



e2r Alert

\$25,000 Awarded to Employee Who Was Terminated for Raising COVID-19 Concerns

A recent Ontario Labour Relations Board (the “Board”) decision confirms that employers will have to pay significant damages in the event an employee is terminated for raising health and safety concerns related to COVID-19.

In *Flores v. Scotlynn Sweetpac Growers Inc.*, the employer hired seasonal workers from Mexico every year to work on their farm. Employees were placed in apartments with thirteen (13) of their co-workers. There was a COVID-19 outbreak at the farm, and one of the employees tragically died of COVID-19. After the death, one employee told a supervisor the farm needed to take better care of the workers. The following day, the owner allegedly confronted the employee and accused him of talking to the media about his safety concerns. The owner told the employee he was being sent back to Mexico and paid for a flight to Mexico. The employee left the farm but remained in Ontario. A few months later, the farm offered re-employment to the employee, but the employee refused.

The employee filed a complaint with the Board alleging he was terminated for raising safety concerns.

In its decision, the Board stated that the employee’s comment to the supervisor indirectly invoked the employer’s duty to take every reasonable precaution in the circumstances to protect the health and safety of workers. The Board further stated there are “no magic words” required for employees to engage their rights under the *Occupational Health and Safety Act*. The Board concluded the employee’s employment was terminated when the employer booked the employee’s return ticket to Mexico. The Board also concluded the reason for the termination was because he raised health and safety concerns. The Board also pointed out the employee was terminated one (1) day after raising the safety concerns to his supervisor.

The Board ordered the employer to pay the employee more than \$25,000 in damages for lost wages, loss of future earnings, and pain and suffering. The Board concluded the reprisal was serious in this particular context because of the power imbalance between the employee and the employer. It is also worth mentioning, the employee did not speak English and relied on the employer for wages, shelter, and transportation.

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In addition, the Board did not reduce the damages because the employee refused to accept re-employment. The Board noted that it was reasonable for the worker to refuse re-employment without assurances from the employer that it would correct the health and safety issues raised by the employee.

Employers should take note of this decision, in particular because the employee made a general comment about health and safety – he did not raise any specific concerns. Yet, the Board found that this comment was sufficient to trigger the employer's obligations under the *Occupational Health and Safety Act*. This decision is also one of the first decisions in which an employee has been awarded significant damages for reprisal during the COVID-19 pandemic.

We strongly recommend you reach out to e2r® to speak to an Advisor prior to conducting any terminations, particularly in this volatile climate.