

MANITOBA LABOUR BOARD

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**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 12
EXEMPTION TO REQUESTS FOR LEAVE UNDER *THE ELECTIONS ACT***

This bulletin is intended to inform the community of the procedures which must be followed in filing of requests for exemption to the requirement to grant leave, pursuant to the provisions of ***The Elections Act***, C.C.S.M. c. E30, (the "***Act***"). An employer may request an exemption if he/she believes the leave would be seriously detrimental to the employer's operations [Section 18(1)]. This bulletin is provided solely as a guideline and does not necessarily reflect all aspects of the process.

Recent amendments to the ***Act*** require an employer, unless exempted under Section 19(3), to grant a leave without pay to an employee who:

- a. is a candidate;
- b. has been appointed an election officer or enumerator; or
- c. has been named an election volunteer by a candidate or a registered political party.

[See Section 14 of the ***Act***.]

A request for such leave must be made in writing by the employee to their employer not less than **five** days before the requested leave is to take effect [Section 15(1)]. The request for leave **must** contain a statement that the employer has the right to apply to the Manitoba Labour Board (the "Board") for an exemption to the requirement to grant leave within **three** days of receiving the request [Section 15(2)].

To request an exemption, the employer must apply in writing to the Chairperson of the Board within **three** days after receiving a request for leave from an employee [Section 18(2)].

When an application is received, the Chairperson of the Board and the Chief Electoral Officer shall together appoint a person to decide the application on an urgent basis. If possible, the person appointed shall be a retired judge [Section 19(1)].

The person appointed to decide the application is not required to hold an oral hearing but may make a decision on the basis of written submissions [Section 19(2)]. The decision is final and binding on both the employer and the employee and is not subject to appeal [Section 19(3)].

At the end of a leave, under Section 20(2), the employer shall reinstate the employee to the position occupied when the leave began or to a comparable position, with no less pay and other benefits than the employee was entitled to immediately before the leave began.

An employee who alleges a contravention may make a complaint to the Manitoba Labour Board under Subsection 30(1) of ***The Labour Relations Act***, C.C.S.M. c. L10, and the matter shall be dealt with as an unfair labour practice [Section 21].

Sections of *The Elections Act* Pertaining to Leave Provisions:

Leave without pay

14 To permit citizen participation in the democratic process, every employer must, if requested, grant a leave without pay to an employee who

- (a) is a candidate;
- (b) has been appointed as an election official or enumerator; or
- (c) has been named as an election volunteer by a candidate or a registered political party.

Written request

15(1) To request a leave, the employee must apply in writing to his or her employer at least five days before the requested leave is to begin.

Notice of employer's right to request exemption

15(2) The request must include a statement that, within three days after receiving the request, the employer has the right to apply to the Manitoba Labour Board for an exemption to the requirement to grant the leave.

Timing of request

15(3) A request for a leave may be made either before or after an election is called.

Part-time leave

15(4) An employee may request either a full-time or part-time leave. If the leave is part-time, the request must specify the days and hours of the leave requested.

Exemption if leave seriously detrimental

18(1) An employer may request an exemption from the requirement to grant a leave under section 14 if the employer believes that the leave would be seriously detrimental to the employer's operations.

Application for exemption

18(2) To request an exemption, the employer must apply in writing to the chairperson of the Manitoba Labour Board within three days after receiving the request for leave under section 5.

Decision maker

19(1) When an application is received, the chairperson of the Manitoba Labour Board and the chief electoral officer must together appoint a person to decide the application on an urgent basis. If possible, they must appoint a retired judge.

Procedure

19(2) The person appointed need not hold an oral hearing but may instead make a decision on the basis of written submissions.

Decision final

19(3) The decision of the person appointed is final and binding and is not subject to appeal.

Right to reinstatement

20(2) At the end of a leave, the employer must reinstate the employee to the position occupied immediately before the leave began or a comparable position, with no less pay and other benefits than the employee was entitled to immediately before the leave began.

Service continuous

20(3) For the purpose of vacation entitlements and pension and other benefits, the employment of an employee who has taken a leave is deemed to be continuous.

Employer's obligations

20(4) An employer must not, because of a leave taken by an employee,

- (a) dismiss, lay off, suspend, demote or transfer the employee; or
- (b) give the employee less favourable conditions of employment than he or she is entitled to, or diminish any benefit related to the employment that the employee is entitled to.

Complaints

21 An employee who alleges a contravention of section 14 or 20 may make a complaint to the Manitoba Labour Board under subsection 30(1) of *The Labour Relations Act*. The matter must be dealt with as an unfair labour practice under that Act.

Procedure

24.3(4) The person appointed to decide the application need not hold an oral hearing but may instead make a decision on the basis of written submissions.

Decision final

24.3(5) The decision of the person appointed under this section is final and binding on both the employer and the employee and is not subject to appeal.

Reinstatement

24.4(2) At the end of a leave under section 24.2, the employer shall reinstate the employee to the position occupied when the leave began or a comparable position, with no less pay and other benefits than the employee was entitled to immediately before the leave began.

Service continuous

24.4(3) For the purpose of vacation entitlements and pension and other benefits, the employment of an employee who has taken a leave under section 24.2 is deemed to be continuous.

Employer's obligations

24.4(4) An employer shall not, because of a leave under section 24.2,

- (a) dismiss, lay off, suspend, demote or transfer an employee; or
- (b) give the employee less favourable conditions of employment than he or she is entitled to, or diminish any benefit related to the employment to which the employee is entitled.

Complaints

24.4(5) An employee who alleges a contravention of this section or section 24.2 may make a complaint to The Manitoba Labour Board under subsection 30(1) of *The Labour Relations Act*, and the matter shall be dealt with as an unfair labour practice under that Act.

The Labour Relations Act

Complaint alleging unfair labour practice

30(1) Any employer, employee or other person, or any union or employers' organization, who or which alleges the commission of an unfair labour practice may file a written complaint in respect thereof with the board.

Copies of *The Elections Act*, C.C.S.M. c. E30, and *The Labour Relations Act*, C.C.S.M. c. L10, may be viewed on the Provincial Government website at <http://web2.gov.mb.ca/laws/index.php> and/or obtained from Statutory Publications, 10th Floor – 155 Carlton Street, Winnipeg MB R3C 1T5, phone: 204-945-3101.

If you require additional information, please contact the Board's office at 204-945-2089.
