

HUMAN RIGHTS AT WORK

Know Your Rights | A project of the Global Labour Research Centre | York University

Human Rights at Work Cover

Workplace **Discrimination**
 Workplace **Harassment**
 Workplace **Accommodation**
 Employer **Responsibilities**

Under the OHRC, you are protected against discrimination based on the following grounds:

- Citizenship
- Race
- Place of Origin
- Ethnic Origin
- Colour
- Ancestry
- Disability
- Age
- Creed / Religious belief
- Sex/Pregnancy
- Family Status
- Marital Status
- Sexual Orientation
- Gender Identity
- Gender Expression
- Receipt of Public Assistance (in housing)
- Record of Offences (in employment)

What do Human Rights have to do with Work?

- Under the *Ontario Human Rights Code* (OHRC), you have the legal right to equal treatment in employment, free from discrimination, pertaining to 17 protected grounds (see sidebar). The OHRC covers employees, independent contractors, and volunteers.
- Under the OHRC, **discrimination** refers to an experience of adverse treatment or impact related to one or more of the 17 protected grounds.
- Discrimination may be either **direct** (when someone acts on their own behalf) or **indirect** (when someone acts on behalf of another) and may be either intentional or unintentional.
- To be covered by the OHRC, the experience of discrimination must take place in relation to employment, housing, services, unions and vocational associations, or contracts.
- Under the OHRC, you have the right to equal treatment while applying for a job or volunteer position, and during recruitment, training, transfers, scheduling, pay, benefits, promotion, performance evaluation, discipline procedures, and termination and layoff.



Examples of Workplace Discrimination

- If an employer denies a leave or benefits based on citizenship.
- If an employer asks an applicant her or his place of origin or ancestry.
- If a policy provides benefits based on marital status (e.g., to married couples but not to others).
- If an employer classifies or segregates job applicants based on race/ethnicity or colour.
- If an employee is denied a promotion that is given to a younger, less qualified employee.
- If an employee is fired because the employer became aware of her or his sexual orientation.

Know Your Rights!

Under the OHRC, your employer has the legal responsibility to:

- Establish policies and procedures that address the issue of workplace discrimination and harassment
- Inform workers of policies and procedures
- Establish a complaints process for workers to report incidents, as well as procedures to investigate incidents or complaints
- Outline how complaints will be investigated



Image: Ontario Council of Agencies Serving Immigrants

Sexual Harassment

Under the OHRC, you have the legal right to work in a setting free from discrimination and harassment (unwelcome racism comments or actions) based on sex, sexual orientation, gender identity, and gender expression.

Workplace Harassment

Harassment includes comments or actions that are, or should reasonably be, known to be unwelcome on one or more of the protected grounds under the OHRC.

Examples of Workplace Harassment

- Yelling at, name calling, making fun of, or threatening a person (including gestures that intimidate)
- Prohibiting a person from speaking or self-expression
- Making rude or offensive remarks
- Isolating a person by not speaking to or acknowledging their presence
- Making unwanted sexual advances or giving gifts
- Spreading rumours

Under the OHRC, harassment must take the form of a **pattern of behaviour** (generally, though not necessarily, meaning more than one incident). For harassment to violate the OHRC, the behaviour must relate to one of the protected grounds in the code.

Workplace harassment is also prohibited by the *Occupational Health and Safety Act*.

Examples of Workplace Sexual Harassment

- Unwelcome sexual contact or remarks
- Unnecessary physical contact or touching
- Leering or inappropriate staring
- Unwelcome demands for dates
- Requests for sexual favours in exchange for a benefit or a favour
- Reprisal (punishment) for refusing to comply with sexual advances or demands
- Displays of sexually offensive pictures or cartoons
- Sex-specific derogatory names
- Rude or insulting language, comments, or jokes
- Unfair treatment based on gender identity



Examples of workplace accommodation based on the *Human Rights Code*:

Disability: restructuring a job or workspace, and retraining or reassigning a worker following an injury, illness, or addiction

Sex/Pregnancy: providing flexible breaks and scheduling for doctor visits as well as modifying dress code and reassigning to lighter duties

Religion and Beliefs: allowing an employee to not work on certain religious holidays

Citizenship: removing “Canadian experience” from job postings and language tests that have little to do with professional performance



Poisoned Environment

A **poisoned environment** is a hostile or unwelcoming workplace that may result from insulting or degrading comments or actions (related to a protected ground under the OHRC) that produce unequal or unfair treatment in the workplace.

The Duty to Accommodate

- Employers have an obligation to provide accommodations that make it possible for you to participate in the workplace and perform essential duties.
- The duty to accommodate means creating equal access to work by removing barriers.
- Accommodation applies to all grounds within the OHRC and failure of an employer to provide necessary accommodation could result in discrimination.
- For people with disabilities, an employer must provide equipment, services, and/or devices needed to do the job.

Information your employer has a right to know when making accommodations

Your employer must adhere to the Privacy Act when gathering and sharing information about you. However, an employer is entitled to receive the information necessary to provide effective accommodation, such as: functional limitations and safety issues to perform your job; and estimation from a professional about how long accommodations will be needed.

Employer Responsibilities

- Your employer can be held responsible for discrimination and harassment even if they did not know of the conduct or condone it, and even if they actively discouraged that conduct. Senior Managers are part of the “directing mind” of an organization, and their failure to remedy a **poisoned environment** makes the company liable for failure to comply with the OHRC.
- The OHRC also covers the “**extended workplace**”, which means that your employer could be responsible for behaviour that occurs away from the physical workplace (e.g., on a business trip or at company party) but that has consequences in the workplace.
- In a unionized workplace, unions and employers are jointly responsible for ensuring that the workplace is free from discrimination. Unions are also subject to the OHRC and may be subject to human rights complaints if they do not support efforts to ensure a workplace is free from discrimination.

Know Your Rights!

Your employer cannot threaten, penalize, or fire you for asking about or exercising your rights under the OHRC.



Making a Complaint

- Human rights complaints are filed with the **Human Rights Tribunal of Ontario**. You have one year from the incident to file a complaint.
1.866.598.0322 | www.hrto.ca
- The **Human Rights Legal Support Centre** provides free legal advice and help with filing an application:
1.866.625.5179 | www.hrlsc.on.ca
- If you are unionized, you should **contact your union** to discuss filing a grievance based on a human rights violation.
- The **Ontario Human Rights Commission** aims to identify and address root causes of discrimination. It conducts activities including research and education, and also develops policies and undertakes public inquiries:
1.800.387.9080 | www.ohrc.on.ca

Record-Keeping

It is important to keep records of your experience in a safe place outside of work. Include:

- What happened
- When it happened
- Where it happened
- What was said or done and who said or did it
- Who might have witnessed the event
- What you did at the time and afterwards

For More Information and Support

Know Your Rights Factsheets Series

<http://glrc.apps01.yorku.ca/know-your-rights-2/>

Osgoode Hall Community & Legal Aid Services Programme, Employment Law Division

<http://www.osgoode.yorku.ca/community-clinics/welcome-community-legal-aid-services-programme-clasp/legal-services/employment-law/>
| 416.736.5029

Community Legal Clinics

Legal Aid Ontario supports 76 community legal clinics across the province, many of which offer services and information related to human rights in the workplace.

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl> | 1.800.668.8258

Toronto Workers' Action Centre

www.workersactioncentre.org | 416.531.0778

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