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## Preventing Discrimination Because of Pregnancy and Breastfeeding

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>> DORA NIPP: Hello and welcome to the Ontario Human Rights Commission's short webinar on sexual harassment in the workplace.

My name is Dora Nipp and I am a Human Rights Education and Change Specialist at the Commission. I will be your moderator today.

Before we begin, I will play a short video that will provide instructions on how to use Adobe Connect.

>> VIDEO: I'd like to go over a few housekeeping items. First, you'll notice that closed captioning is directly under the main presentation. You'll also notice a "Full Screen" button at the top-right side of the presentation pod. You can return your screen to normal size at any time by pressing the "Full Screen" button again. You

should also see two chat pods on your screen; one for technical help and one for discussion questions – these pods are what you will use to communicate with us. When you have a question or comment, please type it into the appropriate pod and your question will appear next to your name. We ask that you reserve the chat pods for questions and comments about the webinar rather than using it for casual conversation, which can be distracting. If you experience any technical difficulties, like your audio cutting in and out, it is likely an issue with your server or Adobe Connect's server. Usually, if you've checked your speaker volume and your own computer, audio issues can be resolved by logging out of the webinar and then logging back in. If you continue to experience technical difficulties, please write to us in the technical questions pod and our IT person will try to help. I'd also like to mention that today's session is being recorded and will be available on the OHRC's website, along with links to further resources. Finally, because of this topic, we often get questions about specific accommodation cases. Please be aware that we cannot provide legal advice, and so, for these types of questions we'll direct you to our policies and guidelines available at [www.ohrc.on.ca](http://www.ohrc.on.ca) for more information and steps you can take.

>>>DORA NIPP: We have several speakers today.

Barbara Hall, Chief Commissioner of the Ontario Human Rights Commission kicks off this launch.

...Followed by Dipika Damerla, Associate Minister responsible for Wellness at the Ontario Ministry of Health and Long-term Care. You'll also hear from Shannon McLennon and Catherine Pestl who will share their experiences as mothers who breastfed their babies. Olga Jovkovic of the City of Toronto and James Rilett from Restaurants Canada are speaking as representatives of the public and private sector. Our final speaker is Kate Sellar, of the Human Rights Legal Support Centre. Let's begin.

>> BARBARA HALL: Hello, I'm Barbara Hall, Chief Commissioner of the Ontario Human Rights Commission, and I'm pleased today to welcome you to our webinar to launch an updated version of our policy to eliminate discrimination based on sex, which includes pregnancy and breastfeeding. I'd like to welcome our partners at the Ministry of Health and Long Term Care for helping with this launch, and I'd also like to thank the speakers who've come to share their perspectives on the issues relating to breastfeeding and pregnancy.

For starters, under the Human Rights Code, it's against the law to discriminate against someone based

on sex. And that includes pregnancy and breastfeeding. Women should not face discrimination because they are or have been pregnant or are trying to become pregnant. When it comes to breastfeeding, it's the mother and only the mother – well, maybe the baby has a bit to say about it – who gets to decide where, when or whether to breastfeed.

In rare cases there may be health and safety risks that can lead to exceptions. But the general rule is that women can breastfeed anytime, anywhere.

The law hasn't changed. Women have had these rights for many, many years. But we continue to see women not getting hired or losing their jobs because they're pregnant or getting fired when they return after pregnancy. We also hear almost weekly about a shopping centre, a swimming pool, or a restaurant asking a woman to stop breastfeeding even though she has every right to do so.

These are just a few of the reasons why we decided to update our policy, to provide a reminder that these rights do exist, and that employers, landlords and service providers have a legal obligation to respect these rights.

The new policy includes updated examples and case law and is written in a plain language style to plainly remind everyone that it's against the law to

discriminate because of pregnancy or breastfeeding.

Pregnancy and breastfeeding are health issues and they're human rights issues. Women have the right to make personal choices in a society that's free from discrimination. There's still much work to be done, and we're working together to advance the health and human rights of all Ontarians.

>> DIPIKA DAMERLA: Supporting women who choose to breastfeed is not only a health issue, but it's also a human rights issue. So as the Associate Minister responsible for wellness, I'm delighted to support anything that makes it easier for women to breastfeed their babies.

