

EMPLOYERS' ALERT

December 2007

Holiday Pay During the Holiday Season

As it is the holiday season, we have received many inquiries from our clients about the rules regarding statutory holidays and holiday pay. These rules are quite confusing, and often depend on the specific facts of each situation. To help you understand how these rules apply, we have selected the four most common questions along with our answers. We hope this information will help you have a happy and "statutorily compliant" holiday.

WHAT'S NEW AT RUBIN THOMLINSON LLP

Christine Thomlinson conducted a seminar at the HRPAAO on December 4th. The seminar covered advanced issues surrounding employment contracts, terminations, the duty to accommodate and poisoned work environments.

We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca.

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.

Question #1 - What days are official statutory holidays?

Under the *Employment Standards Act, 2000* (the "ESA"), there are three public holidays this season namely, Christmas Day on December 25, Boxing Day on December 26 and New Year's Day on January 1.

Question #2 - Who qualifies for public holiday entitlements?

Generally, employees qualify for public holiday entitlements unless they fail, without reasonable cause, to work their entire regularly-scheduled shift before or after the public holiday; **OR** their entire shift on the public holiday if they agreed or were required to work that day. Employees who qualify for public holiday entitlements can be full-time, part-time, permanent or on a limited-term contract. They can also be students. It does not matter how recently they were hired or how many days they worked before the public holiday.

Question #3 - How is public holiday pay is calculated?

Public holiday pay is an amount equal to an employee's regular wages earned in the four work weeks prior to the public holiday plus any vacation pay payable during that period, divided by 20. The term regular wages does not include things such as overtime pay, public holiday pay, premium pay, vacation pay, termination pay and/or severance pay and entitlements.

Question #4 - Can employers require employees to work on the public holiday?

Under the ESA, qualified employees are entitled to take off the public holidays with public holiday pay. Cont'd...

Upcoming Events

Christine Thomlinson will be the facilitator for the CCCA Greater Toronto Chapter's "Workplace Investigations and the Role of In-House Counsel" program, being held at the OBA on January 15, 2008.

Christine will also be co-lecturing at "An Employer's Duty to Accommodate". This is a course being offered through Federated Press and will run from January 21st to 22nd, 2008.

Our next complimentary breakfast seminar will be held on January 29, 2008. Invitations for this session will be coming to your inbox soon. To be sure that you receive a personal invitation, please contact us at contact@rt-law.ca to have your email address added to our distribution list.

Update on the newly revised and expanded How to Conduct a Workplace Investigation Training Seminar

This session, which focuses on workplace investigation techniques discussed in our book, *Human Resources Guide to Workplace Investigations*, and will be held on February 7-8, 2008, is completely full. We have established a pre-registration list for anyone who would like to take the next session, likely to occur in May of 2008. If you would like to be on this list, please contact us at (416) 847-1814.

Terminations for Tough Times

Look for registration information on this new training seminar to take place on February 26, 2008. This session will focus on how to conduct terminations during economically challenging times.

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The employee can, however, agree in writing to work on the public holidays and either:

- Be paid their regular rate for all hours worked on the public holidays **plus** receive a substitute holiday with public holiday pay; **or**
- be paid public holiday pay **plus** "premium pay" of one-and-a-half times their regular rate for all hours worked on the public holidays.

For any public holiday that falls on a non-working or vacation day, qualified employees can **either** take a substitute work day off with public holiday pay **or**, if they agree in writing, they can receive public holiday pay, in addition to their standard wages, for the public holiday with no substitute day off.

There are exceptions, however, the most common relating to employees in hospitals, continuous operations and, most importantly for your purposes, the hospitality industry. These employees are generally required to work on the public holidays if they fall on days they would normally work and if they are not on vacation. This applies to employees who work for hospitals, nursing homes, hotels, motels, tourist resorts, restaurants and taverns, as well as to employees who work for continuous operations companies.

Generally if one of these employees is required to work on a public holiday, the employee shall:

- Be paid their regular rate for all hours worked on the public holidays **plus** receive a substitute holiday with public holiday pay; **or**
- If the employee and employer agree in writing, be paid public holiday pay **plus** "premium pay" of one-and-a-half times their regular rate for all hours worked on the public holidays.

Please feel free to contact us or visit the Ministry of Labour's website at:

http://www.labour.gov.on.ca/english/es/factsheets/fs_public.html for more information on this issue.