

REPORT

NOT ON THE MENU

Inquiry report on sexualized and gender-based dress codes in Ontario's restaurants



**Ontario
Human Rights Commission**
**Commission ontarienne des
droits de la personne**

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Introduction

Since mid-2015, many restaurant workers have raised concerns about sexualized and gender-specific dress codes affecting front-of-house staff in the restaurant sector. Current or former restaurant staff have described their experiences and concerns in the media and social media, started a petition, held events and made human rights and workplace safety complaints.¹

Restaurant work is an important source of employment. In Ontario, restaurants employ 440,000 people, or 6.4% of the workforce, and more than one in five Canadians between the ages of 15 and 24 work in the industry.² It is often an entry point for newcomers into the Canadian job market, and an accessible career option for many others, as most positions do not require specialized training or higher education.³

However, restaurant work can also be precarious, with low wages, reliance on tips and part-time hours. Women are more likely than men to hold precarious employment⁴ and are more likely to experience poverty.⁵ Hosts, bartenders and servers in Ontario are predominantly female, and more than one-third are young women under age 24.⁶ Factors such as lack of awareness of human rights laws, age,

¹ For example, see CBC Marketplace report: <http://www.cbc.ca/news/business/women-dress-codes-human-rights-1.3476964> (retrieved Feb. 21, 2017); Change.org petition "[Stop sexist dress codes in restaurants](#)" with more than 31,600 signatures (as of Feb. 21, 2017); a one-day conference (see Corey Mintz, "[What went down at the Kitchen Bitches conference](#)," *Toronto Life*, Sept. 4, 2015).

² Restaurants Canada Infographic, "[Ontario's Restaurant Industry](#)," updated March 19, 2014 (retrieved Feb. 21, 2017).

³ Interviews with restaurant industry experts.

⁴ Andrea M. Noack & Leah F. Vosko, *Precarious jobs in Ontario: Mapping dimensions of labour market insecurity by workers' social location and context* (2011) Commissioned by the Law Commission of Ontario, available online at www.lco-cdo.org/en/vulnerable-workers-call-for-papers-noack-vosko (retrieved: Feb. 25, 2016).

⁵ See, for example, Vineeth Sekharan, "[Infographic: Canadian Women in Poverty](#)" (2015) Canadian Observatory on Homelessness/Homeless Hub (retrieved: Feb. 22, 2017); and Monica Townson, "[Canadian women on their own are poorest of the poor.](#)" Sept. 8, 2009 (retrieved Feb. 22, 2017).

⁶ Data from the 2011 National Household Survey indicates that almost 75% of food and beverage servers, restaurant hosts and bartenders in Ontario are women, and 36.8% are women between the ages of 15 and 24 (Statistics Canada, no date). See *2011 National Household Survey: Data Tables*. Statistics Canada Catalogue no. 99-012-X2011033. Last modified Jan. 7, 2016. Online: Statistics Canada www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=0&PID=1

recent immigration, uncertain employment, reliance on tips, low rates of unionization, and the prevalence of sexual harassment and sex discrimination in the restaurant industry can increase worker vulnerability.⁷ This means that many employees are afraid to complain about dress codes, sexual harassment or other discrimination, and that discriminatory environments and staff complaints are often not appropriately addressed.⁸ Some workers fear reprisal for raising concerns about dress codes and other sexual harassment:

“I don’t see how to enforce it without people losing their jobs.”⁹

“Employers get away with exploiting people or maintaining questionable conditions of employment because people need the jobs.”¹⁰

The Ontario Human Rights Commission (OHRC) decided to take action on sexualized dress codes because of the systemic nature of the problem and the impacts based on *Human Rights Code (Code)* grounds such as age, sex, creed, gender identity and gender expression. The OHRC is also concerned that workers who object to wearing gender-specific or sexualized dress may be at greater risk of losing employment or not being hired, which may contribute to increased rates of poverty. As well, recent high-profile reports of sexual harassment and discrimination, such as allegations against media and political figures, have led to greater dialogue – in the restaurant industry and across the country – about the barriers women face in the workplace.

The OHRC welcomed the opportunity to contribute to this dialogue, and to work with restaurant associations and leading restaurant companies to reduce discrimination and problematic practices that can lead to discrimination, and make workplaces in this sector more inclusive.

[05897&PRID=0&PTYPE=105277&S=0&SHOWALL=1&SUB=0&Temporal=2013&THEME=96&VID=0&VNAMEE=&VNAMEF](#) (Retrieved: Feb. 25, 2016).

⁷ OHRC, “[Sexualized and gender-specific dress codes: Frequently Asked Questions](#)” and “[Backgrounder: sexual harassment and sex discrimination at work](#)”; and interviews (anonymous), [June 13 and 14, 2016](#).

⁸ OHRC Backgrounder and interviews (Ibid.).

⁹ Email to the OHRC.

¹⁰ Interview, June 13, 2016.

