Employees on leave during an asset acquisition: What Brandt v. Morasse means for employers

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Employees on leave can be out of sight, but shouldn't be out of mind

In *Brandt Tractor Ltd. v. Morasse*, 2026 ONSC 992, the Ontario Divisional Court upheld findings of discrimination where an acquiring employer systematically excluded employees on leave from its hiring process during an asset transaction. While the transaction occurred on an expedited timeline and the acquiring employer applied its approach identically to all employees on leave (regardless of the reason for leave), the Court confirmed that these factors do not insulate an employer from human rights liability.

Key takeaways

Brandt v. Morasse is a clear reminder that human rights obligations do not pause during business transitions. Employers involved in acquisitions, mergers, or restructurings must ensure that employees on protected leaves are meaningfully considered when making employment-related decisions.

A purchaser cannot outsource its human rights obligations to a predecessor, hide behind a tight timeline, or rely on a uniformly applied discriminatory policy; there will be a cost to doing so. For Brandt, it was over $50,000 in damages, mandatory training for its HR team, and ongoing litigation exposure. That expense is avoidable, but it requires employers to account for human rights considerations in transaction planning from the outset.

Background: When an acquiring employer excludes employees on leave from hiring

Ms. Morasse was an employee of Nortrax Canada Inc. for five years. She was on maternity leave when Nortrax sold substantially all of its assets to Brandt in a transaction that was completed, from beginning to end, in fewer than three months.

Brandt hired all but 30 of Nortrax's 650 employees. Notably, neither Ms. Morasse nor any of the Nortrax employees who were on leave during the asset transfer were contacted, interviewed, or offered positions by Brandt. Instead, while at home on maternity leave, Ms. Morasse was notified that her employment with Nortrax was terminated because Brandt "[did] not have a position available" for her.

The Human Rights Tribunal of Ontario (HRTO) found that Brandt discriminated against Ms. Morasse based on sex and family status. Brandt sought judicial review to set aside the Tribunal's decision.

Ultimately, the Divisional Court upheld the findings made by the HRTO as reasonable.

The Divisional Court's reasoning: Upholding human rights obligations in an asset acquisition

Successor status does not shield employers from liability

Brandt argued that the Tribunal erred in keeping it as a named party because it was never Ms. Morasse's employer, and therefore could not be liable. The Divisional Court rejected that argument.

The Court agreed with the Tribunal's reasoning that, while prior cases had limited the ability to add successor employers to human rights proceedings, those decisions involved successors that entered the picture years *after* the alleged discrimination had occurred, and thus, had no involvement in the underlying events. This case was materially different.

The evidence showed that Brandt was directly involved in the hiring decisions that excluded Ms. Morasse. Brandt obtained Nortrax's HR files, consulted with local managers, and participated in a "heavily cooperative process" to decide which employees would receive offers. Further, Ms. Morasse's termination letter expressly confirmed that her employment with Nortrax was ending precisely because Brandt did not offer her a position. In the circumstances, Brandt could not credibly be characterized as a successor with "nothing to do" with the complaint.

The Court emphasized that "Brandt's status as a successor organization played no role in the determination that it was a proper party. Rather, it was Brandt's own allegedly discriminatory conduct in its hiring process that grounded that determination."

Knowledge of protected status may be inferred

Brandt argued that it did not know Morasse was on maternity leave, and therefore her protected status could not have influenced the hiring decision. The Court rejected this on two independent grounds:

- Brandt "knew or ought to have known" that a policy excluding all employees on leave from the interview process would disproportionately affect individuals on protected leaves. Given its access to HR files and active role in selecting hires,

Brandt could not avoid liability by “turning a blind eye” to the discriminatory impact of its policy; and
- More significantly, Brandt admitted in oral evidence that it chose not to interview Ms. Morasse because she was on a leave of absence and was “not immediately available.” This admission contradicted Brandt's assertion that the decision was grounded solely in business reasons and established a clear sequence of events: Ms. Morasse was on maternity and parental leave, her exclusion from the interview process therefore flowed directly from her protected leave, which resulted in no offer from Brandt, and ultimately, the termination of her employment by Nortrax.

The Court held that this admission established a clear nexus between Ms. Morasse’s maternity leave and the adverse impact. In doing so, the Court reiterated that the protected ground need only be *a factor*, not the sole factor, in the decision that led to the adverse impact.

Identical treatment is not the same as equal treatment

Finally, Brandt argued that its policy was non-discriminatory because it was applied uniformly to all employees on leave. The Court rejected this submission, reiterating that identical treatment can still result in inequality if it has a disparate impact on protected groups. The fact that the policy was framed in neutral terms and applied consistently did not insulate it from scrutiny.

Further, since Brandt had expressly admitted that Ms. Morasse was excluded from the interview process because she was on leave, and therefore unavailable to be interviewed, the causal link between the policy and the protected ground was direct and explicit. As a result, the uniform application of the policy did not shield Brandt from liability.

What *Brandt v. Morasse* means for employers

- Where a successor employer is directly involved in hiring decisions or works closely with the predecessor in selecting employees, it may be held liable for discriminatory outcomes.
- Employees on protected leave must be actively considered by employers in decision-making processes. Excluding them simply because they are on leave creates significant risk exposure, regardless of intent.
- A uniformly applied rule will not withstand scrutiny if it disproportionately affects individuals on protected grounds. Courts will focus on impact, not just consistency.
- Where information about an employee’s protected status is accessible and the employer is involved in the decision-making process, knowledge may be inferred. This is particularly the case where the information within the employer’s knowledge (in this case the knowledge that the employee is on leave) should cause the employer to question whether a protected ground is engaged.
- In the context of acquisitions or restructurings, time pressure does not justify excluding or failing to consider employees on protected leave.
- Discrimination does not require that a protected ground be the sole or primary reason for the decision. It is sufficient if it played any part in the adverse impact.

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