

**Webinar on preventing sexual and gender-based harassment at work: An overview**  
**Ontario Human Rights Commission**  
**December 10, 2014.**

>> Hello, and welcome to the Ontario Human Rights Commission's short webinar on preventing sexual harassment at work.

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

Before we begin, I'd like to tell you about a new feature of this webinar -- a Twitter pod that you can see on your screen.

Our Twitter handle is @Onthumanrights and the hashtag for this webinar is #NeverOK, so you can follow our live tweets during the webinar, tweet and retweet.

>> Dora: Dianne Carter, Executive Director of the Commission, will begin today's Webinar.

>> Dianne: Hello, and welcome to our webinar on preventing sexual harassment.

Thank you for joining us.

It may seem obvious, but some people just don't get the simple message -- sexual harassment is against the law.

The Ontario Human Rights Code is very clear -- it prohibits sexual harassment in the workplace and in services such as housing, education and other social areas. The OHRC has long recognized the horrific impact of workplace sexual harassment on victims.

We know that organizations that don't take steps to prevent sexual harassment can face major costs including decreased productivity, missed days of work, low morale, health care costs, and, of course potential legal liability and expenses.

Sadly, sexual harassment continues to be a terrible problem. Because of a variety of factors such as fear of reprisal or shame, most people who experience sexual harassment don't report it.

If inappropriate sexual behavior is not dealt with, it can escalate to more serious forms, including sexual assault.

Employers, employees, service providers, everyone

needs to know where the line is and how sexual harassment can be prevented.

>> Dora: It's now my pleasure to introduce you to today's presenter, Cherie Robertson.

Cherie is a Senior Policy Analyst with the Commission.

Her presentation today will help you recognize sexual harassment through examples, and explain ways to prevent sexual harassment and what can be done when it happens.

Feel free to enter your questions in the discussion pod at any point during the presentation.

Hello, Cherie!

>> Cherie: Good afternoon.

Recent events have triggered a nationwide discussion about sexual harassment and violence against women throughout Canadian society. Sexual harassment is against the law.

The Ontario Human Rights Code -- known as the Code -- prohibits sexual harassment in employment as well as in services, housing, and other "social areas".

The Ontario Human Rights Code has long recognized



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the serious impact of workplace sexual harassment on its victims, and on an organization's employee morale and overall productivity.

At the end of this webinar, we'll provide a link to the Ontario Human Rights Commission's full Policy on preventing sexual and gender-based harassment, which provides greater detail on all of the issues we will discuss today.

In today's session, I'll give some examples of sexual harassment, and we'll talk about ways to prevent sexual harassment and also to deal with it when it happens.

Sexual harassment can happen in all social and economic classes, ethnic groups, jobs and places in the community.

Women who identify by more than one Code ground may be more vulnerable to sexual harassment. In addition to being female, a woman who has a disability, a low income, or who comes from a racialized community -- for example a woman who is black or Aboriginal -- may be especially susceptible to sexual harassment.

And the harassment may be intensified if it is combined with discrimination or harassment based on other Code grounds.

Sexual harassment takes many forms and the policy lists some examples.

For instance, sexual harassment can be:

- Demanding hugs
- Invading personal space
- Unnecessary physical contact, including unwanted touching, etc.
- Leering or inappropriate staring
- Showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images -- including online
- Spreading sexual rumors
- Bragging about sexual prowess
- Demanding dates or sexual favors
- Making offensive sexual jokes or comments
- Acting paternally in a way that someone thinks undermines their self-respect or position of responsibility
- Threats to penalize or otherwise punish a person who refuses to comply with sexual advances, also known as reprisal or payback.

Ontario employers have a legal duty to prevent and respond to sexual harassment.

Employers must make sure they have poison-free environments that respect human rights. It is not acceptable to ignore sexual harassment, whether or not someone has formally made a complaint.

If inappropriate sexual behavior is not dealt with, it may escalate to more serious forms, including sexual assault and other violence.

Employers can prevent many cases of sexual harassment by:

- Having a clear, comprehensive anti-sexual harassment policy in place
- Making sure all employees have the policy and know about their rights, and their responsibilities not to engage in harassment
- Training everyone in positions of responsibility on the policy and their human rights obligations

An effective sexual harassment policy is important.

It can limit harm and reduce an employer's liability.

Promoting the equity and diversity goals of organizations and institutions also makes good

business sense.

The Ontario Human Rights Commission's Policy on preventing sexual and gender-based harassment sets out suggestions on what an anti-sexual harassment policy should include.