Sexualized and gender-based dress codes may discriminate

Employers can have dress codes, but only if they do not violate the *Code*. Human rights decisions dating back to the 1980s have found that dress codes that create adverse impacts based on sex violate human rights laws. Any sex-based requirements in the dress code must be legitimately linked to the requirements of the job, or they will be discriminatory.¹¹

Despite legal protections, sexualized and gender-specific dress codes appear to be common in the food service industry, particularly in table service, and can also be found in other employment and services.¹² In the restaurant sector, women have raised concerns about being required or pressured to conform to gender-based and sexualized expectations, such as being told to wear high heels, makeup, jewelry, particular hair styles, short skirts, and uncomfortable, tight or otherwise revealing clothing (see Appendix A). For example¹³:

“Not dressing up ‘enough’ in terms of hair and makeup does result in a decrease in the number of shifts you get.”

“We’ve been told if you don’t want to wear heels, you can work in the dining room [lower tips than the bar] or at another restaurant.”

The impacts of these requirements can be significant. The OHRC heard restaurant workers describe feeling physically uncomfortable, embarrassed, excluded and/or exposed because of sexualized and gender-based dress codes, including grooming and accessory requirements. Some reported feeling unsafe in the workplace. They

¹¹ For more information on the OHRC’s long-standing position on dress codes and legal cases, see the *OHRC policy position on sexualized and gender-specific dress codes* (Appendix B) and the OHRC guide, *Human Rights at Work*

¹² *Policy position*, *Ibid.*, OHRC interviews with industry experts (anonymous) and media reports, such as Rajeev Syal, *“The law must be tougher over dress code discrimination, say MPs,” The Guardian*, January 25, 2017.

¹³ Email to the OHRC.

felt the required clothing or shoes caused physical constraints, safety risks or health problems, or that they were subjected to greater levels of sexual harassment because of dress and grooming requirements. For example¹⁴:

“Men think it’s ok in these restaurants to hit on [female servers] and make sexual comments, and I do think it is a direct result in terms of how we are presented to them.”

“I and a lot of the girls working there have damaged feet, back pain, and chronic neck pain from wearing heels and lifting heavy plates for 8-9 hr shifts.”

Twenty-two percent of Canadian workers start out in the food service industry.¹⁵ The work environment they experience can set the tone for their employment future. Sexual and gender-related objectification, inequality, harassment and discrimination can become normalized, so some workers assume that their own inappropriate behaviours are acceptable, and others feel they must tolerate the unfair treatment, or quit. All employees should be able to work in a fair and equitable environment without discrimination or harassment, whether they eventually move on to other work, or have a long career in food service.

The OHRC’s initiative on sexualized and gender-based dress codes

Under the *Code*, the OHRC works to identify, prevent and eliminate discrimination, and promote and advance human rights across the province. Our goal is to create an inclusive society where everyone is valued, treated with equal dignity and respect, and takes responsibility and action, so human rights are a lived reality.

To achieve this goal, the OHRC uses its legislated powers, including policy development, public education, inquiries, applications to the Human Rights Tribunal of Ontario (HRTO), and interventions before the HRTO, other tribunals

¹⁴ Email to the OHRC.

¹⁵ Restaurants Canada, “Canada’s Restaurant Industry: Putting jobs and economic growth on the menu,” Fall 2010. Online at www.restaurantscanada.org/Portals/0/Non-Member/2013/Report_IpsosPublicOpinion_Dec2010.pdf

and in the courts. Establishing respectful, collaborative relationships and dialogue is central to the OHRC's work and is key to both systemic change and fostering a culture of human rights accountability.

In recent years, there has been an increase in constructive public discourse on sexual harassment issues. In late 2015 and 2016, several people filed human rights complaints (called applications) at the HRTO, relating to sex and gender bias in restaurant dress codes for female staff. Concerns were also raised with the Ontario Ministry of Labour regarding clothing and shoe requirements.¹⁶ The OHRC decided to use a range of its powers under the *Code* to help identify, address and prevent these problems through systemic changes in the industry.

In March 2016, the OHRC released its *Policy position on sexualized and gender-specific dress codes* (See Appendix B). OHRC policies provide guidance on applying the *Code*. The policies are based on case law, social science research and public consultation, are given great deference by courts and the HRTO, and are often cited in legal decisions. On June 23, 2016, the Canadian Association of Statutory Human Rights Agencies (CASHRA) wrote to the nationwide industry association, Restaurants Canada. CASHRA raised concerns about gender-specific and sexualized dress codes for restaurant workers across Canada, and expressed support for the OHRC's actions and position on the issue.

After releasing its *Policy position*, the OHRC used its powers under the *Code* to:

- Develop educational materials and tools for the restaurant industry about how dress codes may violate human rights protections relating to sex and other *Code* grounds, and how to remove and prevent barriers
- Work cooperatively with restaurant associations to disseminate human rights information and tools, to increase awareness and spur proactive industry-wide change
- Encourage industry leaders to identify and remove discriminatory dress code and grooming requirements and improve working conditions
- Create a culture of respect, dignity and human rights compliance across the sector, and reduce the likelihood of complaints.

¹⁶ Information received from a restaurant.

Work with hospitality industry associations

The OHRC reached out to Restaurants Canada's Ontario branch and the Ontario Restaurant, Hotel and Motel Association (ORHMA) to discuss the dress code issue and seek their help in addressing it. Over the past year, we have been pleased with the cooperation of both organizations, which have worked to raise awareness, identify and address questions and concerns from their members, and provide tools and assistance to remove dress code barriers and increase human rights compliance.

