



What's New in HR Law

Dismissal following lengthy unauthorized absence not discriminatory, says HRTO

July 22, 2019

Summary

In *Joseph v. Tecumseh Community Development Corporation*, [2019 HRTO 635](#) (“Joseph”) the Tribunal dismissed an application made by an employee whose employment was terminated for unauthorized absenteeism and insubordination. Although the applicant was specifically asked to provide medical documentation substantiating her absence or return to work, she failed to comply with these directives. The applicant asserted the termination of her employment amounted to discrimination on the basis of family status. However, the Tribunal ultimately found the applicant failed to provide any medical evidence to substantiate this claim.

Factual Background

The applicant in *Joseph* worked as a Business Development Officer for the respondent employer. Soon after the applicant was required to report to a new General Manager, their relationship began to deteriorate. Over the subsequent months, the applicant raised concerns with respect to scent sensitivity, but did not provide the employer with evidence to substantiate her claim.

Some time later, the applicant requested a medical leave of absence indicating she had been caring for her son, who had experienced a serious mental health crisis. The employer granted

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the leave, which was later extended at the applicant's request. In spite of this, the applicant contacted the employer's Board president and raised human rights concerns regarding her alleged scent sensitivity and disclosing her son's circumstances. The following month, the applicant requested an extension of her leave of absence; however, no supporting medical documentation was provided.

The employer took the position the leave was unauthorized, and that unless the applicant provided adequate medical documentation to support her request, the employer would consider her to have abandoned her position. While the applicant submitted a letter from a psychiatrist regarding her son's condition, she failed to provide adequate medical documentation substantiating her own request for a medical leave. The applicant's employment was ultimately terminated for cause.

The Tribunal's Decision

Before the Tribunal, the applicant argued she had been discriminated against on the basis of disability, family status, and had experienced reprisal. However, the Tribunal dismissed all allegations, including the allegations of reprisal.

The Tribunal pointedly noted that the applicant was "entrenched" in her position about her rights under the *Human Rights Code*, and misguidedly felt she did not have to report to her manager or comply with her employer's directives. In essence, the Tribunal found the applicant failed to appreciate that accommodation is a two-way process. Helpfully, the Tribunal reiterated that employees are required to cooperate with their employers' efforts to accommodate. In this case, the applicant's failure to comply with her employer's reasonable request for information to substantiate her leave was a justified basis for her dismissal.

Check the Box

This decision provides helpful guidance regarding what the Tribunal may consider reasonable efforts to accommodate employees requesting a leave for medical or family status reasons. Of particular relevance to employers is that the Tribunal determined that the applicant could not rely on after-the-fact evidence about her family status responsibilities and her health situation in order to establish discrimination under the *Code*. Rather, the reasonableness of an employer's accommodation efforts will be based on the evidence available to the employer at the time the decision was made.

Need more information?

Should you need more information about human rights and workplace accommodation matters, please contact [Giovanna Di Sauro](#) at 416-408-5513 or your regular lawyer at the firm.

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