out by visiting the HRPAs's website at [www.hrpa.ca](http://www.hrpa.ca).