



## Feasibility of Changing the City of Toronto's Policy on Statutory Holidays

**Date:** June 12, 2019

**To:** General Government and Licensing Committee

**From:** Executive Director, People, Equity and Human Rights

**Wards:** All

### SUMMARY

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The City of Toronto's current policy on Designated Holidays and Floating Holidays, and the collective agreement implementations of that policy provide for flexibility in accommodating requests by employees to observe religious days that are not among the 11 holidays designated by the City. The City's practice of allowing employees to use paid floating holidays, lieu time, applicable leaves, or other scheduling options meets the requirements of the *Ontario Human Rights Code* and is consistent with the approach taken by most public and private sector employers in the province.

### RECOMMENDATIONS

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The Executive Director, People, Equity and Human Rights recommends that:

1. The General Government and Licensing Committee receive this report for information.

### FINANCIAL IMPACT

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There is no financial impact resulting from the adoption of the recommendation in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

### EQUITY IMPACT STATEMENT

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All employees of faith currently have their religious holiday observations recognized equally. The City of Toronto continues to apply an equity approach by providing a variety of options to employees which allows them to observe a religious holiday other than those provided through legislation.

## DECISION HISTORY

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City Council, on March 27, 2019, requested the Executive Director, People, Equity and Human Rights, in consultation with the City Solicitor, to report back to the General Government and Licensing Committee in the second quarter of 2019 on the feasibility of allowing City staff whose religious holidays do not fall on statutory holidays to take their religious holidays off as paid time off work without using sick days, vacation days, or lieu time.

City Council on January 30 and 31, 2019, referred Motion MM2.7 to the General Government and Licensing Committee. [GL2.15 "Request for Report on the Feasibility of Changing the City of Toronto's Policy on Statutory Holidays"](#).

City Council on November 8 and 9, 2016, referred Motion [MM22.6 "Request for Report on the Feasibility of Changing the City of Toronto's Policy on Statutory Holidays"](#) to the Executive Committee.

This item was considered by Executive Committee on December 1, 2016 and was deferred indefinitely.

City Council on October 3, 4, 5, 6, 10, 11, 12, 2000, adopted [Report 19, clause 5 from the Administration Committee](#) recommending the adoption of the Personnel Sub-Committee report from September 12, 2000 on the Harmonization of Compensation Related Policies for Non-Union staff. That report contained the recommendations from the Executive Director of Human Resources on the initial Designated Holidays and Floating Holidays Policy following amalgamation. That policy implemented the clause that non-union employees are eligible for two (2) floating holidays in each calendar year which can be taken at a time that is compatible with the operational requirements of the division in which the employee works.

## COMMENTS

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### Designated Holidays and Floating Holidays

The City of Toronto currently provides the following paid days off to its employees:

- New Year's Day
- Family Day
- Good Friday
- Easter Monday
- Victoria Day
- Canada Day
- Civic Holiday
- Labour Day
- Thanksgiving Day
- Christmas Day

[Feasibility of Changing the Policy on Statutory Holidays]

- Boxing Day
- Remembrance Day (when Remembrance Day falls on a weekday)

Of the eleven paid days off, all but Easter Monday, Civic Holiday and Remembrance Day are provincial statutory holidays designated in the *Employment Standards Act*.

In addition to the eleven listed holidays, the City provides full time employees with two paid floating holidays annually which can be taken at any time in the year subject to operational requirements. Part-time employees are provided with one floating holiday.

These days are provided in addition to an employee's entitlement to paid vacation and any earned lieu time. In addition, the City has other leave options available to employees who require them and obtain divisional approval. For instance, the City's collective agreements with CUPE Local 79, TCEU Local 416 and CUPE Local 2998 (Association of Community Centres) provide for up to five (5) unpaid personal leave days each year, in addition to other leave provisions that are separate from the floating holidays. The City's agreement with TPFPA Local 3888 has a provision for unpaid voluntary leave at the request of the employee.

### **Current Practice for Creed Related Time Off**

Creed is a protected ground under the *Ontario Human Rights Code*. Creed includes religion as well as non-religious based belief systems. The City has a legal obligation to accommodate an employee's creed. The following excerpt from the City's Guidelines on Accommodation of Creed provides guidance with respect to creed related requests for time off.

#### **Time Off for Creed-Based Days of Significance**

Individuals may request time off to observe creed-based days of significance. Time-off requests may be accommodated by allowing the use of floating holidays, lieu time, applicable leaves, or other scheduling options. Vacation days should be used only as a last resort. There is no requirement to pay individuals for time not worked. Individuals who observe creed-based days of significance should make the request for time-off as early as possible. Management can take proactive steps to manage and anticipate creed-based requests for time-off, for example by developing and referring staff to a calendar or resources that sets out common creed-based holy days/observances, however such lists should not be viewed as exhaustive/definitive. The HRO [the Human Rights Office] has resources such as the Multifaith information manual that can assist management in assessing accommodation requests.

The City is committed to ensuring a diverse and inclusive workplace and routinely accommodates creed related requests for time off. As indicated, employees whose religious holidays do not coincide with the holidays provided by the City may use floating holidays, lieu time, vacation days, or unpaid days to take the required days off.

The City's practice of providing designated holidays and floating holidays is common in both the public and private sector in Ontario. The number of paid floating holidays offered by employers typically range from one to three.