The ORHMA has¹⁷:

- Posted OHRC resources relating to sexualized and gender-based dress codes on its website, including the *Policy position*, examples, checklist, FAQs and backgrounder
- Distributed the information to its members through its weekly newsletter and as an online news item
- Invited OHRC staff to deliver a presentation and have a discussion with members at its October 2016 board meeting
- Posted a copy of the OHRC's presentation on its website, and circulated it to 11,000 association members.

Restaurants Canada has:

- Sent out information and links to the *Policy position* and other resources in its bi-weekly e-news mailings to members in Winter-Spring 2016
- Used social media, including Twitter (7,400 followers) to deliver related messages and links several times since Spring 2016
- Discussed the dress code issue at its June 2016 board meeting
- Committed to develop a comprehensive digital workplace best practices guide, including human rights information, to be released soon to all of its 30,000 members and the public.

¹⁷ <http://www.orhma.com/GovernmentRelations/DressCodeInformation.aspx>

The public inquiry: letters to restaurants

On July 8, 2016, the OHRC initiated a human rights inquiry into dress codes in the restaurant sector and identified restaurant companies based on the following criteria:

- They own or operate one or more restaurant chains, or multiple establishments/brands, in the casual/family dining sector, and
- They are industry leaders, in terms of the number of people employed in Ontario, and/or their potential to influence industry norms and standards.

The OHRC wrote to the companies listed below, which represent more than 25 multi-location brands and hundreds of restaurants across Ontario, informing them about dress code concerns and obligations under the *Code*. The letter included a checklist of measures that they – and all restaurants – should take to make sure that their dress codes comply with the *Code*. The OHRC provided deadlines for the companies to provide written commitment to implement the measures, and to show compliance.

Companies contacted

Company	Restaurant(s)
Cactus Restaurants Ltd.	Cactus Club Café
Cara Operations Ltd.	Bier Markt, East Side Mario's, Kelsey's, Milestones, Montana's Prime Pubs: Fionn MacCool's, D'Arcy McGee's, Paddy Flaherty's, Tir nan Óg The Landing Group: Baxters, Hunters, Williams, Jacksons, Harpers, Arthurs, Carters, Kellys, Taylors
Earl's Restaurants Ltd.	Earl's Kitchen and Bar
FAB Restaurant Concepts, Inc.	Against the Grain, Brazen Head, Dominion Pub and Kitchen, Foggy Dew, Murphy's Law, Pogue Mahone, Pour House, Watermark
Firkin Group of Pubs	27 Ontario Firkin pubs
Imago Restaurants	Duke Pubs – Duke of: Devon, Kent, Richmond, Westminster, York, Somerset
Invescor Restaurant Group Inc.	Baton Rouge
JOEY Restaurant Group	JOEY Restaurants

The Keg Steakhouse and Bar	The Keg Steakhouse and Bar
Moxie's Restaurants, LP	24 Ontario Moxie's Grill and Bar locations
Pegasus Group of Companies, Inc.	Figo, Fox and Fiddle, Home of the Brave, La Carnita, Macho Radio Bar, The Miller Tavern, O'Grady's Tap & Grill, Wheat Sheaf Tavern, Palais Royale, The Grand Luxe
Shoeless Joe's Sports Grill	Shoeless Joe's Sports Grill
SIR Corp (Service Inspired Restaurants Corporation)	Canyon Creek, Duke's Refresher Bar, Jack Astor's, Loose Moose, REDS, Scaddabush
Urban Dining Group, Inc.	Amsterdam Brewhouse, Gabby's Restaurant Group, Hey Lucy

The dress code checklist

The OHRC inquiry letter provided a [checklist](#) that was developed to help organizations make their dress codes and uniform policies consistent with the *Code* protections relating to sex and gender, as set out in the OHRC's *Policy position on sexualized and gender-specific dress codes*. While the inquiry focused on specific companies, all Ontario restaurants – and other employers – have a legal obligation to make sure that their dress requirements comply with the *Code*.

All dress code/uniform policies should:

1. Allow for a range of dress/uniform options, for all staff in all front-of-house positions
2. Not require any staff to wear sexualized, revealing or gender-stereotypical clothing
3. Make sure that all staff can choose from clothing options, including pants, that are comparable in terms of style, comfort, practicality and coverage, regardless of sex or gender
4. Offer uniform sizes that fit a wide range of body types
5. Make all dress code options available by default, rather than only offering certain options by request
6. Not include grooming or appearance rules or expectations for women that are more onerous than those for men, or that are sexualized or based on stereotypical ideas of female attractiveness

7. Allow for a range of hairstyles, and not require a specific hairstyle unless it is a legitimate requirement of the job (e.g. food preparation)
8. Specify that applicants or interviewees cannot be asked to identify what kind of uniform option they will choose to wear until they have been given an offer of employment
9. Include processes for handling dress code-related accommodation requests and complaints
10. Be communicated with and freely available to all staff.

The OHRC requested that each company implement these measures in its Ontario operations and confirm compliance by December 2016 with supporting documentation, such as policies, communications, and training materials.

Responses to the inquiry

Overall, the response from the companies contacted was positive. Most were aware of concerns relating to sexualized and gender-specific dress codes, and several said they had already changed dress codes, or were making amendments when they received the OHRC's letter. Over several months, the OHRC provided updates and feedback to all of the restaurants contacted, and engaged in dialogue to help organizations identify and address issues of concern.

