

Termination for Failure to Follow COVID-19 Policy Not Discriminatory

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Ontario's Divisional Court has dismissed an application for judicial review by a former personal support worker who alleged that the termination of his employment was discrimination on the basis of perceived disability and "discrimination by association." The Court affirmed the decision of the Human Rights Tribunal of Ontario (the HRTO), which had dismissed his application on a summary basis.

Prince Owodorum was employed by the Vita Community Living Services and Mens Sana Families for Mental Health facility (Vita) when he came into contact with COVID-19 in June of 2020. Vita provides care and support services to adults with disabilities. Vita removed him from his shift and told him to isolate and test for COVID-19.

Mr. Owodorum's spouse was also an employee of Vita. Mr. Owodorum did not tell his spouse that he had been exposed to COVID-19 and had been instructed by Vita to isolate. As a result, she continued to report for work at the facility. Vita took the position that Mr. Owodorum had failed to follow its COVID-19 policy and terminated his employment. Mr. Owodorum initiated an application to the HRTO, claiming that the termination of his employment constituted discrimination against him on the basis of his perceived disability and that he had been discriminated against on the basis of his association with his wife, who had been the subject of complaints when she continued to come into work after Mr. Owodorum had been instructed to isolate. The HRTO dismissed his application as having no reasonable prospect of success. Mr. Owodorum filed a request with the HRTO to reconsider its decision. This request was also dismissed.

Mr. Owodorum then applied for judicial review of the HRTO's reconsideration decision. He argued that the HRTO misapplied the law by ignoring that he had been terminated for the perceived disability of having COVID-19. The Divisional Court disagreed, finding that it was reasonable for the HRTO to conclude that Mr. Owodorum's employment had been terminated on the basis of his breach of Vita's workplace policies rather than a perceived disability. In coming to this conclusion, the HRTO relied on the termination letter prepared by Vita, which stated that Mr. Owodorum's employment had been terminated "for serious violations of Vita's policies and procedures." The letter specifically stated that it was a violation of policy for Mr. Owodorum not to inform his wife that he had been removed from his shift due to COVID-19 exposure and that by failing to do so, his wife continued to work and had thereby put Vita staff and residents at risk.

In his application for judicial review, Mr. Owodorum argued that it was unreasonable for the HRTO to rely on the termination letter without also having copies of the policies on which Vita was relying to justify the

termination. However, the Divisional Court noted that the HRTO's summary hearing process does not require disclosure of all relevant documents and also affirmed the principle that parties before the HRTO "do not have an absolute right to a full merits hearing on every HRTO application."

This decision illustrates a few things for Ontario employers. First, the HRTO continues to experience significant delays. Mr. Owodorum's employment was terminated in June of 2020, at the height of the first wave of the COVID-19 pandemic. The HRTO's summary hearing in this matter occurred in July of 2024, over four years later.

Second, the reliance of the HRTO on the termination letter provided to Mr. Owodorum to establish the grounds for his dismissal shows how critical such documentation can be in defending against claims of discrimination. Drafting a thoughtful and accurate termination letter that refers to specific policy breaches by the employee can help support a request for summary dismissal and is worth the investment of time and energy.

We encourage our readers to reach out to a member of the Cassels Employment Group for support and guidance on applying workplace policies and drafting termination letters.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.