# Helpful Legal Information for MAHCP Members

## When is an Employer Stopped from Changing an Employment Practice?

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**A common complaint for employees is that employers apply rules and practices differently depending on who is enforcing them.** Some managers will bend over backwards to accommodate an employee's need. Need, time to take your kids to the doctor? "No problem." Others aren't so accommodating. What can you do if you have enjoyed a benefit in your employment relationship and all of a sudden it's gone? Do employees have any rights when the employer unilaterally changes their policies and that change denies the employee a benefit that they may have enjoyed for years? The answer to that question is "sometimes".

Employers have the ability to terminate a practice not supported by the terms of the collective agreement. They are, however, restrained in this activity by the principle of "estoppel". Estoppel is where one person has promised another person something that he is not strictly entitled to and the beneficiary of that promise then takes the benefit offered and is then prejudiced when the first person later tries to strictly enforce the terms of the agreement to take back the benefit. **In order for estoppel to apply, the practice that forms the benefit must be clearly demonstrated.** The employee must demonstrate that the practice was intended to induce reliance and that the employee relied on the practice to his or her detriment.

Where estoppel arises in the context of a collective agreement, the practice interprets the appropriate provision of the collective agreement. The logic there is, why would the employer have agreed to a certain practice unless they interpreted the collective agreement in such a way as to impose that form of practice. The provision of the collective agreement on the issue at hand must be ambiguous so as to support the meaning that the employer has given it.

Where the provision of the collective agreement on the issue is clear and unambiguous, the employer may have the right to change the practice so as to accord with the terms of the agreement. The employer can, in this circumstance, be said to have been "forbearing" on its rights and can end that forbearance at any time.

One example of where the issue of estoppel might arise is vacation accrual. It may be that an employer allowed accrued vacation time in excess of that allowed by the collective agreement. Where an employee has relied on the practice to be able to accrue vacation beyond that allowed under the agreement, the employer is not suddenly allowed to eliminate the days beyond the accrual period. But where the employer provides reasonable notice to the union and employees that vacation accrual beyond that allowed under the collective agreement will no longer be allowed, the practice can be changed.

The employer must be reasonable and fair in providing such notice of the termination of the practice. Where the notice is discrete and clearly spells out the practice that is to be altered, that is arguably reasonable in the circumstances. Where that notice is to something broad and vague, or, in the words of the arbitral jurisprudence, "ambiguous" and able to support more than one meaning, the notice may not be appropriate.

**Estoppel is defined as "a legal doctrine that prevents a person who made a promise from reneging when someone else has reasonably relied on the promise and will suffer a loss if the promise is broken."**

*This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.*

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