In general, companies expressed positive views about addressing dress code, sexual harassment and gender-related issues, mentioning:

- The need to increase gender equality in the food service industry
- The importance of making dress code changes, for fairness, morale and business reasons
- The need to address sexual harassment and other human rights concerns in the workplace
- Support for the OHRC's *Policy position* and/or the inquiry.

All provided documents showing they developed new policies or had amended dress code and/or grooming policies in some or all of their brands.

Overall, restaurant companies were quite engaged: they sought feedback, took part in productive discussion, and made additional changes in response to OHRC input, to ensure their dress codes are more equitable and inclusive.

Several companies, including Cara, Earls, JOEY, Moxie's, Pegasus, Shoeless Joe's and Urban Dining Group, provided some or most of the requested information, but have not addressed all the concerns outlined by the OHRC in its inquiry letter.

- Urban Dining Group has provided some materials relating to Amsterdam Brewhouse and Hey Lucy, but has not provided the dress code for its Gabby's brand, or responded to recommendations about its complaint and accommodation processes.

The other companies made positive amendments to policies and addressed most issues; however, some concerns remain.

- Pegasus has developed new policies, but it had not implemented them at the time of this report, and did not respond to follow-up questions or the OHRC's request for information as to how and by what date the policies would be implemented and communicated with employees
- Cara had not yet implemented its new policies for its Landing Group brand restaurants at the time of this report and did not provide an implementation date. In the meantime, it has instructed the restaurants that women staff are not required to wear dresses and must be given the option to wear pants and shirts
- Moxies and Shoeless Joe's have not amended requirements that employees must wear their hair down
- Shoeless Joe's has not provided information showing that it has developed and communicated a process for handling accommodation requests relating to the dress code
- Earls has not provided information to establish that it has developed and communicated a policy to ensure that applicants/interviewees will not be required to state their uniform preference before being hired
- JOEY states that it is "working to finalize" and implement new uniform options, but has not provided a projected timeline or further information. In the meantime, it has instructed locations to allow a pants option.

Any company whose policies do not meet the measures on the checklist may be vulnerable to human rights complaints. Companies can use the resources provided by the OHRC to help them make sure that their policies do not discriminate under the *Code* (See Appendix D).

General comments on uniforms

Some restaurant companies underscored the value of uniforms and dress codes in promoting the company brand, ensuring a professional and consistent look, distinguishing staff from patrons, and addressing health and safety-related concerns (such as non-slip footwear, reducing risk of accidents relating to jewelry, and not getting hair in food). These are all legitimate business interests, as long as the requirements do not have a discriminatory *Code*-related impact.

Some companies with multiple restaurant brands noted that one or more of their brands already had dress codes that were essentially the same for all staff. However, some of these companies still identified opportunities to update policies to make them more inclusive.

A few companies stated that they seek and incorporate staff input about dress codes. This is a positive step that can help to reduce concerns. However, different employees may have different *Code*-related needs, and are affected in different ways by dress code requirements. Employers must take proactive steps to make their policies as inclusive as possible and have processes for accommodation of *Code*-related needs, and to address complaints about the dress code.

Companies varied in degree of flexibility and staff choice in work clothing, such as:

- Staff choose their own clothing within general colour and style guidelines
- Commercially available clothing from a list of prescribed options
- A mix of self-bought and proprietary clothing
- Almost entirely proprietary clothing.

Companies can have clothing and grooming requirements for staff that are in line with their corporate brand and/or meet their corporate goals. Companies should be aware, however, that the more prescriptive their requirements, the more likely they are to create barriers for staff, such as:

- Sexualizing or subjecting women to different standards
- Discriminatory impacts based on religious belief (e.g. jewelry restrictions, “clean shaven” men, hair or head cover), gender expression or sexual orientation
- Excluding a pregnant person, who may be unable to wear a proprietary uniform or designated style of top or pants.

Positive practices

Some of the positive and most common changes restaurant companies made to their dress code and related policies were:

Clothing

- Added pants options for all staff in all positions, instead of requiring women in any position to wear skirts, dresses or kilts
- Ensured that women and men's pants options are equivalent (not just yoga pants or skinny jeans for women and straight-cut jeans for men)
- Allowed more coverage for women staff:
 - added the option of wearing tights with a skirt or kilt (rather than bare leg, sheer hose or sock requirements)
 - allow for longer skirts, dress and/or kilts by changing the proprietary skirt, dress or kilt options, allowing staff to choose their own, or specifying a minimum length
 - added options like tops with longer sleeves and/or higher necklines, button-up shirts, and cardigans, jackets or blazers
- Changed policies so all front-of-house staff, or all staff in each position, have the same gender-neutral dress code descriptions.

Accessories and grooming

Many companies identified and removed sex-specific requirements in these aspects of their dress codes:

- Accessories:
 - removed jewelry requirements, or
 - clarified that jewelry is optional, before setting out any guidelines or recommendations
- Amended grooming standards to:
 - remove requirements that female staff wear makeup or nail polish
 - clarify that makeup and/or nail polish are optional before setting out any guidelines
 - remove requirements that staff wear their hair down.

