

Objectives – what will we learn?

01

You will be able to identify and discuss the realities of sexual harassment in employment situations.

02

You will be familiar with the law of sexual harassment in Ontario and know your rights as an employee.

03

You will be familiar with how to handle cases of sexual harassment, including how to report instances of sexual harassment.

Why Should Workers Learn About Sexual Harassment?

- It is important for us to learn about sexual harassment in the workplace so that we can identify when it is happening and try to stop it (if it is safe to do so).
- Through understanding what is and what is not sexual harassment we will better be able to see when it is happening to us or to someone around us.
- By learning about our rights we will also know what to do if we do experience sexual harassment in the workplace and know where to get help.

What is Sexual Harassment?

Any *unwanted or unwelcome* behaviour that is sexual in nature and impacts you negatively or makes you feel uncomfortable. It can include:

- Unwelcome contact or closeness (ex. grabbing, groping)
- Remarks, including teasing and talk about sexual activities
- Jokes or pranks of a sexual nature
- Leering or intense staring
- unwelcome demands for dates
- requests for sexual favours or persistent requests for dates
- spreading sexual rumours (including on-line)
- displays of sexually offensive pictures or graffiti

What is Sexual Harassment in the Workplace?

- When these types of behaviour occur in the workplace, on a break or lunch, or sometimes even outside of the workplace.
- It could be done by employers, supervisors, co-workers or clients/customers.
- It can occur beyond the physical walls of your workplace, and can include business travel, workrelated social gatherings, etc.
- It can even occur when you apply for a job or have an interview.
- The behavior is not necessarily directed at an individual. Ex. Working in an environment where sexual banter and joking is prevalent but the individual objects to and doesn't participate in the behavior

Is it a Hostile Work Environment?

- A single, non-severe incident generally doesn't establish a hostile work environment.
- A sexual harassment claim <u>generally</u> requires a showing of *a pattern* of offensive conduct.
- <u>However</u>, a single incident of harassment, if unusually severe, may be sufficient to constitute a violation. Ex. Physical, unwanted touching of someone's intimate areas. A single act this severe can poison a work environment.
- When the victim is the target <u>of both verbal and</u> <u>non-intimate physical conduct</u>, the hostility of the environment is exacerbated and a violation is more likely to be found.

Sexual harassment can occur in a variety of circumstances

The victim as well as the harasser may identify *as any gender*. They do not need to be different genders.

The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

The victim does not have to be the person directly harassed but could be anyone affected by the offensive conduct.

You can experience sexual harassment even if there is no direct contact.

The harasser's conduct must be unwelcome.

Is All Behavior of a Sexual Nature Sexual Harassment?

- Sexual attraction and banter may often play a role in the day-to-day social exchange between employees.
- It can be difficult to distinguish between behavior that is consensual, behavior that is not invited but is welcome, behavior that is offensive but tolerated, and behavior that is outright objectionable.
- Therefore, it is critical to understand that sexual conduct is unlawful <u>only when it is</u> <u>unwelcome</u>.

What Are the Employer's Obligations?

Employers are required to take steps to *prevent sexual*harassment from occurring, such as:

- providing training to employees,
- expressing strong disapproval of unwanted conduct,
- developing appropriate consequences,
- informing employees of their rights and how to raise the issue of harassment.

Ankamah v. Chauhan Food Services 2010 HRTO 2024

Employers must act in a fashion to demonstrate the following:

- a. They are aware of the issues of discrimination and harassment;
- b. They take complaints seriously once a complaint is brought to their attention; and
- c. They act to resolve the complaint and communicate that result to the persons complaining.

Retaliation

- Employees have a <u>right</u> to complain about treatment they believe is illegal.
- An employer cannot punish, threaten or harass an employee for reporting job discrimination or for helping someone else report job discrimination.
- If an employee enforces their rights and is punished, they may have further recourse

How Can I Help Prevent Sexual Harassment?



