



## Ontario Court awards human rights damages in wrongful dismissal action

October 1, 2013

The Ontario Superior Court has awarded human rights damages in a civil action for wrongful dismissal. In *Wilson v. Solis Mexican Foods Inc.* (September, 2013) the Court relied on the 2008 amendments to the Ontario *Human Rights Code* which allow discrimination claims to “piggyback” on other claims in civil proceedings, such as wrongful dismissal. In addition to being awarded three months salary in lieu of reasonable notice, the employee was awarded \$20,000 for compensation for the infringement of her human rights.

Wilson, a business analyst, was dismissed without cause after 16 months of employment and provided two weeks pay in lieu of notice. The employer claimed that the termination was based on a corporate re-organization which resulted in many of Wilson’s job functions becoming redundant. Wilson alleged that her dismissal was based on her physical disability consisting of temporary back problems. After being absent from work for a few weeks due to her back, she sought a graduated return to work with accommodations recommended by her physician. Instead of considering the employee’s request for accommodation, the employer insisted that there be a “complete recovery” and the employee be capable of returning to full-time hours and full duties before making the transition back to the workplace. The employee did not return and shortly after received a letter from her employer terminating her employment as a result of “organizational changes”.

Based on the evidence at trial, the Court had little difficulty concluding that Wilson’s physical disability was a significant factor in the termination. The Court found that her right to equal treatment had been violated, and that she had been denied her right to be free from discrimination. The Court took into account the seriousness of the employer’s breach of the *Human Rights Code*, and its failure to meet the common law obligation to act fairly when dismissing an employee. Wilson was awarded \$20,000 as compensation for violation of her human rights.

### **In Our View**

In an earlier decision from March 2013 (*Berkhout v. 2138316 Ontario Inc.*), an Ontario Small Claims Court judge, in addition to finding that the plaintiff’s employment had been terminated because she had complained of sexual harassment and awarding damages for “unlawful dismissal”, awarded \$15,000 for violation of the plaintiff’s human rights. An appeal of the *Berkhout* matter is scheduled to be heard in January 2014.

Employers can expect to see more discrimination claims coupled with other claims in civil actions for wrongful dismissal. The decision serves as a caution to employers that temporary ailments and



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illnesses are considered to be disabilities under human rights legislation. Employers are under an obligation to accommodate such disabilities to the point of undue hardship. Most importantly, disability cannot play even the most remote factor in the decision to terminate employment.

For further information, please contact [Kecia Podetz](#) at 613-940-2752.