

## Holiday Shopping - City of Toronto

### Application of *Employment Standards Act, 2000*, S.O. 2000, c. 14

Should retail business establishment currently not exempt under Section 3 of the *Retail Business Holidays Act* be allowed to open on a public holiday, there are employment protection provisions in the *Employment Standards Act, 2000* for employees who may not want to work on a public holiday.

#### **Retail Business Holidays Act, R.S.O. 1990, c. R.30 ("RBHA")**

Subsection 1.1(2) of the RBHA provides that despite non-application of the RBHA to the City of Toronto Part XVII of the *Employment Standards Act, 2000* applies as if the RBHA applies to the City and to retail business establishments located in the City.

#### **Employment Standards Act, 2000, S.O. 2000, c.14, PART XVII**

PART XVII **applies to** retail business establishments (premises where a retail business is carried on); employees employed to work in those establishments; and employers of those employees (Subsection 72(1) (a) – (c)).

PART XVII **does not apply** to retail business establishments in which the primary retail business is one that (a) sells prepared meals; (b) rents living accommodations; (c) is open to the public for educational, recreational or amusement purposes; or (d) sells goods or services incidental to a business described in (a), (b) or (c) and is located in the same premises as that business (Subsection 72(2)). Exemptions for opening on a holiday are provided for such retail business establishments under Section 3 of the RBHA.

**Right to Refuse Work** - An employee of a retail business establishment may refuse to work on a public holiday (Subsection 73(1)). Also, an employee may refuse to work on a Sunday (Subsection 73(2)).

**Notice of Refusal by Employee** - An employee who agrees to work on a public holiday or a Sunday may then decline to work on that day, but only if he or she gives the employer notice that he or she declines at least 48 hours before he or she was to commence work on that day (Subsection 73(3)).

**Reprisals by Employer Prohibited** – Pursuant to Part XVIII of the *Employment Standards Act, 2000* no employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so because, among other things: the employee asks the employer to comply with the *Employment Standards Act, 2000* and the regulations; makes inquiries about his or her rights under the *Act*; files a complaint under the *Act*; exercise or attempt to exercise a right under the *Act*; or gives information to an employment standards office under the *Act*. The onus of proof lies with the employer to show that the *Act* was not contravened. (Subsections 74(1) and (2))