

Sexual Harassment in the Workplace

The City of Toronto is committed to respectful, equitable service delivery and employment practices. The City recognizes the dignity and worth of every person and condemns harassment, discriminatory actions, and the promotion of hatred. The City acknowledges that sexual harassment, including LGBTQ2S-based harassment can have a significant and lasting impact on our communities, workplaces and families. The City of Toronto is committed to preventing and addressing all forms of sexual harassment through the consistent application of its human rights policies and by advancing the City's motto "Diversity our Strength."

What is Sexual Harassment?

Sexual harassment is defined in the HRAP as: a) Engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome, based on the prohibited ground of sex, sexual orientation, gender identity and gender expression that a person knows or ought to know would be unwelcome; b) Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

Sexual harassment is a form of discrimination and is against the law. The City of Toronto has long recognized the serious impact of workplace sexual harassment on its victims as well as on overall employee morale and productivity. The City of Toronto **will not** tolerate, ignore, or condone discrimination or harassment. All employees are responsible for respecting the dignity and rights of their co-workers and the public they serve. The City's equity and diversity principals seek to foster a workplace that champions cultural diversity, ethical behaviour, and positive workplace relationships. The City's Human Rights and Anti-Harassment/Discrimination Policy (HRAP) expressly prohibits sexual harassment (see section 4.13) and provides a range of resolution options in the Complaint Procedures to address sexual harassment allegations.

Sexual harassment is not always about sexual desire or interest; it can also involve hostility, rejection and/or bullying of a sexual nature. Creating a sexualized work environment (also known as a poisoned work environment can be a form of sexual harassment. Conduct or comments that sexually harass an individual are often used as tools to leverage power to control, intimidate, or embarrass the victim. Comments, conduct, or displays of a sexual or gender-based nature may be considered sexual harassment even if shared between individuals of the same sex/gender. