

Manitoba Labour Board

402 – 258 Portage Avenue
Winnipeg, Manitoba, Canada R3C 0B6
T 204 945-2089 F 204 945-1296
www.manitoba.ca/labour/labbrd

Case No. 732/06/ESC

File No. 91776

IN THE MATTER OF: THE EMPLOYMENT STANDARDS CODE

BETWEEN:

**KILDARE INVESTMENTS LTD.
t/a KERN PARK CARWASH,**

Employer,

- and -

J.D.,

Employee.

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

WHEREAS:

1. On August 30, 2006, pursuant to Section 96(1) of *The Employment Standards Code*, the Director of the Employment Standards Division of the Department of Labour and Immigration, ordered that the amount of Four Hundred Twelve Dollars and Thirteen Cents (\$412.13) being wages owing by the Employer to the Employee(s), be paid to the Director of the Employment Standards Division of the Department of Labour and Immigration by the Employer and further required the payment of the administrative fee in the amount of One Hundred Dollars (\$100.00) for a total owing of Five Hundred Twelve Dollars and Thirteen Cents (\$512.13).
2. The Employer having disputed the payment of the above-mentioned amount, the Director of the Division, pursuant to Section 110 of the *Code*, referred the matter to the Board.
3. On February 21, 2007, the Board conducted a hearing at which time both parties appeared before the Board and presented evidence and argument.
4. The Board, following consideration of material filed, evidence and argument presented, made the following determinations:
 - a) The Employee commenced employment with the Employer on July 28, 2003;

- b) The Employee took maternity leave from July 8, 2005 to November 4, 2005, the Employer having issued a Record of Employment on July 15, 2005, as noted in Exhibit #1, confirming that the Employee was taking pregnancy or parental leave on July 8, 2005;
- c) The Employee returned to employment with the Employer on August 1, 2006, and worked until Friday, August 11, 2006, at which time the Employer advised the Employee that her employment would be terminated on Monday, August 14, 2006;
- d) While the Employee did not file a written notice with the Employer at least Four (4) weeks prior to November 4, 2005, that she intended to take parental leave of Thirty-Seven (37) weeks immediately following her maternity leave, the Employer, after receiving advice from the Employment Standards Division that the Employee was entitled to return to work, returned the Employee to work at the rate of \$7.85 per hour, for certain shifts which were available on Monday to Thursday of each week;
- e) The Employee was under the impression she had the right to return to employment with the Employer after the expiration of her parental leave and that she was not a new hire;
- f) Notwithstanding the fact that the Employer takes the position the Employee was a new hire on August 1, 2006, thereby entitling the Employer to terminate the employment relationship without notice during the first Thirty (30) days of employment, the Board notes that the Employer never issued a new Record of Employment to the Employee at any time and never gave the Employee express notice that she was being re-hired as a new employee;
- g) The Employee's employment was continuous, meaning that Section 62(d) is not applicable and that the Employer was thereby obliged to give Two (2) weeks notice of termination to the Employee;
- h) However, after giving consideration to the circumstances prevailing in this case, including the admissions of the Employee that she failed to give written notice of taking parental leave and the nature of her other communications to the Employer, the Board, in the exercise of its discretion pursuant to Section 126(1)(b) of *The Employment Standards Code*, is satisfied that it is fair the Employee only receive One (1) week's wages in lieu of notice in the amount of Two Hundred Six Dollars and Seven Cents (\$206.07) from the Employer, as per the attached Statement of Adjustment.

T H E R E F O R E

The Manitoba Labour Board **HEREBY ORDERS KILDARE INVESTMENTS LTD. t/a KERN PARK CARWASH** to pay to the Director of Employment Standards Division of the Department of Labour and Immigration, forthwith:

WAGES:

The amount of Two Hundred Six Dollars and Seven Cents (\$206.07) less statutory deductions, being wages in lieu of notice owing the Employee, J.D.

ADMINISTRATIVE FEE:

An Administrative Fee in the amount of One Hundred Dollars (\$100.00) pursuant to Section 96(1) of *The Employment Standards Code*.

TOTAL:

The total amount being Three Hundred Six Dollars and Seven Cents (\$306.07).

DATED at **WINNIPEG**, Manitoba, this 15th day of March, 2007.

"Original signed by"

REGISTRAR

CJ:tj/rb-s