“Get To The Working Overtime Part!”: Ontario Court Rules Against Employer In Class Action For Unpaid Overtime



After over a decade of litigation, an Ontario court has ruled that the Canadian Imperial Bank of Commerce ("CIBC") breached its overtime obligations under the *Canada Labour Code* (the "Code") to a class of approximately 31,000 tellers, personal bankers and other front-line workers across Canada. Full text of the decision can be found here, although we note that specific damages owing to employees have not yet been determined.

The core allegation at issue is that over the 16 years in question, CIBC’s overtime policies and recordkeeping practices contravened the Code and, as a result, employees were not appropriately compensated for their overtime work.

Under the Code, standard hours of work cannot exceed 8 hours per day and 40 hours per week. Where an employee is "required or permitted" to work more than the standard hours of work, they must be paid time and a half. The Code also requires that employers record the hours worked each day by every employee, and that they keep this information on file for a minimum of 3 years.

An employer is liable for "permitting" overtime hours if it knew or ought to have known that overtime hours were being worked, and failed to take steps to prevent the work.

Under the policy applicable at the time, overtime was only paid if an employee had received prior written approval from their supervisor or manager, except in "extenuating circumstances." In practice, however, employees were either regularly required/expected to work, or were not prevented from working, beyond their scheduled hours regardless of whether proper or formal was ever sought or granted (note: the facts showed that in many cases it was not).

Justice Belobaba held that class members did work unpaid overtime and the CIBC had permitted, or at minimum not prevented, the overtime – even in instances where no prior authorization was given – for the following five reasons:

1. The bank’s overtime policies contravened section 174 of the Code;
2. The bank’s failure to record actual hours worked each day contravened the Code Regulations;

3. The bank delegated the responsibility for the interpretations and enforcement of it overtime policy to branch managers without guidance or direction;
4. The bank knew or ought to have known that employees were working unpaid overtime; and,
5. The bank simply "looked the other way."

The court found that CIBC breached the overtime obligations under the Code as, rather than implementing a system to track and pay for all hours required or permitted, the bank made overtime compensation contingent on pre-approval. As a result, class members worked overtime hours that were not recorded or compensated in accordance with the requirements of the Code. The overtime policy was further found to have impeded overtime claims that were otherwise compensable under the Code.

In light of this decision, federally-regulated employers should carefully review policies and practices related to overtime and hours of work. Indeed, this cautionary tale applies equally in provincial jurisdictions as labour standards legislation (such as the ESA, in Ontario) will generally set out basic requirements regarding overtime. Whether you are a federally-regulated employer or you fall under provincial jurisdiction, if you require assistance in developing an effective overtime policy the lawyers at CCPartners are here to help.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

by Cristina Tomaino, CCPartners