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New Ontario Public Holiday - Family Day
by Leanne Standryk

On October 11th, 2007 the Ontario Liberal Party won the provincial election, and will enjoy a majority government lead by Premier Dalton McGuinty. On October 12, 2007 the Ontario Legislature amended the Regulations under the *Employment Standards Act, 2000*, and declared Family Day to be a public holiday.

With limited exceptions, eligible employees in Ontario will enjoy another day off of work each year with public holiday pay. The holiday known as Family Day will fall on the third Monday of each February beginning in February 2008.

Ontario now has nine public holidays under the *Employment Standards Act, 2000*: New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day. With the addition of this new holiday, the question for employers to consider is whether they are obligated to recognize the new holiday.

In 1989 Boxing Day was introduced as a new public holiday and this question was considered at that time. In the unionized context, arbitrators found that where a collective agreement already provided a greater benefit than the employment standards legislation (the former *Employment Standards Act*), taking into account the new holiday, the employer was not obligated to recognize the new holiday. Since that time there have been amendments to employment standards legislation and while the former Employment Standards Act had a specific greater benefit provision for public holidays that is not duplicated in the current *Employment Standards Act 2000*. Despite this fact the greater right or benefit argument may still be recognized as a viable position under the Employment Standards Act 2000. In determining whether you must recognize the new holiday or whether you may choose not to do so, reference the terms of your collective agreement or other contract language. Determine whether the contract language requires you to recognize any new government-created holiday. Determine whether the contract language provides a greater benefit to employees than the statutory minimum public holiday entitlements. Determine whether the contract language confers a greater benefit even when the new holiday is factored in. Consider how your employees will react if the new holiday is not recognized.

Determining these answers will provide guidance as to whether your organization must recognize the new holiday or whether it may choose not to do so.

For more information with respect to the new public holiday – Family Day, please contact Leanne Standryk and/or Robert Reid.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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