In 2008, the Ontario Human Rights Tribunal in the *Markovic v. Autocom Manufacturing Ltd.* case held that there is no automatic right to two days of paid leave to reflect the days off for Christmas and Good Friday. Rather, the Tribunal endorsed individualized accommodation through flexible scheduling or the “menu of options” approach as an appropriate response to requests for religious observance leave. In essence the Tribunal found that the accommodation of religious observance will not require in all cases that employees be provided paid days off. Rather, the Tribunal found that by providing a process for employees to arrange for time off through options for scheduling changes, without loss of pay, an employer can satisfy its duty to accommodate. It is only where scheduling changes would create undue hardship that employers will be required to annually grant employees a minimum of two days of paid leave for religious observances. The City's current practice, is consistent with the menu of options approach endorsed by the Ontario Human Rights Tribunal.

## **Comparative Analysis**

A review of the practices of public sector employers revealed a range of similar practices.

For instance, permanent employees of the Ontario Public Service (OPS) may take up to three (3) paid days off for special or compassionate purposes. Those three days may be used for a number of reasons including bereavement and, where applicable, for religious observances.

The City of Vaughan allows employees to use up to five paid days from their accumulated sick leave days for "unforeseen personal needs." These five personal leave days may also be used for religious or cultural observances.

The Toronto District School Board provides five (5) miscellaneous paid days off per year to their teachers. These days can be used for religious observation, but are also used for other purposes such as attending family funerals, ill dependent days, or the birth of a spouse's child.

Most municipal employers in Ontario have implemented policies in which employees can request time away from work for religious observances and those requests are accommodated through scheduling changes, lieu time, flexible time options, vacation time or unpaid leave time. This approach is consistent with the requirements of the *Ontario Human Rights Code* and supported through Tribunal decisions. This is also consistent with the City's current practice.

Public sector employers do not appear to have a category of leave exclusively for employees who observe religions that do not celebrate Christmas or Easter on the statutorily designated days.

## Other Considerations

The *Ontario Human Rights Code* recognises creed as a protected ground. As earlier indicated, religion is an example of a creed. However, the creed protection also extends to agnostics and atheists. Any policy or practice adopted by the City cannot discriminate against people of different creeds.

While the goal of ensuring that employees of different creeds are afforded the opportunity to take paid time off for religious observance is a laudable goal there are a number of reasons why the City's current approach is preferred.

Firstly, the current process affords employees the opportunity to take up to two paid days off without requirement of proof of an observance and/or requiring the City to verify the employee's creed.

Secondly, the two floating holidays are available to all employees regardless of their religion or lack thereof. One could argue that the fact that the floating holidays are also available to employees who observe the Christian holidays that are designated holidays gives them a greater benefit than employees of other creeds. However, the City is legally required to provide all employees, regardless of creed, with Good Friday and Christmas Day off. If the City decided to provide employees of other creeds with paid time off for their religious observances, those employees would still get the benefit of the designated religious holidays. The City's current practice of giving designated days off and allowing two floating holidays for employees to use for a range of reasons, including religious observances, is a reasonable compromise.

Thirdly, the duty to accommodate does not require the City to provide as many days off as are observed by a specific faith. The duty to accommodate only requires that an employee's request for religious observance be accommodated.

The City has a diverse workforce and currently accommodates employees through a range of means. The City's current policies, practices and collective agreements support both an equitable and inclusive environment for religious and non-religious creed beliefs practiced by employees and is in compliance with the *Ontario Human Rights Code*.

If the City desires to provide additional paid days off for employees, the most advisable way to do so would be to provide additional days to all employees. It would not be advisable for the City to develop a program or policy whereby it would be required to verify employee's creed and days of observance. Doing so may expose the City to liability. For instance, employees who are not religious will not have access to the additional days. In addition, it is not advisable to place managers in the position of verifying employee's beliefs. A policy only available to employees that practice faiths whose days of observance are not currently designated holidays also raises questions such as:

- Must an employee actively practice the faith to be entitled to the days off?
- What about days of observance of an employee's spouse or children's faith?
- Are only the high holidays recognised or can an employee take the days off for any holidays relevant to their creed?

The daily cost of employment for all active employees in the City, using 2018 as the benchmark year, is \$8,849,466. The actual cost of permitting employees to take their religious holidays as paid days off would depend on the number of employees who are impacted and the number of religious holidays each employee is permitted to take each year.

One approach the City might consider is to adopt a program similar to the OPS, the City of Vaughan, or the Toronto District School Board whereby employees are permitted to use a designated number of days from an existing benefit, such as paid bereavement leave or ill dependent leave, for creed or cultural observance. As indicated, creating a new benefit that can only be accessed by employees who observe particular religions is not advisable.

It is worth noting that changes to the City's paid holiday policies may have operational impacts. For divisions with legislated staffing ratios, minimising absences is particularly important. As outlined in this report, the City currently provides a range of time off to its employees. The current policies and practices are aligned with best practices throughout the Province.

In conclusion, it should be noted that the CUPE Local 79 and TCEU Local 416 collective agreements expire on December 31, 2019 and the City will commence collective bargaining in the Fall of 2019, if it is decided that this matter has not been resolved sufficiently through this analysis, the preferable approach would be for this issue to be dealt with through collective bargaining.

## **CONTACT**

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## **SIGNATURE**

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