Acting as a Helper

Address with perpetrator (if safe to do so)

Report to supervisor

Keep notes/ documentation File written complaint with employer

File grievance if unionized

Insist on investigation/written report/consequence

Report to police if criminal harassment and/or sexual assault

What If There Aren't Witnesses?

A common belief is that sexual harassment cannot be proven unless there are witnesses.

This is untrue! It is not unusual for sexual harassment to occur privately with no eyewitnesses.

<u>But</u> it is possible to have someone prove the sexual harassment without having seen it themselves.

Ex. Someone observed the victim's demeanor immediately or shortly after an alleged incident of harassment.

The victim may have spoken to someone – such as coworkers, friends, parents, a doctor or a counselor after the incident and they can help prove it happened.

What Can I do if I witness someone experiencing harassment?

Victims often pretend they are okay when they are not.

If you see something inappropriatespeak up! (If it is safe to do so)

Documentation

- It is important to **document** sexual harassment. A written account helps the victim to report incidents accurately to authorities within the company or to someone they trust.
- Write down who, when, where, and how the sexual harassment occurred.
- You should also write down how the harassment <u>made you feel at the time</u>, how it affected your work environment, whether there were witnesses (if yes, their names), and whether you reported the harassment to someone else.

What The Law Says



Occupational Health and Safety Act, R.S.O. 1990, c. O.1

"Workplace Sexual Harassment" means:

- Engaging in a course of vexatious comment or conduct against a worker in a
 workplace because of sex, sexual orientation, gender identity or gender expression,
 where the course of comment or conduct is known or ought reasonably to be known
 to be unwelcome, or
- Making a sexual solicitation or advance where the person making it is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome [subsection 1(1)].

Human Rights Code, R.S.O. 1990, c. H.19

• 7(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2); 2012, c. 7, s. 6 (2).

Legal Options

1

File a complaint with the Human Rights Tribunal of Ontario within one year of the last incident:

• http://www.sito.gov.on.ca/hrto/application-and-hearing-process/

2

File a claim in Small Claims Court if value is under \$35,000 within 2 years of the last incident:

 https://www.attorneygeneral.ju s.gov.on.ca/english/courts/gui des/ 3

File a claim in the Superior Court of Justice if claim value exceeds \$35,000 within 2 years of last incident

**highly recommended to retain lawyer for this.

4

Report behaviour to police if the conduct is criminal behaviour

• https://www.rainn.org/articles/ reporting-law-enforcement 5

Report to Ministry of Labour if employer is not following health and safety regulations

 https://www.labour.gov.on.ca/ english/hs/pubs/fs_wvh_atwork.php

Remember – the law is on your side.

The law is on your side. You have the right to work in an environment free of harassment.

You have a right to complain to your employer about harassment. The law requires the company to act upon your complaint.

Retaliation is illegal and your employer is not allowed to punish you for reporting.

You can obtain legal assistance to exercise your legal options like filing a complaint under the Human Rights Code or *Employment Standards Act*.

Please Contact Us







You can reach us at:

443 Ouellette Ave. Suite 200 Windsor, ON N9A 4J2

Tel: 519-256-7831 Fax: 519-256-1387 TTY: 519-256-5287

Monday - Friday: 9:00am-4:30pm

Additional Resources

Government of Ontario:

https://www.ontario.ca/page/understand-law-workplace-violence-and-harassment

■ Human Rights Tribunal of Ontario:

http://www.sjto.gov.on.ca/hrto/

■ Canadian Human Rights Commission:

https://www.chrc-ccdp.gc.ca/index.html

Ministry of Labour Health & Safety Contact Centre

Toll-free: 1-877-202-0008

■ Human Rights Legal Support Centre:

https://www.hrlsc.on.ca/en/welcome

■ The Legal Clinic:

http://www.legalclinic.ca/services.html

Phone Toll Free 1 (888) 777-8916

Services for victims of sexual assault:

http://services.findhelp.ca/ovss/

■ Private counselling services in your community:

https://www.psychologytoday.com/ca/therapists/ontario