

# The “Women’s Strike”: What employers need to know

*On March 8, women around the world are abstaining from work and shopping in protest. Here’s how companies should handle it.*

Mar 7, 2017 **CB Staff**



*A crowd marches in solidarity with the Women’s March on Washington, outside the Alberta Legislature in Edmonton, Alta., on Saturday January 21, 2016. (Jason Franson/CP)*

On March 8th, **International Women’s Day**, women (and some men) around the world won’t be showing up to work. Organized as a follow-up to January’s **Women’s March on Washington**, the one-day walk-out—called the **International Women’s Strike**, or **A Day Without A Woman** in the U.S.—will see participants opting out of paid or unpaid labour, curtail spending (unless it’s at women- or minority-owned businesses) and wear red. The broad goal is to illustrate the importance of female work on the global economy.

It’s impossible to predict how widespread the one-day strikes will be, but judging by the massive participation around the world in January’s marches, there’s reason to expect this will be more than a fringe pursuit. And that means many employers in Canada (and elsewhere) might find some of their employees absent for a day.

Should a company support the movement, or reprimand those who participate? How can a manager proceed with business as usual if a good portion of employees don't come to work for a day? Some companies, like **Toronto-based Hubba**, reportedly **gave staffers the pre-emptive OK** to duck out for a day, with no loss of pay or no need to take vacation. Other employers anticipating mass participation, **including some school districts in the U.S.**, are shutting down entirely for the day.



### **How workplaces punish women for being ambitious**

It's a sensitive topic that even managers sensitive to the cause find tricky to navigate—especially if they operated in non-union environments and are unaccustomed to labour disruptions. So we asked a panel of employment and labour experts to provide some insight on how employers can—and should—handle the Women's Strike. Here is their best advice:

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### Learn the legal lay of the land

“I think it's important to note that what's being discussed isn't a strike—at least not in official terms. If we go back to first principles, a strike is a tool used in a unionized environment, where unionized employees will leave *en masse*. What we're dealing with here is a political statement, which seems to be mimicking general strikes of earlier decades.

“In terms of rights, the employee doesn't have the right to express political beliefs on employer time. [In Ontario], the **Employment Standards Act** allows for leaves of absence for various purposes—emergency leave for medical

problems, children in need, that kind of thing. But there's nothing from a statutory standpoint that gives an employee permission to leave to express their political opinion at employer expense.

“It is important to note that a single day of absence would not be a just cause for dismissal—but if employers are unwilling to support their employees in the strike, they might send a letter notifying the employee that further absence could result in eventual dismissal.”

—**Allison L. Taylor**, *employment lawyer*, *Stringer LLP Management Lawyers*,  
*Toronto*

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### Accommodate—to a degree

“Certainly I think that there's no legal obligation upon an employer to have to provide a full paid day off in order for an employee to protest. But I think it depends on the job, and the employer can certainly be accommodating and can find a mutually agreeable solution.

“The employee could take it off as a vacation time; if they needed to, they could take sick leave. Or the employer could give the day to them as time in lieu thereof, and have them make it up another time. It really depends on the organization. The real point is, there is no legal obligation upon an employer to fund an employee's political protesting.

“I know many employers would be very happy to support this kind of thing, and would have no concern whatsoever doing so, but if the workplace is seriously depleted, there would have to be a make-up time. The work still has to get done, and it does create a bit of a business issue if there's no one to do the work. I think employers can be flexible, I think they can allow employees

the right to demonstrate, but at the same time acknowledge that the work does need to get done at some point.”

—**Natalie C. MacDonald**, managing partner, *Rudner MacDonald LLP*,  
Markham, Ont.

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## Think of the optics

“There’s a big difference between what an employer can do and what they *should* do. Protests of this nature don’t constitute a legal strike for unionized workers, and the concept of striking in the strict sense doesn’t exist for non-union workers. Whether you’re unionized or not, it’s really an employee being absent from work without a justifiable excuse, so how are you going to treat that? Maybe you fire the workers or, if applicable, go after the union, but do you want to be the employer punishing and creating negative blowback because employees are showing solidarity for women? I wouldn’t counsel any of my clients to do that.

“That said, if I were an employer seeing this coming down the pipe, I would do everything I can to protect my business. That includes canvassing people—asking if they plan to take time off for this, and get that information on the schedule.

“I might also think of reviewing the social media policy, considering how off-duty conduct could impact the company’s brand management. If you run a McDonald’s, and an employee is engaging in a day of protest, make sure they’re not out wearing their McDonald’s uniform while they do it, regardless of whether or not you as a manager support the cause personally. You don’t get to pick and chose.”

—**Shana French**, *employment and labour lawyer, Sherrard Kuzz LLP, Toronto*

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## Don't retaliate

“It’s tricky, because for many people disrupting workflow *is* the intent. The whole point is to show employers and the state the reality that women’s labour—both paid and unpaid—is undervalued. And while this is technically an illegal strike, I think companies have to be careful around retaliating against workers who chose to engage with it. If companies are seen firing, suspending, demoting women who protest it could cause backlash from consumers or related companies [they do business with].

“I think frankly, employers should try to embrace the idea behind this, especially if the company has any pretense of being a feminist organization or treating women’s rights as a priority, whether it’s in their corporate culture or their customer relations. Those companies would find it really difficult to oppose a one-day walkout in this regard.

“Another factor is companies [that punish protesting employees] could be viewed as retaliating against political statements, which in some jurisdictions are protected under the human rights legislation, and that can get really hairy. It’s all about optics, and taking an openly antagonistic stance against the workers wouldn’t play well.”

—**Christo Aivalis**, *Professor of Canadian Political and Labour History at Queen’s University, Kingston, Ont.*