Employer Dismisses Pregnant Employee Based On Facebook Post: Ontario Human Rights Tribunal Awards $37,849 To Complainant



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In *Iskander* v. *2363327 Ontario Incorporated and Primeau*, 2024 HRTO 1122, the Ontario Human Rights Tribunal allowed a complaint alleging prohibited discrimination in employment on the basis of sex, including pregnancy and sexual harassment. The complainant, Kristina Iskander, testified that she believed she was dismissed from employment because she was pregnant. The Tribunal found the respondents to have breached the *Human Rights Code*, R.S.O. 1990 c. H. 19 (the "*Code*") and awarded $37,849 to the complainant.

On April 15, 2018, the complainant was hired as a cook at a restaurant run by the corporate respondent, 2363327 Ontario Incorporated (the "Company"). The individual respondent, Richard Primeau, was the Company's owner and sole director and officer. The complainant reported directly to Mr. Primeau and his spouse.

The Tribunal emphasized that the respondents chose not to participate in the Tribunal's process and refused to comply with its directions. As such, the Tribunal could rely only on the complainant's materials and evidence. The Tribunal found her testimony to be consistent with her complaint and therefore accepted the allegations as set out in the complaint.

During the hiring process, the parties discussed that the complainant was pregnant and required sufficient hours of work to ensure she could qualify for Employment Insurance (EI) maternity and parental leave benefits on the birth of her child (the "Benefits"). The parties agreed that the Company would provide the complainant with full-time or nearly full-time work following a brief ramp-up period.

Following the complainant's first week of work, she sent Mr. Primeau a text message about her future work schedule to ensure she would have enough hours to qualify for the Benefits. In response, Mr. Primeau terminated her employment with the following message:

Yes, unfortunately we will not need you anymore We hired a new Cook as a casual and we understand that as per your Facebook you will be leaving after the baby is born so we had to take that decision.

Best of luck Richard and Laura

[*Sic.*]

The respondents claimed that the decision to dismiss the complainant from employment was informed by the following Facebook messages between her and one of her relatives:

Kristina Iskander: Hey Peeps!! Looking for 3 cooks for May 19th One time gig more opportunities in the future for an event in Ottawa!

Mary Hopley: Are you back in Canada.

Kristina Iskander: Just for a bit.

[*Sic.*]

In response, the complainant testified that she had never discussed her post-maternity plans or indicated that she would not be returning to work with the Company after her leave. Further, she testified that she had not yet told her relative that she was pregnant or that she had returned to Ottawa after living abroad. The complainant's evidence was that the respondents had not asked her about the Facebook post or her post-maternity plans before terminating her employment.

Despite ongoing efforts to find another job, the complainant was unable to secure new employment before giving birth in July 2018. As such, she was forced to rely on personal savings and family support which she found to be embarrassing.

The respondents failed to provide an alternative explanation for the events at issue in the complaint and were deemed to have accepted the complainant's allegations. The Tribunal found the complainant's version of events to be true and credible and held that her *Code*-protected rights were breached by the respondents. The Company and Mr. Primeau were held jointly and severally liable for the breaches.

With respect to remedy, the Tribunal awarded $15,000 as compensation for injury to dignity, feelings and self-respect, $7,499 for lost wages, and $15,350 for lost benefits.

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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.

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