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Preventing

sexual and gender-based harassment

Sexual harassment in employment

Sexual harassment is a type of discrimination based on sex. When someone is sexually harassed in the workplace, it can undermine their sense of personal dignity. It can prevent them from earning a living, doing their job effectively, or reaching their full potential. Sexual harassment can also poison the environment for everyone else. If left unchecked, sexual harassment in the workplace has the potential to escalate to violent behaviour.

Employers that do not take steps to prevent sexual harassment can face major costs in decreased productivity, low morale, increased absenteeism and health care costs, and potential legal expenses. Under the Ontario *Human Rights Code*, sexual harassment is “engaging in a course of vexatious comment or conduct that is known or ought to be known to be unwelcome.” In some cases, one incident could be serious enough to be sexual harassment. Some examples of sexual harassment are:

- asking for sex in exchange for a benefit or a favour
- repeatedly asking for dates, and not taking “no” for an answer
- demanding hugs
- making unnecessary physical contact, including unwanted touching
- using rude or insulting language or making comments toward women (or men, depending on the circumstances)
- calling people sex-specific derogatory names
- making sex-related comments about a person’s physical characteristics or actions
- saying or doing something because you think a person does not conform to sex-role stereotypes
- posting or sharing pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including online)
- making sexual jokes
- bragging about sexual prowess.

Both women and men may experience sexual harassment in employment, but women tend to be more vulnerable to it because they often hold lower-paying, lower-authority and lower-status jobs compared to men. At the same time, even women in positions of authority may experience sexual harassment.



Example: A disgruntled employee spreads rumours about his female director, stating that she is having an affair with the company president and that she is only successful because she “slept her way to the top.”

Whatever her position, portraying a female worker in a sexual way can diminish her status and image in the eyes of other employees.

While sexual harassment occurs across occupations and industry sectors, it may be more common in certain types of employment, including:

- male-dominated work environments (for example, the military, policing, construction work)
- jobs that are thought to be “subservient” (for example, nursing, massage therapy, waitressing, the sex trade)
- work done in isolation (for example, live-in caregivers).

Applying the *Human Rights Code* in employment

The *Code* says every person has the right to be free from unwelcome advances or solicitation in employment. “Employment” includes applying and interviewing for a job, volunteer work, internships, *etc.* It also includes activities or events that happen outside of normal business hours or off business premises, but are linked to the workplace and employment.

Example: An employer may be held liable for incidents that take place during business trips, company parties or other company-related functions.

Some forms of sexual harassment in the workplace, such as gender-based harassment, are aimed at reinforcing traditional gender roles.

Example: A supervising police sergeant makes sexual advances towards a younger female constable. When she does not return the interest, he over-scrutinizes her work performance, accuses her of incompetence, and addresses her as “Mrs.” instead of “PC” in front of colleagues.

A person does not have to directly refer to another person's gender or be openly sexual for the behaviour to violate the *Code*. For example, targeting an individual because of their sex and discouraging or driving them away from continuing to work in a position is harassment.

Example: A supervisor constantly interrupts a female employee during meetings or comments on her physical appearance in a way that sets her apart from male employees. The comments suggest she is not equal to the men, and include statements like “women don't belong in the boardroom.”

It is also considered sexual harassment to make repeated comments to a woman about how she looks:

Example: A tribunal found that an employer sexually harassed an employee when he made repeated comments to her about her physical appearance, such as “Oh, don’t you look pretty today; Oh you shouldn’t wear that dress, it doesn’t do much for you; Those nylons don’t go with that skirt; Let’s run off and get married...”

Preventing and responding to sexual harassment

Employers operating in Ontario have a legal duty to take steps to prevent and respond to sexual harassment. They must make sure they have poison-free environments that respect human rights. From a human rights perspective, it is not acceptable to ignore sexual harassment, whether or not someone has formally complained or made a human rights complaint.

When deciding if an employer has met its duty to respond to a human rights claim, tribunals are likely to think about:

- the procedures in place at the time to deal with discrimination and harassment
- how quickly the organization responded to the complaint
- how seriously the complaint was treated
- the resources made available to deal with the complaint
- if the organization provided a healthy environment for the person who complained
- how well the person who complained was told about the action taken.

Employers can prevent many cases of sexual harassment by having a clear, comprehensive anti-sexual harassment policy in place. In cases of alleged sexual harassment, the policy will alert all parties to their rights, roles and responsibilities. Policies must clearly set out how the sexual harassment will be dealt with promptly and efficiently. The OHRC’s *Policy on preventing sexual and gender-based harassment* includes suggested contents of an anti-sexual harassment policy.

Everyone should know about the anti-sexual harassment policy and the steps in place for resolving complaints. This can be done by:

- giving policies to everyone as soon as they are introduced
- making all employees, etc. aware of them by including the policies in orientation material
- training people, including people in positions of responsibility, about the policies, and educating them on human rights issues.

An effective sexual harassment policy can limit harm and reduce liability. It also promotes the equity and diversity goals of organizations and institutions and makes good business sense.

Employers should monitor their environments regularly to make sure they are free of sexually harassing behaviours. Taking steps to keep a poison-free environment will help make sure that sexual harassment does not take root, and does not have a chance to grow.

For more information:

To find out more about what you can do to prevent and address sexual harassment in the workplace, see the Ontario Human Rights Commission's *Policy on preventing sexual and gender-based harassment* at www.ohrc.on.ca

For more information on the human rights system in Ontario, visit:

www.ontario.ca/humanrights

The Human Rights System can also be accessed by telephone at:

Local: 416-326-9511

Toll Free: 1-800-387-9080

TTY (Local): 416-326 0603

TTY (Toll Free) 1-800-308-5561

To file a human rights claim (called an application), contact the Human Rights Tribunal of Ontario at:

Toll Free: 1-866-598-0322

TTY: 416-326-2027 or Toll Free: 1-866-607-1240

Website: www.hrto.ca

To talk about your rights or if you need legal help with a human rights application, contact the Human Rights Legal Support Centre at:

Toll Free: 1-866-625-5179

TTY: 416-314-6651 or Toll Free: 1-866-612-8627

Website: www.hrlsc.on.ca

For human rights policies, guidelines and other information, visit the Ontario Human Rights Commission at www.ohrc.on.ca

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