I want to share a personal story. About 16 summers ago I went back to work when my daughter was six months old. I was breastfeeding her at the time and I wanted to continue to breastfeed her. I was fortunate that I was able to find a daycare very close to my place of work. And so I came up with a system where I would drop her off in the morning, and then just before I handed her over to the staff people, I would nurse her. I'd go back to work. And on my lunch hour I would go back to nurse her again. And then in the evening when I went to pick her up, the first thing I'd do is nurse her and then we'd both go home together.

And I told the daycare staff that, you know, in between or around 10 o'clock, 3 o'clock, whenever she was hungry, they should give her the bottle. And that seemed to work, and you know, I was doing this for a few weeks. Then one of the staff pulled me aside and said, "You know, can you come at the same time every day?" And I was a little, you know, taken aback because as a mom, I did try to go every day for noon, but sometimes I'd go there for 12:15, sometimes I'd go there 12:30, and sometimes I couldn't go there at all because of work pressures.

And I told the staff that listen, if I don't come by 12:15, give her the bottle. So I was a little defensive. And they said, you know, "The reason I'm saying this is that your daughter, when we give her the bottle at 10 AM, she takes it. We give it to her at 3 in the afternoon, she takes it. But if we try to give her a 12:15, she refuses to take it because she waits for you. She's hungry, she's cranky, but she waits for you."

And I was just dumbfounded because I thought how does this little thing know? How did she have this time clock in her head that says, okay now it's okay to take the bottle, but now I think mommy might be coming. And it just about broke my heart. And of course it strengthened my resolve to nurse her, and I did. Actually I went on to nurse her a little past her second

birthday, the best decisions I ever made.

So if there's anything I can do to support women to continue to breastfeed for as long as they're comfortable, I'm delighted to do so.

>> SHANNON MCLENNON: The reason why I went to this particular swim was because I was told it was breastfeeding friendly. I was nursing my baby in the warm pool, and she was relaxed and loved it. And then a supervisor who was substituting the regular supervisor approached me on the deck of the pool and asked – and told me that I needed to go to the change room and breastfeed my baby.

And I just remember thinking, feeling really confused because what felt so normal, to breastfeed my baby no matter where I was, I was really confused that it was a problem. And I felt embarrassed and centred out. And I felt like it was very, very, very unfair. I felt discriminated against.

When I went to the media, I didn't expect it to be so big. In fact, I didn't really know that they would care about my story. And that's 16 years ago, before social media became a huge vehicle to spread this type of information.

>> CATHERINE PESTL: So my workplace was very

welcoming for me as a breastfeeding mother. I'm lucky in that I do work for a community health centre, so we do understand and are very aware of the benefits of breastfeeding, extended breastfeeding, and supporting and advocating for mother and child.

We know that breast milk is healthful for the child, the mother, but also for the community's health. So it was important for them as well as for me. The adjustments that they had to make were minimal. The office that I was provided with was relatively easy, but you didn't – you don't need a private office. I was given an office where I could pump throughout the day as I pleased, and I could store my breast milk then. But certainly, just having a room where you're comfortable enough and where there's good storage is key for providing breast milk.

I did have to really make it – make my staff and my workplace and management level aware of how important it was for me. And I did stand up and make sure they knew that I needed that and it was very important, and I had all the information to tell them why. And then it was – it was easy for them to then get onboard and ensure that now, staff that are continuing on behind me can continue to provide breast milk for their children as well.



>>> OLGA JOVKOVIC: At Toronto Public Health we welcome employers of businesses such as movie theatres, restaurants, other workplaces, to openly identify that they are in fact welcoming of breastfeeding families. And if they choose to identify as being welcoming, they can register online and they will receive an information package which includes a decal that they can post on their business window or door that openly says to the public, “Come on in. We’ll support you. We’ll welcome you. We’ll make you feel comfortable here.”

And with the 31,000+ births per year and 90% of women choosing to breastfeed, it’s a really important component of their customer base. So it’s a really important issue from their perspective in terms of looking at their business and supporting their clients.

>> JAMES RILETT: Thanks for the opportunity to speak to the important issue of breastfeeding, the rights and expectations of breastfeeding mothers. We’re in the hospitality industry here at Restaurants Canada, and we think it’s important that our members in all restaurants look to the needs and expectations of breastfeeding mothers.

