

# Is Firing Employee Right After Finding Out She's Pregnant Automatically Discrimination?



On Monday, an employee announces that she's pregnant and will be taking maternity leave. Just a few days later, she gets fired. It sounds like an open-and-shut case. The employer clearly committed pregnancy discrimination. Right? Not necessarily. While the timing is highly suspicious, it could also be just a coincidence. Liability hangs on the employer's ability to prove that the decision was already made (or in the works) and based on legitimate, nondiscriminatory reasons having nothing to do with the employee's pregnancy. Here are 2 cases illustrating what an employer must do to meet that burden.

## Case 1: Firing WAS Pregnancy Discrimination

### Situation

A successful sales VP at the BC branch of an Ontario-based payment processing firm told her boss that she was pregnant and going on leave in 3 months. The very next day, the firm notified her that it was eliminating her job. The firm acknowledged that its timing was poor but insisted that it was losing money and had already decided to close the BC branch 2 weeks earlier. But the VP didn't believe it and sued.

### Ruling

The BC Human Rights Tribunal found the firm liable for pregnancy discrimination and ordered it to pay the VP \$3.125 for lost wages and \$8,000 for injury to dignity, feelings and self-respect.

### Reasoning

The timing alone suggested a "nexus" between the pregnancy and the firing. The explanation that the firm was struggling and had laid off other employees, while true, wasn't enough to disprove the suspicion that the VP's pregnancy was an "operative factor" in the decision to terminate her, the Tribunal reasoned, citing:

- The VP's great successes at the firm;
- Her lack of prior discipline or warnings; and
- The promotions and positive feedback and job performances she consistently got.

The Tribunal concluded that the firm probably was contemplating closing the BC branch and that the VP's pregnancy provided the perfect occasion to put the plan into operation.

*Kooner-Rilcof v BNA Smart Payment Systems and another*, 2012 BCHRT 263 (CanLII)

## **Case 2: Firing Was NOT Pregnancy Discrimination**

### **Situation**

A hair and nail colourist announced her pregnancy on December 22; on December 27, she got terminated. The salon contended that the timing was just a coincidence and that she was fired for longstanding performance issues.

### **Ruling**

The Ontario Human Rights Tribunal found no pregnancy discrimination and tossed the case.

### **Reasoning**

While the timing was suspicious, this wasn't a situation where a highly effective employee was fired totally out of the blue without warning the day after announcing she was pregnant. In finding that pregnancy didn't factor into the decision to terminate, the Tribunal noted there was credible testimony and records in the colourist's file, including 3 disciplinary letters over her 6 months of employment, detailing her:

- Inadequate performance;
- Ongoing difficulties in completing colour treatments in a timely manner; and
- Problematic interactions with clients, colleagues and supervisors.

*Fleming v Salon 130 Inc.*, 2015 HRT0 743, CHRR Doc. 15-1243