Accommodation and complaint policies

Most companies said they developed or amended statements, policies and processes to address complaints and dress code accommodation requests. For example, many included:

- Titles of people to whom complaints and accommodation requests could be made, such as shift managers and/or site managers
- Names and/or titles of persons to whom issues can be escalated, if they are not appropriately addressed at the initial complaint or request level, such as:
 - owners/franchisees
 - human resources contacts and/or company leadership/head office contacts, with contact details.

Several larger companies also provided anonymous or confidential email, online or telephone hotline contacts for staff complaints.

Communicating policies and amendments to staff

Companies described several ways that dress code changes have been communicated to staff, such as:

- Discussions at board, operations and management meetings
- Staff meetings in each restaurant/location
- Amendments to hard copies of employee handbooks/manuals, and
 - providing manuals to every employee at hire
 - keeping a hard copy at each restaurant site
- Attaching memos about dress code changes to employee pay stubs
- Posting dress code policies and posters in staff areas of each restaurant location
- Posting policies/manuals online.

Additional statements, policies and actions affirming gender equality and safe and positive workplaces

Many companies described other efforts to create more equitable environments based on sex and gender, and create positive, safe and welcoming environments.

For example:

- JOEY stated that its commitment to advancing women into leadership roles means that women now occupy 51% of salaried management positions
- Imago introduced gender-neutral washrooms and posted signs in washrooms and staff rooms about the right to safety relating to gender, and received positive feedback from patrons and staff about both measures
- Statements of commitment to provide a fair and inclusive workplace
- Several companies – such as Cara, Cactus Club and Shoeless Joe’s – have policy statements and/or training that reference employee protections in health and safety, employment standards, human rights, workplace sexual harassment and violence, and other legislation, and indicate their commitment to comply
- SIR Corp’s policies include a statement that all uniform options are available to all staff based on personal preference, regardless of gender identity
- The Keg and Earls report that they monitor concerns and compliance with policies through employee surveys. The Keg also includes availability of gender-neutral dress options at all locations as part of regular site audits
- Some companies with operations outside of Ontario said they have also implemented their dress code changes in operations in other provinces and the USA.

Ongoing concerns and solutions

Companies described many good practices and changes to policies. However, the responses also identified areas for improvement.

Grooming and accessories

Despite the OHRC’s input, two restaurants still have a requirement that hair be worn down – such as “completely down” with no hair clips or accessories. Even if not worded specifically about women, this requirement is likely to

disproportionately affect women, and to affect staff differently based on other *Code* grounds in addition to sex or gender. Companies with this requirement may be vulnerable to human rights complaints.

While an employer may reasonably expect employees to present a well-groomed appearance, employees of any gender may have different lengths or textures of hair. Hair length and style preferences may relate to sex, gender expression, race, ancestry, ethnic origin, creed (religion) or other *Code* grounds.

Several restaurants indicated that they request that all staff with longer hair, regardless of gender, style it so that it stays behind their shoulders, or tie it back, to avoid actual or perceived contact with food.

Some companies' makeup and jewelry guidelines still present concerns because they imply a gendered preference in their appearance guidelines. One company told the OHRC that it doesn't require jewelry or makeup for women, but its policy implies a preference for jewelry when it says "stylish necklaces are a great way to show fashion sense." Another company addressed this concern by amending a statement that said that makeup is a "big part of being put together," to clarify that those who choose to wear makeup should not overdo it.

The OHRC has stated that a range of hairstyles should be allowed and that makeup, nail polish and jewelry – traditional expectations of women – are not related to a person's ability to perform the job. Any rule or restriction that has a different impact based on sex, gender expression or other *Code* grounds, and does not relate to the requirements of the position, may violate the *Code*.

Many companies involved in the inquiry provided policies with hair, grooming, and accessory guidelines that appear more inclusive and gender-neutral, such as:

- Allowing hair to be held back or up, with guidelines about the colour and style of hair accessories, if desired;
 - for example, some companies specify that accessories should be: minimal and unobtrusive, not decorative in nature, similar to hair colour, or specific colours, such as metallic or company brand colours
- Having one set of hairstyle, grooming and accessory/jewelry requirements or policies for all staff in front-of-house positions

- Stating clearly that makeup, nail polish and/or jewelry are not required for any position, and only then providing guidance advising staff of restrictions or suggestions for people who choose to wear them
- Setting out jewelry restrictions, but allowing certain items and/or referring to the right to request accommodation based on *Code* grounds
 - some specify that wedding bands, medic-alert bracelets and items required as religious articles of faith are allowed or can be accommodated.

See Appendix C for a sample gender-neutral dress code policy.

Gender-specific policies

There appears to be a strong tendency to maintain separate policies for female and male staff relating to grooming, accessories, shoes and clothing. While this is not inherently discriminatory, setting out separate policies can result in duplication, and can result in non-equivalent options that may be discriminatory. It can create pressure on female staff to wear traditionally feminine-gendered clothing, or on all staff to conform to gendered clothing expectations based on sex that may not reflect their own gender identity.

The examples below are of non-equivalent dress options where restaurants had separate policies for women and men in the same position:

- Men wear a long-sleeved shirt, while women wear a close-fitting knit top, scoop-neck top or t-shirt, or a top or dress that is sleeveless
- Button-up shirts are not listed as an option for women but are listed for men in the same position
- In several restaurants, uniform colour options differentiated between front-of-house staff by gender, rather than by position
- Some dress codes for women list skirt and dress options first, and the pants option last, which may imply that wearing pants is the least preferred option
- Tight, “skinny-jean” options for women and less form-fitting options for men
- Shoe requirements such as a 1½ to 2-inch wedge heel for women, with no heel style or height specification for men.

