

Refusal of Sick Leave During Maternity Violates Ontario Human Rights Code

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A decision of the Ontario Divisional Court on June 4, 1996 suggests that women employees will be able to invoke the sick leave provisions of their collective agreements for at least part of their maternity leaves. In *OSSTF, District 34 v. Essex County Board of Education*, Carlinda D'Alimonte had requested that she be allowed to use her accumulated sick leave benefits for the period of time during labour and after delivery that she would be unable to work for medical reasons.

The employer refused D'Alimonte's request, granting sick leave only for the four days preceding the birth when she was unable to attend work. It claimed that, under the *Employment Standards Act*, maternity leave had to begin from the date of birth, at which time sick leave was no longer available. The union grieved, citing the collective agreement clause which provided that sick leave was available for "physical or emotional disability certified by a medical practitioner".

The employer won at arbitration, where a majority of the board held that, although D'Alimonte had been absent for health-related reasons for at least part of her maternity leave, sick leave and maternity leave were separate and exclusive. As a result, the term "physical disability" in the collective agreement had to be read as excluding disability due to having given birth.

On judicial review, the Court ruled in the union's favour, observing that the board had accepted evidence that D'Alimonte was unable to work for some four to six weeks. By reading the phrase "physical disability" to exclude disability arising from a normal pregnancy, the Court held, the board had adopted an interpretation that discriminated against pregnant women and violated Ontario's *Human Rights Code*. (For a description of more recent developments, see ["Appeal to be heard in the Essex County Board of Education case"](#) on our What's New page and ["Ruling on use of sick leave by employees on maternity leave stands in Essex County case"](#) on our Publications page.)