

# 2016-07 Post-Mat Leave Constructive Dismissal

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Lee Partridge started as a dental hygienist at Botony Dental Corp. in March of 2004. Not surprisingly, there was no written employment contract, nor written office policies. As a hygienist, she had no guarantee of hours, was paid only for time spent actually treating patients, was required to take an unpaid lunch break, and her hours varied from 20 to 35 per week.

Three years later, she was promoted to office manager. As office manager, her hours became regular (9 to 5), she worked through lunch and was paid for it, and her wage was increased to \$41. Lee had already taken one maternity leave with this employer and returned to work without issue. In 2010, with an annual salary of over \$70,000, she took a second mat leave and was scheduled to return in July, 2011.

The owner-dentist texted Lee prior to her scheduled return that she was booking her into the hygiene schedule. The position of office manager was no longer available and she would return to her prior position as hygienist. Accordingly, her hours were being reduced, as was the certainty of her hours. Lee insisted she be reinstated on more favourable terms. Things became acrimonious. The dentist terminated her.

Lee sued for wrongful dismissal, and breach of her human rights. The Court ordered the dentist to pay Lee compensation for 12 months of reasonable notice (despite the fact that Lee had only been employed there for 7 years) as well as an additional \$20,000 for discrimination on the ground of family status which breached her human rights. On both heads of damages the Court ordered compensation at the high end because the Court was influenced by what the Reasons for

Judgment refer to as the dentist's "willful and reckless disregard for her obligations as an employer."

Dealing with an employee returning from parental leave raises some of the most common questions we get at MBC. In this and other scenarios, an employer often wishes to make changes upon discovering that they may have been overpaying relative to market rates. There are perfectly legitimate and legal ways to address and remedy such concerns without triggering a constructive dismissal or other legal problems. (We always recommend addressing this issue when preparing a Practice Protecting Package TM for our doctors.) But it is an area fraught with potential land-mines and should not be attempted without expert employment-law advice. This case unfortunately serves as a good example of exactly what not to do. Contact us at 905-825-2268 or [mbc@mbclegal.ca](mailto:mbc@mbclegal.ca) if you find yourself in this or other problematic employment-law situations and would like to know the right way to handle it.



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Janet Sawyer, BSc, MSc, DVM

## **Reminder to Ontario employers: the Bill 132 clock is ticking...**

As Ontario employers, each of us has until September 8, 2016, to comply with significant new legal obligations. On March 8, 2016, Bill 132, the Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016, (the "Act") received royal assent. Among other things, the Act requires that, as an Ontario employer, you update your workplace harassment policy to comply with the Act before the September 8 deadline. (Click here to read [Bill 132](#).)

If you are an existing Practice Protection Package TM client of MBC, this is one of the exceedingly rare times (in our thirteen years of business) that you must update your PPP TM. As a professional courtesy to our PPP TM clients, for a limited time, we will update the Workplace Policy Manual of your PPP TM to comply with the new law for a nominal fee of \$320 (plus HST). Please contact us as soon as possible as we have a large roster of clients who need to have their policies updated and the clock is ticking.

Email: [mbc@mbclegal.ca](mailto:mbc@mbclegal.ca) or call us: 905-825-2268.

The PPP: Just Do It

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