Taking steps to maintain a poison-free environment will help make sure that sexual harassment does not take root and is not given a chance to grow.

Employers should monitor their workplaces regularly to make sure they are free of sexually harassing behaviors.

When deciding if an employer has responded appropriately to a sexual harassment complaint, a human rights tribunal is likely to look at:

- The procedures in place at the time to deal with discrimination and harassment
- How quickly the organization responded
- 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 kept

informed about the status of the complaint,  
actions taken, etc.

Organizations that don't take steps to prevent sexual harassment can face major costs in decreased productivity, low morale, increased absenteeism and health care costs, and potential liability and legal expenses.

If a person believes they have been sexually harassed they should try, where possible, to resolve the problem through any internal policies or resolution mechanisms the employer may have.

Using an internal mechanism does not replace the right to file a human rights claim, or to proceed in other ways.

If the person is in a union, they can contact their union for help.

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A person who is being sexually harassed at work may have recourse under the Occupational Health and Safety Act, and they can contact Ontario's Ministry of Labor for more information.

In some cases, sexual harassment is a criminal

offense. It is a crime if the harassment involves attempted or actual physical assault, including sexual assault, or threats of an assault.

Stalking is a crime called "criminal harassment."

Where sexual harassment includes any of these things, a person can contact their local police.

The Human Rights Legal Support Centre can offer advice and human rights legal services. Victims of sexual harassment can make a complaint, called filing an application, with the Human Rights Tribunal of Ontario. This must be done within one year of the last incident of sexual harassment.

>> Dora: Thank you, Cherie.

We have time left for questions and answers. As I indicated earlier, we won't be providing legal advice.

If you have a complaint and require legal advice, contact the Human Rights Legal Support Centre.

If you are an employer, service provider, or human resources professional and you require legal advice, please consult with legal counsel.

Again, feel free to enter your questions in the discussions pod. And if we don't get to their

question, check back to the site. Let's start with a frequently asked question:

What do I do if I'm being sexually harassed?

>> Cherie: If you think you're being sexually harassed, keep a written log. Where it happens, what was said or done, who said or did it, who saw what happened, if anyone, and what you did at the time. Include the names of anyone you spoke with, when you spoke with them, and what action, if any, was taken to resolve the problem. Where possible, you can make it clear to the person harassing you that the behavior is unwelcome and you want it to stop.

However, a person doesn't have to reject the harassment at the time it happens for there to be a violation or for the person to claim their rights under the Code. A person may be in a vulnerable situation and afraid to speak out. Employers must maintain workplaces free from discrimination and harassment whether or not anyone objects.

>> Dora: Some employers have internal processes. Are these the people to contact first?

>> Cherie: Where possible, one should try to resolve through internal policies or internal mechanisms that the employer has. Using an internal mechanism does not replace the right to file a human rights claim or to proceed in other ways.

If you're in a union, you can contact the union for help. If you do make an internal complaint, it's always a good idea to do it in writing. Include all details and ask for a written response. Keep a copy of the complaint and any response that you may get. It could be helpful later if you decide to take further action.

>> Dora: I heard from one person that she told her union about the sexual harassment but no action was taken to stop it.

>> Cherie: Unions have legal responsibilities to make sure they're not causing or contributing to discriminatory actions. They can be held liable for policies or actions that are discriminatory, including not taking steps to address workplace sexual harassment or a poisoned environment. Depending on the circumstance, you may also have recourse under the Province's Occupational Health and Safety Act. Contact the Ministry of Labor for more

information. As we discussed earlier, sexual harassment in some cases may amount to a criminal offense. In these circumstances, you can contact your local police.

And in terms of filing a Human Rights complaint, you can file an application, otherwise known as a complaint, with the Human Rights Tribunal of Ontario. This must be done within one year of the last incident of sexual harassment. If you want to talk about your rights or need legal help with the human rights claim, contact the Human Rights Legal Support Center.

>> Dora: Thank you, Cherie. Rachel has a question. An individual hugs a woman, referred to as Jane. Jane doesn't object to the touching, but it makes Sara feel uncomfortable. Is this harassment?

>> Cherie: So I think that a certain amount of common sense has to be used in the workplace. One of the requirements for finding sexual harassment is whether the behavior is unwanted by the person on the receiving end. So in this case, if Jane doesn't feel harassed, it wouldn't amount to

sexual harassment. Having said that, other kinds of behavior could take place in the workplace that could poison the environment for other workers. Someone like Sara, if she saw other types of behavior, sharing of sexual images, for example, online, she may not be directly involved with the exchange but could have her work environment poisoned.