Companies should make sure that unconscious biases and gender expectations do not shape their dress code requirements. They can achieve this by establishing

gender-neutral dress code requirements/options for all staff in a position, and allow each employee to choose what is appropriate for them, from the available option(s) (see Appendix C for an example).

Implied preference for certain gender-specific clothing

In some cases, the order in which clothing or shoes are described or depicted, the images used, or the language of the policy implies a preference for gender-specific items.

Many companies provide images of clothing and shoe options for staff. A visual guide can be helpful, but in some cases may imply a preference for a more revealing or stereotypically feminine look for women. The clothing options depicted, and their order, matter. For example, the following approaches can imply a preference for gender-stereotypical dress:

- Images of women staff dresses or short skirts, with long hair and/or costume jewelry, rather than the more gender-neutral options
- Images of shoes for women staff that all have high or narrow heels, with no flat shoes equivalent to those depicted for men
- Language stating that makeup or costume jewelry is a “great way to express yourself” or to “show your fashion sense,” or “a big part of being put together,” without saying that it is optional.

Ideas to address these concerns include:

- Make sure that lists or images of clothing options do not overemphasize more feminine or revealing options
- Provide one shoe description for all front-of-house staff
- Make sure that any images provided reflect the full range of comparable options available to all staff, such as:
 - images of female staff wearing more gender-neutral options and coverage equivalent to male staff, such as pants, button-up shirts, long-sleeved tops and blazers
 - examples of flat and/or lace-up shoes for all staff
- Language that encourages wearing makeup, jewelry or nail polish should be removed, and any guidelines about these items should state that they are optional.

Conclusion

While the OHRC has limited its inquiry to certain companies, the *OHRC policy position on sexualized and gender-specific dress codes* applies across Ontario. The *Policy position* and related OHRC tools and resources (Appendix D) are provided to help all companies identify and remove dress code barriers.

All Ontario restaurants and other organizations must make sure that their dress code policies are consistent with the *Code*. This is a key step to create fair and equitable work environments, and to prevent human rights violations and litigation. We encourage restaurant employees and other workers who feel that dress code policies discriminate against them to raise the issue with their employer, if they feel they can, and to use the OHRC's policies and other resources to self-advocate. If this is not successful or possible, they may choose to file a human rights application with the Human Rights Tribunal of Ontario and/or contact the Human Rights Legal Support Centre (HRLSC) for support in this process.

Human rights protections are comparable across Canada, and concerns about gender-specific dress codes have not been limited to any particular jurisdiction. Human rights law requires that workplaces take proactive steps to ensure that their work environments are inclusive, and allow people of all sexes and genders to work without discrimination.

Appendix A: Examples of dress code requirements or expectations that may violate the *Human Rights Code*

- High heel and/or uncomfortable shoe requirements for women, while men are allowed to wear tennis shoes or other low-heeled options
- Women staff required to wear revealing skirts or dresses, such as: short hemlines, low necklines, sleeveless tops, very tight-fitting and/or thin fabric
- Women not allowed to wear pants, given a pants option not equivalent to that for men (such as yoga pants vs. jeans), or told they can't wear pants in certain roles or locations (such as hosts, or servers in lounge areas)
- Women staff being prohibited from covering up:
 - required to have bare/exposed legs: prohibited from wearing stockings or pantyhose, tights and/or leggings under dresses/skirts
 - not allowed to wear another layer (sweater, jacket, long sleeves) with revealing outfits, or limited as to when or where they may do so
- These rules subject women to different standards and impacts than men, and may exclude staff based on creed (religion) or disability
- Grooming and appearance standards for women that are more onerous than those for men, and/or sexualized or stereotypical based on gender, such as:
 - required to wear makeup, jewelry and/or nail polish
 - required to wear hair down, in a particular style, or not in braids or dreadlocks. In addition to linking to sex, gender identity, or gender expression, these may exclude certain staff based on religion, race, ancestry, or sexual orientation
- Only offering gendered or sexualized outfit options up front (such as scoop-necks, sleeveless tops, mini-dress/skirt), so that staff must specifically request other options (higher neck, long sleeves, pants or longer skirt)
- Providing women's uniforms only in smaller sizes
 - This excludes women of larger size based on sexualized expectations
- Telling women staff what underwear they should or can't wear: such as being told not to wear a bra, or to wear thong underwear
- Pressuring women to wear sexualized dress to be hired, to get preferred shifts, more shifts/hours, or to work in specific positions or locations.

Appendix B: OHRC policy position on sexualized and gender-specific dress codes

Some Ontario employers require female employees to dress in a sexualized or gender-specific way at work, such as expecting women to wear high heels, short skirts, tight clothing or low-cut tops. These kinds of dress codes reinforce stereotypical and sexist notions about how women should look and may violate Ontario's [Human Rights Code](#).

