



**Why You Should Re-consider
Terminating a Pregnant
Employee**

If you're thinking about terminating a pregnant employee, no matter the reason, you should know it doesn't come without certain risks and repercussions in Ontario. First off, it contravenes Human Rights legislation to terminate an employee for any reason related to her pregnancy, second it's more costly to terminate a pregnant employee because you must consider they will suffer additional hardship and damages, and finally you should be cognizant of the message this action sends to the rest of your staff.

We break down these factors to give you the important aspects to review and consider before handing out a termination letter. Although it can be difficult to terminate a pregnant employee without serious financial or legal consequences, it is by no means impossible.

Pregnancy is a protected ground under Human Rights

If you terminate a pregnant employee she may make a claim under Human Rights, in which the onus will fall to the employer to prove the termination was in no way related to the employee's pregnancy. To demonstrate this point, consider how you would answer the following questions. Please note, these are likely questions you would face at a Human Rights hearing.

- Why was this employee chosen for termination over others?
- Was she the only employee terminated, or is this part of a group termination?

- Are any other employees in the work group at the same or lower seniority and skill level that were not let go? Could she have performed their duties?
- Are you currently hiring for other positions? Was she considered for any of these positions?
- Was there an alternate position she was qualified to perform on an interim basis to bridge her to the maternity leave, either in this department or other locations?
- Are you planning to re-hire a replacement for this employee's position in the near future?

If the termination is the result of poor performance and the pregnancy is coincidental, you should be prepared to answer these questions:

- Do you have thorough performance documentation on file with the employee's acknowledgement?
- Did you only start disciplining the employee for these performance issues after she became pregnant?
- Could these performance problems be related to a medical condition, as a result of her pregnancy, which you should be accommodating (i.e. morning sickness, mobility constraints, fatigue, etc.)?
- Are you treating this employee consistent with the way you have treated others with performance problems?

Legitimate circumstances do exist that would justify the termination of a pregnant employee, such as the closure of the business or branch location or job elimination provided there were not reasonable alternatives to termination (as suggested in the questions in Part 1 above). However, you still need to be prepared to demonstrate and justify the legitimacy of your actions should you receive a complaint.

Additional Hardship and Damages

Employers should recognize that an employee who is pregnant will likely suffer more hardship and damages as a result of being terminated, than an employee who is not.

For example:

- The pregnant employee may not collect enough insurable hours due to premature job loss which could affect her eligibility for maternity/ parental leave benefits
- A visibly pregnant woman would have greater difficulty securing permanent employment (greater than an employee who is not pregnant) and may not become re-employed or be forced to take lower paying temporary work to bridge the gap to her maternity leave
- If the employee is unable to find suitable employment, she may have to start collecting employment benefits (EI) which will reduce the length of time she can receive maternity/ parental benefits once the baby is born

- Due to the termination, the employee will likely not be covered by the company benefit's plan beyond the minimum notice period. The loss of benefits during pregnancy is particularly damaging since the employee will need her health benefits at this critical time
- Had the employee not been terminated, her job would have been protected for up to one year while on maternity/parental leave and she would have the right to resume her former position or one of a comparable nature once her leave was complete. As a result of the termination the employee has lost her re-employment rights.
- There are other less tangible impacts that should be considered. The most important of which is the added mental stress and anxiety being terminated would cause a pregnant woman.

Ultimately, the greater the personal damage the employee can prove (based on the factors listed above), the greater the expense could be for the employer in the form of settlement costs, legal fees and time spent fighting the claim.

Employee Perceptions

This type of termination may be viewed by other employees as unfair, unnecessary or unreasonable which could affect your employee's morale. Many organizations preach "fostering a positive work environment" and "creating a respectful workplace" as part of their corporate values. Employee handbooks often include a

policy on Human Rights and Equal Opportunity Employment. It would appear rather insensitive to terminate a pregnant woman without justifiable reason and leaves other employees wondering “How would I be treated if I was pregnant or became suddenly ill or disabled?” Simply put, be sure your actions are consistent with your corporate beliefs. Inconsistencies between policy and practice can disengage your employees and result in unmanaged turnover and low morale.

The best advice is to consider other alternatives prior to terminating and above all, proceed with caution and compassion.

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