

It's the thought that counts: Some little-known laws about gift cards

by: Derek Cullen, Partner

published May 10, 2024

Gift cards are everywhere. You see them at the checkouts. Sometimes they arrive in your stocking. Often, they end up in the bottom of your purse or your glove compartment. According to some retail sources, half of all issued cards currently have a balance on them, and some 10% of them are never redeemed at all.

There are two ways to look at them. On the one hand, a thoughtful gesture to ensure that you don't buy the wrong thing. On the other hand, a cynic would say that they are the new currency of a generation of lazy gift givers that burden the recipient with the decision making, and the parking, and the shopping, all at a location of the givers choosing, all so that the givers can feel better about themselves.

Whatever side of the etiquette you see, there are legal nuances to gift cards that many may not know about. Here are five that may surprise you.

1. **It might expire.** Pursuant to consumer protection laws, most store gift cards cannot expire. However, "service specific" gift cards can have an expiry. For example, a gift card to Walmart has no expiry, but a gift card specifically for a manicure to your favorite salon might. If you get one of these, check the date.
2. **Promotional Cards.** Where a business offers a certificate or card for promotional purposes (no money was paid for it), they can time limit it as well. So, when a business offers a gift card as a prize for a golf tournament, they may time limit it. Again, check the date.
3. **It may be a taxable benefit to an employee.** Depending on the type and the amount, gift cards from an employer to an employee might be treated as taxable income. A card for a specific store that cannot be redeemed for cash or near-cash items is exempt, but a Visa debit card, or a mall-wide gift certificate is taxable. That means that income tax must be taken off, as well as Canada Pension Plan (CPP) and Employment Insurance remittances on them, and a T4 slip issued. There are annual limits as well (\$500) even on the non-cash amounts.

4. **Additional fees may apply.** Retailers cannot charge a separate fee for the card but may charge a fee to replace it if lost or to customize it (i.e., print a name or photo on it). Single retailers are not allowed to charge an annual fee to have it on standby for not being used, but a retail group of stores may charge \$2.50 per month stand-by fee after a year. This means that a \$25.00 gift card to Shoppers Mall, for example, may get used up within a year or two if it is not redeemed.
5. **It may not carry over to new owners.** If a business changes hands, depending on how it was structured, the subsequent owner may not have to honor the previous owner's gift cards. This generally does not apply to national chains whose franchisees are expected to honor them, or in cases of a sale of the shares of the business, but a mom-and-pop who takes over the local restaurant in an asset sale do not have to honor the previous owner's gift cards. Preserving customer goodwill might require it but the law may not.

Getting that gift card from grandma or your employer for the holidays is as predictable as the menu for Christmas dinner. You will act appropriately surprised, and they will act as if you are so hard to buy for. It may be the thought that counts ... just don't count on it being tax-free, good indefinitely ... or actually getting used.

DISCLAIMER: *This article is written for informational purposes only and does not constitute legal advice. The views expressed are solely the author's and should not be attributed to any other party, including Meighen Haddad LLP. If you want to seek legal advice, please contact the author directly or call our office at (204) 727-8461.*

The Author:
DEREK CULLEN
Partner
dcullen@mhlaw.ca
204.725.8767