It’s important that our members and everyone that works in or around the hospitality industry educate themselves on this important issue. It’s not just an issue

for the good of business or the good of their customers, but it's good for society in general. We encourage you to educate yourself and if you need assistance, you can go to our website at [restaurantscanada.org](http://restaurantscanada.org)

>>> KATE SELLAR: So we've had protection in the code for women who are pregnant and breastfeeding for a really long time. But unfortunately, we are still constantly battling for that right for women to both work and have a family.

So we still see lots of cases where we are representing people who have been fired once they tell their boss that they're pregnant, or when they come back to work after a maternity leave, and either their job is no longer waiting for them or they're demoted.

So those issues are still very much, you know, alive and well, unfortunately. And you know, the first message that we have for women who come to us is that you're not alone. This problem still exists and it exists in a whole range of workplaces. And you know, the good news is that there's something you can do about it, and you can enforce your rights under the code because it's important in workplaces that women are included, and women who want to have children and families are included.

And I think the other piece that's really important

is to know that not all employers are 100% aware of what their obligations are in terms of their pregnant employees or their employees who are returning from mat leave. And so it's important to avail yourself of the information and to check out the commission's policy, because it's really comprehensive and helps employers to figure out how they can make sure that women are fully participating in the workforce, and included, and being treated fairly.

>> DORA NIPP: It's now my pleasure to introduce you to today's presenter, Anya Kater. Anya is a Senior Policy Analyst with the Ontario Human Rights Commission and he will be taking you through the Commission's updated policy. Hello Anya!

>>> ANYA KATER: Hello and welcome all. I'm pleased to introduce you to the OHRC's updated Policy on preventing discrimination because of pregnancy and breastfeeding. I'll give you an overview of the key parts of the policy, and we'll have time at the end for questions and answers.

The Policy is based on the Ontario Human Rights Code, and it begins by setting out the foundations of the Code. The Code is the law that provides for equal rights and opportunities and freedom from discrimination, in Ontario. The Code recognizes the dignity and worth of

every person and aims for a climate of understanding and mutual respect so that each person feels part of the community and is able to contribute to the community. Under the Code, it is against the law to discriminate against or harass someone because of their sex – including women who are pregnant or breastfeeding. Most human rights claims based on discrimination because of pregnancy relate to employment. But they can also relate to housing, goods, services and facilities, contracts and membership in unions, trade and professional associations.

The policy sets out some principles that apply to pregnancy and breastfeeding: Having children benefits society as a whole. Women should not be disadvantaged in society because they are or have been pregnant. The Supreme Court of Canada recognized that the financial and social burdens, and cost associated with having children, should not rest entirely on women. While women have made major advances in gender equality, discrimination against women because of pregnancy continues to be common in society, particularly at work.

The policy recognizes that discriminating because of pregnancy is sex discrimination, and that women face unique experiences of discrimination because of their ability to become pregnant. The policy also applies to

trans people and people of diverse genders who are pregnant or nursing and who may not identify as “women.”

The policy defines pregnancy broadly. Discrimination based on pregnancy can happen when a woman: is trying to get pregnant, was pregnant or states she intends to have a child; will be taking a maternity leave; has an abortion or experiences complications related to an abortion; or has a miscarriage or stillbirth or experiences complications related to miscarriage or stillbirth.

Discrimination can also happen because a woman experiences complications related to pregnancy or childbirth, lacks energy due to pregnancy, is perceived to be “too big” or “fat” while pregnant or is unable to wear a form-fitting uniform, is recovering from childbirth, receiving fertility treatments or is breastfeeding.

The policy recognizes that a woman’s experience of discrimination because of pregnancy may be unique based on other aspects of her identity involving other Code grounds. For example, there are distinct negative stereotypes about pregnant women who are parenting on their own, are young, have a disability, receive social assistance, are racialized or Aboriginal, or are lesbian or bisexual.

Discrimination because of pregnancy may overlap with

discrimination based on family status. For example, a new mother in the immediate post-natal period is protected from discrimination because of pregnancy and family status. Men may also face family status discrimination because of their relationship with women who are pregnant, or because they have accommodation needs relating to caring for a newborn. Trans persons or people of diverse genders who are pregnant or nursing a baby may be vulnerable to unwanted attention, disrespectful treatment, or inappropriate actions or comments because they are seen as not conforming to gender norms. The policy also recognizes that pregnancy can intersect with gender-based violence.