Sexualized and gender-specific dress codes are all too common in some restaurants and bars, and can be found in other services. Whether in formal policy or informal practice, they contribute to an unwelcome and discriminatory employment environment for women. Female employees may face scrutiny to make sure they are abiding by the dress code, and may experience employment-related consequences for failing to dress or wear their hair, makeup or jewelry in a particular way. Employees may feel pressured to agree to sexualized dress requirements to get a job or because they fear losing tips, shifts, or even their jobs.

Employers can have dress codes, but only if they do not violate the Ontario *Human Rights Code*. Human rights decisions dating back to the 1980s have found that dress code requirements that create adverse impacts based on sex violate human rights laws.¹⁸

Employers must make sure that any uniform or dress code policy does not undermine employees' dignity and right to fully take part in the workplace because of *Code* grounds, such as sex (which includes pregnancy), race, gender identity, disability, gender expression and creed (religion).¹⁹ Dress codes may discriminate

¹⁸ *McKenna v. Local Heroes Stittsville*, 2013 HRTO 1117 (CanLII) [a woman's shifts were cut after she expressed concern about wearing a new form-fitting uniform due to her visible pregnancy]; *Doherty and Meehan v. Lodger's International Ltd.* (1981), 3 C.H.R.R. D/628 (N.B. Bd.Inq.) [women required to wear tuxedo-style jacket and shorts that accented their female sexuality]; *Ballantyne v. Molly'N'Me Tavern* (1982), 4 C.H.R.R. D/1191 (Ont. Bd. of Inq.) [woman denied employment because she would not work as a "topless waitress"]; *Mottu v. MacLeod*, [2004] B.C.H.R.T.D. No. 68, 50 C.H.R.R. D/223 [female servers required to wear a bikini top for a beach themed event night]; *Noseworthy v. Canton Restaurant* (2009), 69 C.H.R.R. D/33 (N.L. Bd.Inq.) [female employees required to wear skirts and not trousers].

¹⁹ For a discussion of dress codes and trans and gender-nonconforming individuals, see the Ontario Human Rights Commission's (OHRC) publication, *Policy on preventing discrimination because of gender identity and gender expression*, available at www.ohrc.on.ca/en/policy-preventing-discrimination-

based on one or more *Code* grounds. They may also discriminate based on how *Code* grounds combine or intersect with each other. For example, a dress code that requires a woman with a mobility disability to wear a restrictive skirt, without exception, may discriminate based on the intersection between disability, sex and gender expression.

Female employees should not be expected to meet more difficult requirements than male employees, and they should not be expected to dress in a sexualized way to attract clients. An employer should be prepared to prove that any sex-based differences in the dress code are legitimately linked to the requirements of the job. Where this cannot be shown, these dress codes will be discriminatory. For example, in one human rights case, in the absence of any justification by the employer, a tribunal found that the employer's expectation for female staff to exclusively wear skirts, while allowing male staff to wear pants, was discriminatory.²⁰

Sex-based dress codes undermine women's dignity and may make them more vulnerable to sexual harassment from other staff, customers and management.²¹ The Ontario Human Rights Commission's [Policy on preventing sexual and gender-based harassment](#) identifies that certain jobs – such as massage therapy, waitressing and bartending – are also occupations where women may be subjected to unwanted sexual behaviour. Tribunals have ruled on human rights claims in which female employees experienced unwelcome sexual behaviour while they were required to comply with gender-specific dress codes.²²

Employers have a duty under the *Code* to remove barriers to women's full and equal participation in employment, take steps to prevent sexual harassment and respond to it quickly when it occurs. As part of the Government of Ontario's 2015

[because-gender-identity-and-gender-expression](#). For more information on dress codes as they affect people with different faiths, see the OHRC's *Policy on preventing discrimination based on creed* at www.ohrc.on.ca/en/policy-preventing-discrimination-based-creed.

²⁰ *Noseworthy v. Canton Restaurant*, *supra* note 1.

²¹ The Restaurant Opportunities Centers United Forward Together, *The Glass Floor: Sexual Harassment in the Restaurant Industry* (2014) online: The Restaurant Opportunities Centers United Forward Together <http://rocunited.org/pr-the-glass-floor-report/> (retrieved February 10, 2016) at 25; Kaitlyn Matulewicz, "Law and the Construction of Institutionalized Sexual Harassment in Restaurants," *Canadian Journal of Law and Society* 2015, Vol.30 No.3, 401-419.

²² *Noseworthy v. Canton Restaurant*, *supra* note 1; *Doherty and Meehan v. Lodger's International Ltd.*, *supra* note 1.

action plan on sexual violence and harassment,²³ changes to the *Occupational Health and Safety Act*²⁴ strengthen employers' obligations to prevent and respond to sexual harassment. Reviewing existing dress codes and removing discriminatory requirements may help employers meet these obligations.²⁵

When setting out dress codes to meet business needs, employers should not rely on stereotypes or sexist ideas of how men or women should look. They should think about a range of clothing options. Dress code policies need to be flexible and include everyone, regardless of their sex, gender identity, race, disability, gender expression or religious faith. Employees should be able to choose from this range of options without pressure or coercion. More information about designing non-discriminatory dress codes can be found in the OHRC's publication, [Human Rights at Work](#).

²³ The action plan is entitled, *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment*. See www.ontario.ca/document/action-plan-stop-sexual-violence-and-harassment (retrieved November 13, 2015).

²⁵ The changes to the *Occupational Health and Safety Act* take effect September 8, 2016.

