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LABOUR AND EMPLOYMENT COMMUNIQUÉ

CASE LAW UPDATE ONTARIO HEALTH PREMIUM: SUPREME COURT OF CANADA REJECTS EMPLOYER'S LEAVE APPLICATION

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In our December 18, 2006 Labour and Employment Communiqué we informed you of the Ontario Court of Appeal's decisions in five companion cases all of which involved the issue of whether the employers were liable to pay for the Ontario Health Premium (OHP). The Court upheld four awards in favour of the unions and two in favour of the employers.

In one of the cases, the *Toronto Transit Commission v. Amalgamated Transit Union, Local 113*, the Court of Appeal upheld the arbitrator's award which found the employer liable to pay the OHP. In that case, the collective agreement provided as follows:

The Commission agrees to pay...

...

100% of total contributions required for the following coverages:

...

(a) Ontario Health Insurance Plan (O.H.I.P.)...

The arbitrator in *Toronto Transit Commission* ultimately found that the language of the agreement was "broad enough in its terms to capture the OHP whether it is a 'premium' or a 'tax'."

The Toronto Transit Commission sought leave to appeal to the Supreme Court of Canada. On June 21, 2007, the Supreme Court of Canada dismissed the appeal with costs. The Toronto Transit Commission estimates that payment of the OHP on behalf of its unionized employees will cost \$6-million annually. Employees may also receive a refund of any OHP already paid.

LEGISLATIVE UPDATE: UNPAID MILITARY LEAVE¹

Three provinces have recently amended their respective labour standards legislation to permit members of the Canadian Forces Reserves who require time away from civilian employment to attend training or deployment missions overseas a period of unpaid leave.

The provinces of Saskatchewan, Nova Scotia and Manitoba are the first to enact protections for reservists who require time away from employment. The federal *National Defence Act* also provides employees in the federal public service with periods of leave for reservist duties.

Note:

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* Prepared with the assistance of Isabell Grzesiowski, summer student, Miller Thomson LLP (Toronto).

The Saskatchewan *Labour Standards Act* provides that reservists are to be given an unpaid leave of absence for any period required to attend for active service with the reserve force or for training with the reserve force. The Act also provides that following a return from a leave, the employee must be returned to employment on the same terms and conditions and with no interruption of seniority or loss of any privilege connected with seniority. The Act expressly provides that an employer who is in breach of the military leave provisions must reinstate the employee and pay the employee for lost wages.

The Nova Scotia *Labour Standards Code* and regulations limit the leave provisions to employees who have completed at least one year of employment, and permit a leave of absence for service to be a maximum of 18 months in a three-year period. The Act also limits leaves for certain types of reservist training. The Manitoba *Employment Standards Code* entitles employees who have been employed for a period of seven consecutive months to an unpaid period of leave to accommodate the period of service, whether it be active service or for training.

In Ontario, a Private Member's Bill, which received first reading on May 16, 2007, sought to provide reservists with a two-year period of unpaid leave from civilian employment. The Bill died on the legislature floor at the ending of the session of Parliament.

REMINDER: CANADA DAY, JULY 2, 2007

The *Employment Standards Act, 2000*, provides that Canada Day is a statutory holiday. In accordance with the federal *Holidays Act*, July 2nd is the deemed to be Canada Day.

ABOUT THE AUTHOR :

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

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