Termination Days After Pregnancy Announcement was Discriminatory



It’s a business reality that sometimes workers need to be terminated for valid reasons relating to their performance, a decline in business or the worker’s inability to meet the requirements of the job. But how and when you terminate that worker is the difference between a proper termination and damages for wrongful dismissal or discrimination claims. Here’s how one employer came so close to avoiding damages—and why it didn’t succeed.

THE CASE

What Happened: An office receptionist was out of work on pregnancy leave from March 2011 through February 27, 2012. In August 2012, she was transferred to an affiliated company to help with an inventory and fiscal year-end activities. She announced later that month that she was again pregnant. She was not scheduled to work the day after her announcement, a Thursday, and she was told she needn’t come to work that Friday before a holiday weekend. One day after returning to work after the holiday weekend, the employer terminated her employment. The employer claimed she was terminated because business conditions were declining and there was insufficient work to keep all the employees busy, she didn’t have the same experience and skills as other workers and she was unable to work Thursdays and weekends, while no other employee similarly limited their hours. Additionally, management said it believed she was looking to leave the company anyway because her resume was found on a printer at the office and she was openly pursuing a real estate career and even took leave to attend real estate courses. The employer said that for all these reasons it had decided to terminate her much earlier but deferred the termination because the affiliated company needed help with its year end activities so it decided to transfer her to that company temporarily before terminating her.

What the Tribunal Decided: The tribunal ruled the timing of the termination made it more probable than not that her pregnancy was a factor.

The Tribunal’s Reasoning: The tribunal found ample non-discriminatory factors supporting termination such as a decline in business and a lack of work, the worker’s apparent search for another job and future plans for a real estate career, as well as her inflexibility with scheduling and lesser skills and experience than some other workers. But, the tribunal also said there wasn’t a satisfactory explanation for why the termination happened when it did, so close in time to her pregnancy announcement. There was no evidence the year-end process was wrapping up and the worker was no

longer needed. And there was “absolutely no evidence that explains the timing of the decision” to terminate. There was only testimony from one administrator that the employer had made a decision to terminate the worker before she announced her pregnancy. Therefore, because the termination occurred so close in time to the pregnancy announcement, and there was no other explanation for that timing, the tribunal found it more probable than not that the pregnancy was a factor. The tribunal also inferred that if she was truly going to be terminated earlier but was kept on only to help with the inventory and year-end activities, she would have been retained until the fiscal year end in September. Thus, the tribunal ruled that the worker was entitled to wages she’d have earned through the end of September [*Huang v. High Life Heating, Air Conditioning & Security Inc.*, [2014] HRTO 1356 (CanLII), Sept. 12, 2014].

ANALYSIS

Timing is everything! And so is documentation. This employer had a sturdy leg to stand on with its evidence of the company’s decline, lack of sufficient work, the worker’s apparent search for another job and her limited availability and skills. But it all fell apart because of the timing of the termination and lack of any documentation to fully support the fact that the employer had planned this all along, before the worker announced her pregnancy. Remember that a discriminatory reason need only be one factor in a termination. So, the lesson is if you are going to retain a worker for some reason *after* you’ve decided termination is inevitable, make sure you thoroughly document your review of her employment and the decision making process that led to the decision to terminate, including the timing of decisions—whether it be via memos between administrators or a record of any meetings or discussions concerning the decision to terminate. That way, if your timing becomes unfortunate due to unforeseen events that can serve as grounds for a discrimination claim, such as a pregnancy, you may have evidence to rebut the suspicious timing of your termination.