Appendix C:

Sample gender-neutral dress code policy

These are examples of gender-neutral dress code descriptions based on dress codes already in use in Ontario restaurants, including a wide range of styles and degrees of formality. Note: all positions should include a pants option.

Below each option they may wish to include, companies can set out guidelines, such as colour, source, style, fabric type and/or pattern, and how the item is to be worn (such as options to roll sleeve or pant cuffs, limitations on skirt or shorts length, any seasonal limitations on wearing the item, etc.).

Servers, hosts, bartenders and/or managers

Tops:

- Option 1: button-up clean pressed shirt, tucked in
- Option 2: untucked clean pressed dress shirt or blouse with tailored hem
- Option 3: dressy top/sweater
- Option 4: dress

Optional top layers:

- Option 1: vest (with tucked in dress shirt)
- Option 2: sport jacket or blazer
- Option 3: cardigan, sweater or jacket

Bottoms:

- Option 1: flat-front pants and/or jeans
- Option 2: black skirt (for example, “no more than 1½ inches above the knee”)

Hosiery:

- Option 1: socks
- Option 2: (with skirt or dress) optional tights, stockings or socks

Front-of-house staff

Tops: short or long-sleeved company brand shirts

Bottoms:

- Option 1: black pants/indigo denim jeans, etc.
- Option 2: black dress shorts (in summer)
- Option 3: company kilt with kilt pin, with socks/hose/tights

Shoes:

- Dress shoes, black, polished, leather finish, with a non-slip sole. Shoe must cover toe and heel of foot
- Black dress shoes, minimum ½-inch sole. Must have defined heel. No square toes or overly pointed toes, no poorly maintained shoes
- Can specify; for example, "If there is a heel it may be no more than 2.5 inches."

Accessories

Belts may/must be worn with pants (can specify...):

- Colour and material (plain, not decorative, no logos, etc.)
- Buckle guidelines (colour, not decorative, simple, no "bling," etc.)

Jewelry (state it is optional):

- Can set out guidelines or recommendations relating to style, colour, size or number of pieces
- Mention exceptions, such as for wedding rings, or medic-alert bracelets, and any accommodation requests

Hair accessories (state they are optional) can specify:

- They can be decorative (some companies say "express yourself") or
- Must be unobtrusive in size and colour (for example, could say accessories "should be neutral colours," "similar to hair colour," "silver or gold," in "company colours," etc.)

Grooming

Hair must be clean and tidy; could add...

- Hair (or majority of hair) should be in natural range of shades, rather than bright colours (“such as...”)
- Longer hair (such as “below shoulder length”) is to be held back for sanitary reasons
- See Accessories section re: hair accessories

Fingernails: clean and well-manicured

- If nail polish is worn, it should not be chipped
- Can add statements like “in neutral shades” or “in the following colours...”, or “no extreme colours” (such as...)

Makeup (state it is optional)

- If makeup is worn, it should be... (for example, “daytime style,” “not heavy or deep in colour,” “light and blend in with your natural colouring,” etc.)

Accommodation and complaints

- May want to start by affirming the company’s commitment to human rights, employment, health and safety and other relevant legislation
- Anyone with a concern about the workplace, including discrimination or harassment, or who needs accommodation relating to the dress code or other issues, can address it in the following ways, such as
 - bringing issue to shift manager, site manager, owner/franchisee
 - if that is unsuccessful or not possible, bringing issue to human resources or head office
- Provide relevant contact information
- For more information, see the OHRC guide [Human rights at work.](#)

Appendix D: OHRC resources on dress codes, sexual and gender-based harassment, and employment

Dress codes

- [Policy position on sexualized and gender-specific dress codes](#)
- [Sample gender-neutral dress code](#)
- [Dress code checklist: removing barriers based on sex and gender](#)
- [Examples](#) of policies and expectations that may violate the *Code*
- [Frequently asked questions](#) on sexualized and gender-specific dress codes:
 - See Question #7 re: designing non-discriminatory dress codes

Sexual and gender-based discrimination and harassment

- [Backgrounder: sexual harassment and sex discrimination at work](#)
- [Policy on preventing sexual and gender-based harassment](#)
- Webinar, "[Preventing sexual harassment at work](#)" (40 minutes, pre-recorded)

Human rights at work

The [Human rights at work](#) guide helps employers comply with human rights law and avoid discrimination in advertising, hiring, and all other aspects of employment. See in particular discussion on:

- Dress codes – s. IV.7(c)(ii), and accommodation requests – s. IV.8 (e)(vi)
- Reasonable, *bona fide* job requirements – s. IV.2
- Preventing and addressing human rights issues – s. IV.1(a)

E-Learning (20-30 minutes each)

- "[Human rights 101](#)"
- "[Working together: the Code and the AODA](#)"
- "[The duty to accommodate](#)"

OHRC policies and related plain-language brochures

- Available [online](#)
- Policies provide more detail on employer responsibilities and employee and service user rights under the *Human Rights Code*.
- Brochures provide short, plain-language summaries, useful for education, training and advocacy.
- These resources cover topics like: creed, pregnancy and breastfeeding, disability and the duty to accommodate, race and related grounds, sexual orientation, gender identity and expression, drug and alcohol testing, removing the “Canadian experience” barrier and others.