

ONTARIO HUMAN RIGHTS COMMISSION COMMENTS ON SEXUAL HARASSMENT IN THE WORKPLACE

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In response to various recent events in which the issue of sexual harassment has obtained national focus, the Ontario Human Rights Commission ("**Commission**") published on November 25, 2014 an [information bulletin](#) on sexual harassment in the workplace.

The Commission's policy on sexual harassment is not new, with the most recent version (the "[Policy on Preventing Sexual and Gender-Based Harassment](#)") having been published in 2013. However, the Commission's most recent publication is a reminder to employers and employees alike of the seriousness of the issue. The Commission is also mindful of the increasing scrutiny now being brought to bear on numerous workplaces, with a focus not only on potential misconduct, but also on how such concerns are investigated and addressed.

Ontario's *Human Rights Code*, R.S.O. 1990, c. H.19, specifically forbids sexual harassment, including in the workplace:

"7(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee."

As a result, the Commission makes clear in its bulletin that Ontario employers have a legal duty to prevent and respond to sexual harassment. Organizations that do not take steps to prevent sexual harassment can face potential legal liability and expenses, along with less tangible risks like decreased productivity, low morale and increased absenteeism.

When deciding if an employer has responded appropriately to a sexual harassment complaint, a Human Rights Tribunal vice-chair is likely to look at a number of factors, including the employer's procedures for addressing harassment, the employer's handling of the complaint and the employer's history.

How can employers prevent sexual harassment?

Employers can often avoid cases of sexual harassment by taking one or more of the following fundamental

steps, all of which are strongly recommended by the Commission:

1. Having a clear, comprehensive anti-sexual harassment policy in place;
2. Ensuring all employees have the policy and are aware of their rights, and their responsibilities not to engage in harassment; and
3. Training everyone in positions of responsibility on the applicable policy and their respective human rights obligations.

Ultimately, each employer will want to address workplace sexual harassment in a manner which meets its own unique needs. McMillan LLP's [*Employment and Labour Relations Group*](#) has a wealth of experience in helping employers address workplace risks such as sexual harassment, including through drafting or reviewing appropriate workplace policies and handbooks, and by providing training to better enable managers to recognize and address such problems.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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