

## EMPLOYERS' ALERT

January 2008

### Changes to the Employment Standards Act: Family Day and Reservist Leave

There have been two recent and important changes to the *Employment Standards Act, 2000* (ESA) about which all employers should be aware.

#### WHAT'S NEW AT RUBIN THOMLINSON LLP

On January 15<sup>th</sup> and 17<sup>th</sup> Janice Rubin was a guest on Canada AM during "Career Week". Janice provided viewers with a legal perspective regarding the hiring and termination process, hours of work, accommodation and bullying at work.

Christine Thomlinson was the facilitator at the Canadian Corporate Counsel Association's lunch on January 15<sup>th</sup>, where the topic of discussion was the Role of In-House Counsel in workplace investigations.

Christine also co-lectured at Federated Press' two day conference entitled "An Employer's Duty to Accommodate" that was held on January 21<sup>st</sup> and 22<sup>nd</sup>. Christine discussed the employer's duty to accommodate in light of the recent changes to mandatory retirement.

James Heeney spoke to the Quinte West section of the Ontario Dental Association at a dinner on January 24<sup>th</sup> in Belleville. James discussed general employment law issues.

On January 28<sup>th</sup> Christine appeared as a panelist at the HRPAA's webinar on the new statutory holiday called "Family Day".

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](mailto: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.*

#### Reservist Leave

Amendments were made to the ESA to now provide job protection to military reservists who are required to take a leave from work. Under the ESA, unpaid leave will be given to reservists where: the employee is deployed to a Canadian Forces operation outside Canada; or the employee is deployed to a Canadian Forces operation inside Canada that is or will be providing assistance in dealing with an emergency or with its aftermath.

In order to qualify for the unpaid leave, the employee must have been employed with the employer for at least 6 months and provide written notice as prescribed.

Unlike pregnancy/parental leave, for example, reservist leave does not require that the employer continue pension/benefit plan contributions during the leave. However, during this period, seniority would accrue.

Upon return from the leave, the employee would have the right to be reinstated to his/her position unless the employee's employment is ended solely for reasons unrelated to the leave.

Once the employee is able to return, the date an employee wants to be reinstated can be postponed by the employer until the later of two weeks after the day on which the leave ends, and the first pay day that falls after the day on which the leave ends. However, if the leave is postponed by the employer, the employee's pension/benefit contributions must be made.

Failure to reinstate an employee after the leave can result in an order for reinstatement, back wages and damages.

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## Upcoming Events

On February 13<sup>th</sup> Janice Rubin will be one of six facilitators at the Law Society of Upper Canada's program entitled "Advanced Roundtable in Employment Law". The roundtable discussion will focus on "Litigating Human Rights Issues after Bill 107 - Court or Tribunal" and "Punitives, Wallace and Assorted Torts: Can we do Better?"

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### New RT Training Sessions

#### Terminating in Times of Uncertainty

Terminating in Times of Uncertainty is a training seminar that focuses on the termination process during times of economic uncertainty. Our innovative program will lead you through a fictitious termination file. Using checklists and precedents, you will gain knowledge and understanding of the termination process which you can then apply to your own organization. Janice Rubin and Christine Thomlinson will be conducting the next session on February 26<sup>th</sup>. Register today to take advantage of our early-bird discount. Early-bird discounts expire on February 8<sup>th</sup>. Please contact us at (416) 847-1814 to register.

#### Conducting Internal Workplace Investigations

Our upcoming training seminar entitled "Conducting Internal Workplace Investigations" has 'sold out'. We have added a second session due to popular demand, which will occur on May 29<sup>th</sup> & 30<sup>th</sup>. Space is limited at this point. Please contact us at (416) 847-1814 to register.

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### Family Day

The ESA has also been amended to include a new statutory holiday - Family Day - on February 18<sup>th</sup>. Please refer to our last Employers' Alert where we discussed employees' rights on statutory holidays generally. However, since this is a new holiday, we wanted to answer a number of questions recently put to us by some of our employer clients:

**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 ESA. Federally regulated employers such as banks, airports, and telecommunications companies, are not required to give employees the day off.

**Question Two: Can employees be required to use a "floater day" on February 18<sup>th</sup> as their Family Day, if they are given "floater days" in addition to statutory holidays? Answer: It Depends.**

Decisions by the Labour 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 "all statutory holidays plus" a prescribed number of floater days.

### 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!