

# ELECTIONS AND THE WORKPLACE: KNOW YOUR RIGHTS AND OBLIGATIONS

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*Ontario Provincial Election 2022 Edition*

Public discourse and civic participation take many forms during an election. Among other things, individuals may choose to donate to a political party, grassroots organizations may lobby for their preferred policy positions, and of course, electors will cast their ballots for their preferred candidates and political parties. There are rules that carefully govern these activities in Ontario and interactions between political entities and stakeholders – whether it be individuals or organizations.

In this article, as part of McMillan LLP's ongoing coverage of this year's Ontario provincial election, we discuss the *Election Act*, employer obligations, and employee rights when it comes to elections and the workplace. Ontario's provincial election is likely taking place on June 2, 2022. The election period begins at 12:01 AM on the day the writ of election is issued, running until the last polling day.

## **Employees' Right to Vote**

According to Elections Ontario, polling hours on Election Day are from 9AM ET to 9PM ET.<sup>[1]</sup> By law, employers are required to provide employees with three consecutive hours to vote during polling hours on Election Day. In the event that an employee's schedule does not allow for this, employers must grant an employee's request for additional time for voting.<sup>[2]</sup>

## **How does this work in practice?**

Employers should aim to provide three consecutive hours off within an employee's scheduled workday where an employee's schedule does not permit a reasonable amount of time in which to vote before or after work. However, employers may also adjust an employee's work schedule to ensure that all employees have the requisite three consecutive hours in which to vote. For example, if an employee is scheduled to work between 10AM ET and 7PM ET, an employer could:

- have the employee start work two hours later, at 12PM ET, and work two hours longer, until 9PM ET, or
- have the employee start work one hour earlier, at 9AM ET, and finish work one hour earlier, at 6PM ET.

Both of these options provide employees with the required three consecutive hours to vote between 9AM ET and 9PM ET. Of course, if an employee's workday already begins or ends such that a consecutive three-hour window of voting time is available without missing work, the employer is not obligated to make any adjustments to their schedule.

In general, adjustments to an employee's schedule may be made to permit voting at a time most convenient to the employer, so long as the employee is still granted three consecutive hours in which to vote.<sup>[3]</sup> Employers are not allowed to impose any penalty or deduct wages from an employee who exercises their right to vote as described above.<sup>[4]</sup>

### **Employees' Rights to Assist Elections Ontario**

Employees are also permitted to request time off if they are volunteering or working with Elections Ontario as a Returning Officer or Poll Official on Election Day, so long as the request is made to their employer at least seven days prior to the requested time off.<sup>[5]</sup> While these requests must be granted, employers do not have to compensate employees for such leaves.

Employers who do not comply with the above requirements are subject to penalties under the *Election Act*. Any person who, inside or outside of Ontario, prevents another person from voting or otherwise interferes with that person's exercise of the vote is guilty of an offence and may be liable up to \$5,000.<sup>[6]</sup> If said person prevents another person from voting knowingly, they may be liable up to \$25,000 and up to two years less a day of imprisonment.<sup>[7]</sup>

### **Political Activity and the Workplace**

Canadians often choose to publicly participate in, and voice their opinions about, elections, candidates, political parties, and public policy. Many citizens may be surprised to learn that their freedom of expression, guaranteed by the Charter of Rights and Freedoms, only applies to government actions. Therefore, if you work for a private corporation, the Charter does not give you the freedom to express yourself universally. Even individuals who work for the government may have some lawful restrictions over the types of political activity they engage in. For example, certain government employees need to abstain from political activities to avoid the perception of a conflict of interest and to maintain the impartiality of the Public Service.

Employees participating in elections must be aware that, in Ontario, they can be held accountable for political views and statements they make, even when not working. Determining whether employees can be fired with or without cause, or whether their comments fall under an exempted category (such as advocating about health and safety or human rights), is a fact-driven inquiry to be made by the court or applicable tribunal. Both employers and employees must be mindful of their rights (and their limits) in the workplace, particularly at

times where civic participation and dialogue is more common.

That said, employers should be cautious about what kind of political speech is being targeted. While the Ontario *Human Rights Code* does not protect against discrimination based on political belief, any disciplinary decision must always be made in good faith. Imposing sanction or even differential treatment on the basis of an employee's political beliefs risks being seen as "bad faith".

There are many considerations when participating, or managing employees that are participating, in an election. Be it as an individual, lobbyist, organization, or political entity, it is important to ensure compliance and work with qualified professionals that can assist you and your organization in navigating applicable lobbying and election finance laws.

*The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.*

[1] [Elections Ontario: Ways to Vote](#)

[2] EA 6(3).

[3] EA 6(5).

[4] EA 6(4).

[5] EA 6(1.1).

[6] EA 96.2(1).

[7] EA 97.1.

by [Timothy Cullen](#), [Kyle Lambert](#), and [Jeremiah Kopp](#)

### **A Cautionary Note**

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