The policy deals with different types of discrimination because of pregnancy and breastfeeding. Let me go through some of these with you.

Discrimination may be direct and overt, where a person or organization deliberately treats a woman negatively because she is, was or may become pregnant. For example, a breastfeeding mother is asked to stop breastfeeding her child or leave a restaurant; or an employer dismisses a pregnant employee because of stereotypes that pregnant women cannot do their jobs. Discrimination may also be indirect, where it is carried out through another person or organization.

It's often subtle - so you may need to look at all the circumstances of a situation to see a pattern of behavior.

Sometimes discrimination is more complex and “systemic.” It can be embedded in patterns of behaviour, policies and practices that are part of the structure or informal “culture” of an organization, or sector. For a woman who is, has been or may become pregnant, systemic discrimination can appear to be neutral. In fact, it creates or perpetuates a position of disadvantage by limiting rights and opportunities because of her pregnancy.

Example: A government employer has a policy that after three years of continuous service, a contract employee becomes a permanent employee. However, the policy excludes unpaid leaves of greater than 60 days (including maternity and parental leaves). While this policy appears to be neutral, it has an adverse effect on women who, more often than men, have gaps in their employment for maternity and parental leaves.

The Code also protects people if they experience reprisal or threats of reprisal. A reprisal is an action, or threat, that is intended as retaliation, punishment or “payback” for claiming or enforcing a right under the Code.

Discrimination includes harassment which can happen

at work, in housing or with services. Pregnant or breastfeeding women are harassed when they experience a “course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.” Vexatious means distressing or annoying. Harassment includes: repeated negative comments about a pregnant woman’s appearance, her pregnancy symptoms, or whether or not she’s a good mother. It includes repeated unwanted touching of a pregnant woman’s stomach and negative comments about whether a pregnant woman can do her job.

Harassment may not explicitly refer to a woman’s pregnancy. An example might be a pregnant woman who experiences groundless and repeated criticism of her work, or becomes the brunt of demeaning teasing that is not directed at other employees.

Widespread or ongoing harassment can lead to a poisoned environment for pregnant women.

Or, in some situations, a single statement or incident can be bad enough to create a poisoned environment.

Generally, a poisoned environment is based on the nature of the comments or conduct and the impact on an individual or group rather than just on the number of times the behaviour happens.

Not addressing discrimination and harassment could cause a poisoned environment. Employers, landlords



and service providers have an obligation to maintain an environment that is free of discrimination and harassment, whether or not anyone objects.

The Code says that employers and unions, housing and service providers have a legal duty to accommodate the needs of women because of pregnancy, unless it would cause undue hardship. Accommodation means changing policies, practices, rules or standards so pregnant women can have equal opportunities.

The Policy lays out three principles that guide the duty to accommodate: Respect for dignity, individualization, and integration and full participation.

And it discusses how each of these principles applies to accommodating pregnant and breastfeeding women.

When accommodation meets these three principles, it's considered "appropriate accommodation."

The Policy also looks at the importance of designing society with the needs of pregnant women in mind and removing existing barriers. Good inclusive design will decrease the need for people to ask for individual accommodation.

Here's an example of inclusive design. A large retail outlet designs its facilities to include a nursing room with comfortable chairs for women to breastfeed their children in private. It also creates a breastfeeding policy, and educates staff on women's rights to breastfeed their

children throughout the store.

Where an accommodation will cause undue hardship, the organization has to put the next-best solution in place, such as interim accommodation while appropriate accommodation is being phased in.

The Policy goes through the accommodation process. The accommodation process is just as important as the accommodation that is provided.

Accommodation is a multi-party process so everyone needs to co-operate. The Policy talks about the responsibilities of the woman requesting the accommodation and the accommodation provider.

If you need accommodation based on pregnancy, you are responsible for making your needs known. This includes co-operating during the process and providing any necessary documentation outlining your limitations or needs. However, you don't need to give documentation on the needs that are associated with the natural progression of your pregnancy – such as doctor's appointments - or for the need to breastfeed.

The policy sets out what organizations must do throughout the accommodation process. For example, they must accept a woman's accommodation request in good faith, unless there are legitimate reasons for acting otherwise, they must take an active role throughout the process, and they must get expert advice, where it's

needed.

