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LABOUR AND EMPLOYMENT COMMUNIQUÉ

MINISTRY OF LABOUR PROPOSES UNPAID, JOB- PROTECTED LEAVE FOR ORGAN DONORS

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On March 2, 2009 the Ontario Minister of Labour introduced legislation (Bill 154) that, if passed, would amend the *Employment Standards Act, 2000* (the "ESA") to provide unpaid, job-protected leave for employees who donate certain organs. The impetus for this initiative stems from the recommendations of the Citizens Panel on Increasing Organ Donation established in 2006. There are approximately 1,700 men, women and children currently waiting for an organ transplant in Ontario and approximately 30 percent of total organ transplants come from living donors.

At this time, the proposed leave would apply to persons who are donating all or part of the following organs: kidney, liver, lung, pancreas and small bowel. All employees covered by the ESA would be eligible for the leave regardless of the size of their employer, so long as they have been employed by the same employer for at least 13 weeks. Employers may require employees who take this leave to provide a medical certificate issued by a legally qualified medical practitioner confirming that the employee has undergone or will undergo surgery for the purpose of organ donation.

Donors would be entitled to take this unpaid, job-protected leave for the period prescribed in their medical certificate, or up to 13 weeks if no period is prescribed. Leave may be extended more than once if a medical certificate confirms that the employee is not yet able to perform his or her duties. However, the total length of the leave would not be permitted to exceed 26 weeks.

The leave would begin on the day that the employee undergoes surgery to donate the organ, or if necessary, at an earlier time as specified in his or her medical certificate. Employees who wish to take leave or extend their leave must give their employer two weeks written notice or notify their employer as soon as possible if such notice is not possible in the circumstances. Similarly, employees may end their leave early by giving their employer at least two weeks written notice.

As with other leaves under the ESA, the seniority and length of service credits for employee donors would continue to accumulate during the leave. Employers providing certain types of benefit plans would have to continue to make their contributions during the leave if the employee continues to pay his or her contributions, if any.

Miller Thomson will keep you apprised of further developments in this area.

Note:

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Your comments and suggestions are most welcome. Please direct them to:

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Around Miller Thomson

Stuart Rudner will be chairing Osgoode Professional Development's annual employment law conference titled "Proactively Managing Legal Risk in Challenging Times" April 27-29, 2009. Stuart will also be speaking at a pre-conference workshop on the *Employment Standards Act, 2000* on April 27, 2009, and moderating a Judges Panel on the Bench's view of employment terminations on April 28, 2009.

Erik Marshall will be speaking with Stuart at the pre-conference workshop on the *Employment Standards Act, 2000* on April 27, 2009.

Adrienne Campbell will be speaking at the conference on the scope of an employee's duty to mitigate on April 28, 2009.

Jane Roffey will be speaking at the Ministry of Labour's Collective Bargaining Conference on the role of conciliators and mediators in collective bargaining on May 5-6, 2009.

Laura Cassiani recently wrote an article titled "The Global Workplace 101: Issues facing multinational employers" that appeared in the Spring 2009 edition of Canadian Corporate Counsel Association magazine.

ABOUT THE AUTHOR:

Erik Marshall is a member of our Labour and Employment Group in Toronto. He provides legal services and advice to a wide range of clients in the private and public sectors.

Our Labour and Employment Practice Group is dedicated to providing comprehensive and integrated legal services, and advises management in all aspects of labour relations and employment law. For more information about our Group, visit our website at www.millerthomson.com.

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