

RESPECT IN THE WORKPLACE

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Harassment

□ Prohibitions against harassment in the workplace:

- Human Rights Code of Ontario
- Occupational Health and Safety Act
- Common Law - Court decisions



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Human Rights Code

□ Prohibits

- discrimination and
- harassment in employment



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Five Areas of Protection

- Employment
- Contracts
- Provision of service, goods and facilities
- Accommodation (housing)
- Membership in a trade union, trade or occupational association



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Prohibited Grounds

- Employment

Race	Ancestry
Place of Origin	Colour
Ethnic Origin	Citizenship
Creed	Sex
Sexual Orientation	Age
Record of offences	Marital Status
Family Status	Family Status



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Discrimination

- Direct – treating someone different specifically based on one of the protected grounds
 - Most like harassment
- Indirect – apply a rule or standard without consideration for one of the protected grounds



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4 Elements to Harassment

1. Course of vexatious comment or conduct that troubled the complainant
2. Comment or conduct carried out by the employer, co-employees or third parties such as clients or suppliers

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4 Elements, con't

3. The accused must have known or ought to have known the conduct was unwelcome
4. The conduct is related to a prohibited ground

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Sexual Harassment

- Includes any **unwanted** advance, request, invitation or comment of a sexual nature as well as personally offensive sexual behaviour
 - unwelcome sexual flirtation, advances, propositions or gestures
 - verbal harassment such as sexist jokes and innuendos causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that they are, by their nature, clearly embarrassing or offensive
 - Leering
 - derogatory or degrading remarks directed towards a person because of their sex or sexual orientation

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Sexual Harassment

- sexually degrading words to describe a person
- requests for sexual favours, especially when an employment decision is based on submission to or rejection of such deviant conduct
- graphic, verbal comments about an individual's physical characteristics or clothing
- inappropriate display of sexual pictures or materials that are considered offensive
- intentional, unwanted physical contact
- sexual assault (an offence under the [Criminal Code](#))
- verbal abuse, reprisal or threat of reprisal for rejection of a sexual solicitation or advance


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Human Rights Code Remedies

- Monetary, Unlimited
 - compensation for loss of dignity, feelings and self-respect
 - Range of \$850 to \$30,000. Medium is approximately \$10,000 to \$15,000
 - Compensation for actual financial losses (i.e. lost wages)
- Remedial
 - Apology
 - Reinstatement


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Human Rights Code Remedies, Con't

- Public interest remedies
 - Policies
 - Training


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Human Rights Cases

- Most are sexual harassment cases
 - *Harriott v. National Money Mart*, 2010 HRTO 353 (CanLII)
- Cases based on race etc. are usually quite egregious
- Single incidents
 - *Prestressed systems v. L.I.U.N.A. Local 625* (2005) 143 L.A.C. (4TH) 340)
- Evidence of discrimination
 - *Dhamrait v. JVI*, 2010 HRTO 1085



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OHS : Workplace Harassment

- OHS definition of “harassment”

engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome



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MOL Guidelines

- Conduct typically occurs more than once (although extreme singular incident could be singular incident, e.g. single comment of “no sex, no promotion”)
- Examples include:
 - making remarks, jokes or innuendos that demean, ridicule, intimidate, or offend
 - displaying or circulating offensive pictures or materials in print or electronic form
 - bullying
 - repeated offensive or intimidating phone calls or e-mails, or
 - inappropriate sexual touching, advances, suggestions or requests



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MOL Guidelines

- Harassment Does NOT include reasonable action or conduct by employer, manager or supervisor that is part of normal job function even if there are unpleasant consequences for worker
 - Changes in work assignments/scheduling
 - Job assessment and evaluation
 - Workplace inspections
 - Implementation of dress codes
 - Disciplinary action


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MOL Guidelines

- Harassment does not include differences of opinion or minor disagreements between co-workers would also not generally be considered workplace harassment


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OHSА Remedies

- None
- OHSА requirement - Policy/Program and instruction
- General duty to “*take every precaution reasonable in the circumstances for the protection of a worker*” specifically applies to workplace violence but not workplace harassment


