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# e2r Alert

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## Pregnancy impacts reasonable notice period – 5 months' notice awarded for only 4.5 months of service

A recent Ontario decision provides a vital reminder to employers about the importance of an enforceable termination provision and the risks associated with terminating pregnant employees.

In *Nahum v. Honeycomb Hospitality Inc.*, a 28-year-old employee with only 4.5 months of service was terminated without cause; she was five months pregnant at the time.

Unfortunately for the employer, the employee's contract did not contain an enforceable termination provision and the court was required to assess the employee's common law reasonable notice period. The main issue was whether the employee's pregnancy should be a factor in determining the reasonable notice period. The employee argued that the court should simply recognize that it will generally take pregnant jobseekers a longer period of time to find a new position. The employer argued against this because it could lead employers to shy away from hiring pregnant candidates or candidates likely to become pregnant out of fear it will cost more money to terminate them.

The court ultimately agreed with the employee and found that, generally speaking, pregnant jobseekers face additional challenges when looking for work. Therefore, pregnancy is a relevant factor to be considered when determining an employee's reasonable notice period.

Accordingly, the court awarded the employee five months' reasonable notice – longer than the employee was actually employed!

Of note, reasonable notice would not have been an issue had there been an enforceable termination provision.

We encourage our clients to reach out and speak to an e2r® Advisor prior to conducting any termination so we can assess the potential risks and exposure. Furthermore, we also encourage our clients to have an e2r® Advisor review any employment agreements being used to determine whether the termination provision meets the seemingly ever-changing requirements established by the case law.