Again, a hug, if it's two people who are consenting to that interaction and that's the extent of it, wouldn't amount to sexual harassment.

>> Dora: Cherie, what can organizations do to make sure that they comply with their Human Rights obligations? And if you could respond also, or work into your response, the question raised with respect to how employers can regularly monitor the workplace.

>> Cherie: Sure. As we talked about in the presentation, organizations have a legal duty to prevent and respond to sexual harassment. They can't choose to ignore sexual harassment, whether or not someone has made a formal complaint. We know from our experiences at the Human Rights

Commission that if inappropriate behavior is not dealt with, it can escalate to more serious forms including sexual assault and other violence.

So we mentioned earlier, and we elaborate in our policy, about concrete ways that employers can help prevent many cases of sexual harassment. Things like having a clear and comprehensive anti-sexual harassment policy in place, ensuring that all employees have the policy and are aware of their rights and responsibilities not to engage in harassment. And training everyone in positions of responsibility on the policy and the human rights obligations.

We know that an effective sexual harassment policy can limit harm and reduce an employer's liability. Promoting the equity and diversity goals of organizations and institutions makes good business sense. We have spoken about the need for employers to monitor workplaces regularly to make sure they're free of sexually harassing behaviors.

In concrete terms, it could amount to making sure

that everyone in the workplace knows that the employer is aware of its Human Rights obligations, it acts in compliance with the Ontario Human Rights Code and Human Rights principles and letting the employees know of the complaint mechanisms available to them should they be experiencing harassing behaviors.

>> Dora: Now many workplaces already have a harassment policy as required under the Occupational Health and Safety act. What about having a policy that's separate from that?

>> Cherie: The requirements of the Occupational Health and Safety Act may overlap with the Code. However, the scope of the Ontario Human Rights Code is broader than that of the Occupational Health and Safety Act. It has primacy over the Occupational Health and Safety Act.

In terms of effectively addressing sexual harassment, it's recommended that employers have their own separate sexual harassment policies.

>> Dora: This webinar is primarily focusing on employment. You mentioned that sexual harassment is also prohibited in other social areas. Can you elaborate on that?

>> Cherie: The Ontario Human Rights Code prevents sexual harassment in five contexts, also known as social areas. These are: employment, housing, services (such as educational services) membership in vocational associations (such as unions), and contracts. While this webinar has focused on sexual harassment in the workplace, sexual harassment is also prohibited in all of the other social areas covered by the Code.

The Commission's Policy on preventing sexual and gender based harassment looks closely at the social areas of employment, housing and services, as we know from our research these are areas where sexual harassment commonly takes place.

>> Dora: Thanks. One question we have received in the past is with respect to harassment from a supervisor at work. An individual is threatened to be

fired if reporting the harassment.

>> Cherie: The Ontario Human Rights Code protects people from what we call reprisals, meaning payback, and sexual harassment or discrimination due to sex. Hostility, excessive scrutiny, for example, social exclusion or other negative behavior because they have rejected a proposition such as a for a date or something like that, are forms of reprisal. The person is protected whether the sexual harassment claim is ultimately proven or not.

>> Dora: Thanks, Cherie.

Now what if initially a relationship was consensual and ongoing for some time and then, later, one employee claims sexual harassment?

>> Cherie: Depending on the circumstances, there's a principle coming out of the case law that past consent doesn't amount to present consent. In situations where employees have been involved in a relationship and the relationship breaks down, the person who may have initiated the breakup can

expect to not be harassed because of the prior relationship and ongoing consent or assurance that the behavior is not unwanted would need to be secured between individuals so as to avoid behavior that could amount to harassment.

>> Dora: should employees be educating their managers, or when it comes to the extent in which a manager can listen to a complaint in confidence, are managers allowed to promise they will not tell their bosses or do you need to educate them so that they must respond, report any of these issues?

>> Cherie: If an individual comes to a manager in confidence and wants to explain some of the behavior that they have been experiencing, there can be an expectation of confidentiality to a point. However, the manager would then be on notice that there are things happening within the workplace that could trigger their liability or their organizational responsibility to respond.

So once issues around harassment have been raised within a workplace, an employer, if they're being prudent, should revisit some of the organizational

strategies that we have outlined earlier about ensuring that people know that the employer takes harassment seriously, they abide by their Human Rights obligations and what some of the mechanisms that exist to deal with harassment include. Just so that people know that if they are experiencing this type of behavior, that they have recourse and that the employer will be supportive of them.