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MOL

- Will investigate to determine if you have a policy or program
- Will NOT investigate or resolve harassment complaints
- Duty to investigate and resolve disputes remains with the employer



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MOL'S Position on Harassment Claims

- <http://www.labour.gov.on.ca/english/hs/pubs/wpvh/role.php>
- *It is not the role of ministry inspectors to resolve or mediate specific allegations of harassment in the workplace.*
- *Employers are responsible for investigating and dealing with incidents and complaints of workplace harassment. They are also responsible for making decisions on what steps, if any, should be taken as a result.*



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MOL'S Position on Harassment Claims, con't

- *A worker may also seek resolution of a workplace harassment incident or complaint outside of the employer's internal investigation procedure. In particular, a worker may do this if he or she believes the employer did not properly deal with the matter.*
- *For example, a worker may:*
 - *contact the [Human Rights Tribunal](#) to file an application to have their matter heard if the alleged harassment is based on one of the grounds prohibited under the [Ontario Human Rights Code](#); or*
 - *seek to resolve harassment issues through the grievance arbitration process if they are represented by a union; or*
 - *seek to resolve harassment issues through civil litigation, depending on the circumstances*



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Court Decisions

- Damages for Constructive Dismissal
- Damages for mental suffering for the manner of dismissal
- Examples
 - *Piresferreira v. Bell Mobility*, 2010 ONCA 384
 - *Sulz v. Minister of Public Safety and Solicitor General*, 2006 BCCA 582



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Due Diligence

- Policy and Procedure
- Train Managers
 - The Law
 - How to be effective managers
 - Keep it positive
 - Keep it professional
 - Avoid cliques or favouritism
 - Don't ignore or avoid the unpleasant employee



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Due Diligence, con't

- Screen potential employees
- Harsh Managers
 - Monitor
 - Don't pair with sensitive employees



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Due Diligence, con't

- Be aware of risky situations
 - The loner or outsider
 - Poor performers
 - Performance reviews
 - Post sick leave
- Document



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Responding to Harassment Complaint

- Follow your policy
- Procedure is everything: Investigate and make a decision
- Treat every allegation equally
- Be sensitive to the accused as well as the complainant



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Tips for Creating a Respectful Workplace



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The Basics

□ Actions to Avoid

- Having loud telephone conversations
- Not cleaning up after yourself in the staff kitchen
- Showing up late for meetings
- Looking at a co-worker's computer screen over his or her shoulder
- Taking supplies from a co-worker's desk
- Neglecting to say please and thank you
- Wearing too much perfume
- Chewing gum loudly
- Taking the last of something without replacing it
- Talking behind someone's back
- Asking someone to lie for you
- Blaming someone else when you are at fault



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The Basics, con't

- Taking credit for someone else's work
- Asking a subordinate to do something unrelated to work, i.e. run errands
- Trying to convert others to your political or religious beliefs
- Opening someone else's mail
- Sending unwanted email
- Telling offensive jokes
- Smoking in common areas
- Not pulling your own weight
- Complaining about the company, boss, and co-workers
- Having a condescending attitude toward others

Toward a More Civil Work Place; Avoiding Offensive Behavior on the Job
By Dawn Rosenberg McKay, *About.com Guide*



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Tips - Discourage

- Any "consensual" but offensive joking, especially about human rights protected grounds
- Gossip or back biting
- Poking fun behind people's back especially about human rights protected ground
- Cliques or favouritism



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Tips - Encourage

- Keep it professional

- Speak up
 - Directly and not to talk behind each other's backs
 - Respectfully

- Listen first, speak later
 - 24 hour rule

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Tips - Encourage

- Appreciate different perspectives

- Appreciate interests are often different than a position

- Fess up to mistakes
 - It's not the mistake but how you handle it
 - Go easy on others who make mistakes

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Tips - Encourage

Lighten up!!!!!!

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HOW

- Lead by Example

- Train

- Reward

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