In many cases, it will not cost a lot to accommodate someone's pregnancy or breastfeeding needs.

Accommodation may simply mean making policies, rules and requirements more flexible.

Some examples are: Flexible work hours. Relocating someone temporarily to another location, work station, or assigning alternative duties. Chairs to sit at work or in a service environment. Breaks at work as needed. A quiet place to rest during breaks. Time and space to breastfeed, or express and store milk. Allowing a mother to bring a baby to work or school to breastfeed.

Accommodation does not need to be provided if it causes undue hardship, which is a very high standard.

The Code lays out only 3 factors that can be considered "undue hardship". They are:

1. Cost. The cost to the organization to make the accommodation must be so high that it affects the viability of the organization, such as making it go out of business.
2. Outside sources of funding, if any. These could help offset costs.
3. And health and safety risks. If an accommodation causes significant health and safety risks, this may create undue hardship.

There are no other considerations laid out in the Code.

Not business inconvenience, employee morale or customer preference. Organizations would need to use objective information to show that an accommodation would cause undue hardship.

The Policy explains the special protections that women have through the Employment Standards Act and the benefits under the Employment Insurance Act. It states that unions and collective agreements must comply with human rights laws. The Policy explains that women are entitled to the same rights to health and disability benefits given to other employees who are covered for health-related absences.

The Policy describes the types of discrimination that women could experience in the workplace because they are pregnant.

For example, at a job interview, except in specific circumstances, employers cannot ask a woman if she is pregnant, has a family, or plans to become pregnant.

An employer cannot refuse to hire a pregnant woman for pregnancy-related reasons, such as thinking that she will be going on maternity leave, or that it will be inconvenient to train a replacement soon after a woman who is pregnant is hired.

Employers cannot withhold or withdraw projects or opportunities from pregnant women or women of

childbearing age because they question her commitment, competence or capacity, or because they believe that “she will be gone on leave soon anyway.” If the employer notices a change in a woman’s work performance that is related to her pregnancy -- for example, she is not as productive because she tires more easily – they should ask about this relationship. In these situations, employers must explore accommodation options before disciplining a woman or terminating her employment.

If terminating a woman’s job is in any way based on her pregnancy or maternity leave, this will violate her rights under the Code.

Good human resources practices, such as documenting performance problems and progressive discipline, can help an employer show that a pregnant woman’s employment was terminated for reasons that were NOT related to her pregnancy.

Discrimination based on pregnancy or having a young child is illegal in housing.

Sometimes, a woman who is expecting a child may be refused a rental application by, for example, a landlord who says it’s because the apartment is “not childproof.” Or a landlord might discourage or deny applications from families that are expecting children by saying

things like: it's a "quiet building", it's an "adult lifestyle" building, the housing is "not soundproof", or the apartment is "geared to young professionals".

Landlords must address any possible discrimination or harassment related to pregnancy within their rental housing environment, involving tenants, a landlord's agent or others working in the housing environment (such as maintenance workers).

Pregnant or breastfeeding women cannot be denied service, unless there is a legitimate reason for doing so.

"Services" include colleges and universities, hospitals, health services, insurance providers, malls, parks, public transit, and stores and restaurants, among others.

Breastfeeding women cannot be told to: Cover up, be more discreet or move elsewhere, even if someone complains

Service providers should design their services to include pregnant and breastfeeding women.

For example: Both the City of Toronto and the City of Hamilton have policies that support breastfeeding in spaces controlled by the city.

People who believe they been discriminated against based on their pregnancy or because they are breastfeeding should try to raise the matter or make a complaint with their employer, union or other vocational

association, landlord or service provider.

If this is not possible or the problem is not addressed, they can ask the Human Rights Legal Support Centre for advice or make a formal complaint – called an application – directly to the Human Rights Tribunal of Ontario within one year from the last alleged incident.

Parties at the Tribunal can ask an adjudicator to consider this policy when making their decision.

People can also ask another person or organization to file an application on their behalf.

The policy concludes with a section on the organization's legal duty and responsibility to maintain an environment free from discrimination and harassment because of sex.

Organizations must take steps to prevent and respond to violations of the Code. If they don't, they may be liable and face monetary penalties or other orders from a tribunal or court.

It is not acceptable to be unaware, to ignore or fail to address potential or actual human rights violations, whether or not a complaint is made.