>> Dora: We have a question from Rachel. Dove tailing with the answer you just gave. If an individual makes a harassment complaint, can they remain unnamed?

Certainly if you file a formal application with the Human Rights Tribunal of Ontario, that is not necessarily the situation.

>> Cherie: If you want to file a complaint with the Human Rights Tribunal of Ontario, you have to identify yourself as a complainant. If you file a grievance, the same is true. It gets back to what we were saying earlier. If issues around harassment have been raised whether a person wants to file a

formal complaint or not, it triggers a manager's responsibility to take it further. Making sure they're free of harassment.

>> Dora: Cherie, how often does the Commission update the sexual harassment policy or policies in general?

>> Cherie: We put our out sexual harassment policy in 2011. It was an update of an earlier policy. We re-updated in 2013. We ideally try to keep them as up-to-date as possible depending on the area and the case law that may have been decided relating to certain grounds that may prompt us to do an update more quickly to account for new developments in the law.

>> Dora: Thank you. Cherie, when an employee claims that the action of another person led to sexual conduct and it was welcomed and it was never asked to stop, then out of the blue there's a complaint, how would that be dealt with?

>> Cherie: So oftentimes sexual harassment will

take place without a third party witness. And you will frequently find situations in which it's a he said, she said type of situation. And from the perspective of an employer, they should conduct an investigation and try to get as much information as possible.

Then if it does ultimately go through to a Human Rights Tribunal complaint, if there are no witnesses, generally speaking, credibility is the biggest factor and the individuals will give their testimony, they are subject to examination, and cross examination and whoever is the most credible in their version of events can be determinative of how those types of complaints are resolved.

>> Dora: Cherie, social media is such a hot issue right now. How do you deal with harassment online?

>> Cherie: So we know that social media can be an area in which harassment takes place. Some of the concerns for employers would be whether the media is being accessed at the workplace, whether it has tied to the workplace, implications for their workers, and there are some jurisdictional issues around this that are not entirely clear in the law. However, we

do know that the tribunal has ruled on a few different sexual harassment complaints and interpreted what it means to be in the workplace.

The scope of behavior that is seen to be linked to the workplace is expanding. So things like events that take place outside of the workplace, office parties, company trips, and things like that, if they have a link to the workplace, they'll be seen to be in the workplace. And there have been complaints that deal with behaviors that are taking place online or through social media. We're not -- I mean, what we would say to employers is to try to, where they can, monitor behavior happening in the workplace to ensure that people's environments are not being poisoned by content accessed through social media.

>> Dora: We have a question from Lacy. I hope I paraphrase it correctly. A question with respect to -- I will just say an agency that provides services to the public and the clients are vulnerable.

How would you go about -- what would you do to ensure that sexual harassment doesn't take place or what steps would you take to prevent sexual

harassment?

>> Cherie: So the responsibilities for organizations would be very similar in the employment context or in the housing context. We have a whole section in our policy that deals specifically with housing as a service.

I am hoping that I am reading this correctly, but some of the issues raised in the question relating to mental health comes in vulnerable populations, I am not sure I totally understand that, but I think we do know, for example, through the work that we've done on mental health discrimination that people who have certain types of mental health disabilities may be more vulnerable, susceptible, to sexual harassment and other types of exploitation. That may be something to be aware of when serving these populations. I hope that's helpful.

>> Dora: Lacy has clarified her question. Her staff work with individuals, with many types of people, and they want to make sure that their staff are protected from sexual harassment from the clients.

>> Cherie: So I suppose I would say in response to that that employers do have a responsibility to protect their employees from sexual harassment that may be perpetrated by third parties. And we have some guidance in our policy on the steps that need to be taken but yes in general.

The answer to that, third party harassment is something that the employer needs to address and take responsibility for.

>> Dora: So Rosemary's question is what situations would constitute calling the police?

>> Cherie: As I mentioned earlier, where harassment includes assault or threat of an assault or behavior such as stalking, which is called criminal harassment, that would push it into the area of the criminal law. And that would be, that type of harassment, including any of those things, would be types of behavior that could be reported to your local police service.

>> Dora: That's all the time we have for questions  
Thank you for joining us, thanks again to Cherie, and  
we look forward to receiving your feedback over the  
next few days.

Have a good day, everyone. Thank you. [Webinar  
has concluded]