The policy lays out several steps organizations can take to make sure they are following the Code, including complaints procedures, education and training, and accommodation policies.

>> DORA NIPP: Thank you, Anya. We have time left for questions and answers on Preventing Discrimination because of Pregnancy and Breastfeeding. Feel free to enter your questions in the discussion pod. Let's begin with few frequently asked questions. So Anya, can a woman whose pregnancy preventing her from doing the job she was hired to do be fired by an employer?

>> ANYA KATER: Good question, Dora. The policy makes it clear that it is discriminatory if an employer fires, demotes, lays off an employee because she is or might become pregnant or returning from a maternity leave or on a maternity leave. Employers have to accommodate pregnant woman and policy goes through that kind of test. And the accommodation is based on her individual needs and it could include changing her job duties temporarily or assigning hers alternative to work temporarily, those kind of things and quite a few accommodation options for employment, housing and services

>> DORA NIPP: Thank you. Anya, where can people learn about pregnancy and breastfeeding discriminations cases that have gone to human rights tribunals?



>> ANYA KATER: In the policy we describe many different real life examples of discrimination cases that are policy principles are based on. Also one of our legal councils has created extensive case Law Review of all the cases relevant to pregnancy and breastfeeding discrimination since 2008 and review and describes the cases in narrative kind of report and that's placed on website as well and will be available along with the policy.

>> DORA NIPP: Just one more question that has come up frequently. Are there any circumstances where an employer can legitimately refuse to hire somebody that's pregnant?

>> ANYA KATER: It violates the code unless there's legitimate and bona fide requirement that a woman not be pregnant and accommodating her would cause undue hardship and policy lays out what's required -- what employers would have to show for something being a bona fide requirement and again, high test to meet and other things have to show it is not possible to accommodate her in the job without causing undue hardship such as that accommodation creates really significant health and safety risks or significant costs. So employer can't refuse to hire pregnant

woman thinking, for example, she will be going on maternity leave or for any other reason related to the pregnancy. That would be discriminatory.

>> Speaker: We have a question from Leah. She is with an agent that provides home care for people, disabilities and seniors aging at home. How does code apply in the situation where client refuses to permit an employee to, for example, store breast milk when at the client's home.

>> DORA NIPP: It is a really good question and it is the organization. So it is the employer Duty to Accommodate a woman when she is breastfeeding and that includes expressing and storing milk. There's accommodation process that would have to be gone through and part of that process may require the organization to talk to the client and need to store the breast milk and another accommodation just as appropriate and respects the woman's dignity and respects individualized needs and allows her for full integration and participation there might be another accommodation that's also appropriate. For example, can the employer provide a cooler that she could store her breast milk in and, you know, might be a process of discussing a number of different options again if it respects the woman's dignity option might be switching

her to another client if that's considered to be the most appropriate accommodation and range of options that should be discussed and responsibility of the woman and the employer is to talk about these range of options and cooperate in that process

>> DORA NIPP: Thank you. We have a question from service provider. There's health and safety risks involving with breastfeeding woman in my particular service environment. Must I still allow a breastfeeding woman in this area?

>> ANYA KATER: Well, again, service providers and others like employers and housing providers but in the case of service providers they can only refuse service to breastfeeding women if there's a bona fide or legitimate reason such that process of accepting a breastfeeding woman would cause undue hardship based on really significant health and safety risks that are involved but before deciding that something will cause undue hardship there's a process that needs to be gone through and undue hardship based on health and safety needs to be assessed, risks would need to be assessed objectively and organizations would have to try to reduce the risk as well. So our policy talks about the process and another policy talks about how to assess

risk based on accommodation and that's our policy and guidelines on disability and Duty to Accommodate and also available on the website.

>> DORA NIPP: We have another question that's related to services and this is in the context of university and research and consultation did you come across best practice in accommodating students in university context?

>> ANYA KATER: We do in a policy provide some information and some examples how universities could accommodate women. I'm assuming breastfeeding and pregnant woman. So, for example, students aren't general leap -- don't generally bring their children to class but an example might be that university allows a woman to bring her breastfeeding baby to class with her and that could be an example of accommodation. So another example is if a woman is doing a cooperative placement and the placement is far away, she might request an accommodation to the it closer to her home and travel back and forth and breastfeed her baby.

>> DORA NIPP: How would enforce obligation to not discriminate against pregnant woman in hiring process?

>> ANYA KATER: Often that could be subtle discrimination where it might happen to somebody but they are not quite sure what the reason is, why they didn't get hired and that kind of discrimination can be difficult to detect. There are certain areas of the code that specifically speak to application forms and interviews in terms of what you can ask and what you can't ask. Whether a person is pregnant, for example, would be prohibited question to ask on application form or during an interview unless there is some kind of bona fide requirement that requires a woman not to be pregnant, but those would be rare circumstances. And so a woman could, for example, if she believes she has been discriminated against file application with human rights tribunal of Ontario and support through the human rights support center during that process.

>> DORA NIPP: Anya, can you comment on what entitlements are available for women who are sick before or after pregnancy?

>> ANYA KATER: Sure. Policy provides health related absences and benefit plans and generally once an employer decides to provide an employee benefit package they have to do that in nondiscriminatory way and pregnant woman or woman taking sick leave based

on complications or reasons related to pregnancy are entitled to the same general entitlements that people have having to take leaves or access disability plans have received because of disability or accident or injury. So although Supreme Court of Canada it is confirmed that while pregnancy is not an illness or a disability it is considered to be a health related absence so that's where equality in terms of benefit provisions and leave provisions apply.

>> DORA NIPP: Anya, thank you for your comments and discussion pod, so ask Anya to talk about pregnancy and breastfeeding protection for trans people.

>> ANYA KATER: It does apply to trans people who are pregnant and nursing even if they don't identify as woman. Trans and gender people might be subject to unique forms of discrimination that intersect with each other because of gender identity, gender expression and sex and pregnancy. For example, they might be vulnerable to unwanted attention, disrespectful treatment or inappropriate conduct from other people because they don't conform with gender norms and trans men, for example, might be -- have to out themselves at work if they require a pregnancy related

accommodation. So there's specific stereotypes that relate to trans people and family status and pregnancy, for example, that having a transparent will be harmful for a child and consistent and kind of create ground work related to discrimination.

>> DORA NIPP: Thank you. Now, oftentimes people will go up to a woman who's pregnant and touch her stomach. Seems to be pretty common practice. Why would it be considered harassment?

>> ANYA KATER: That's a great question, Dora. Woman's pregnant bodies are often thought to be a matter of public concern and people sometimes behave in a way that otherwise would be inappropriate with women. For example, making comments about how big a woman is, her size, what she's or how much she's and unwanted engaging of the stomachs. Unwanted touching of woman is a form of sexual harassment and even if somebody doesn't mean to offend the woman it is really the impact on the woman that matters.

>> DORA NIPP: Great, thank, Anya. A question from Julia and with respect to connections with this policy and questions of family status and gives an example and shortage of daycare spots who are 12 to 18 months

making it more difficult for women to find day whir or close to the workplace. Can you give thoughts on additional accommodations that could be thought through that are available?

>> ANYA KATER: I think that speaking to pretty common phenomenon and lack of child care spaces in term of whether a woman requires an accommodation from her employer because she is having difficulty finding child care arrangements. If there's -- really having difficulty she might need to have accommodations for her child -- take care of the child temporarily and in terms of the actual problem, societal problem enough daycare spaces it is difficult for the code to address that issue. More of societal issue that speaks to rights and concerns. ( daycare. )

>> DORA NIPP: I don't see any more discussions. Anything else you would like to say?

>> ANYA KATER: No. I think that's great and thank everybody for participating and I hope you get a lot of information and more answers to your questions through reading the policy and case Law Review.

>> DORA NIPP: Thank you, Anya, for sharing your expertise. I would like to thank everyone for



participating in the webinar today. There's a link to short 5-minute survey at the end of the session and very much appreciate the feedback. Today's webinar will be available online and share the reporting with your colleagues and access it any time yourself. Leave the webinar up for a few minutes more so you can have time to fill in the survey and access the web resources and access the links select the title and press the browse to button. Thank you again for participating. Thanks again to Anya and we look forward to receiving your feedback the rest few days and have a good rest of the day, everyone.

#### Communication Access Real-time

Translation (CART) is provided in order to facilitate communication accessibility and may not be a totally verbatim record of the proceedings.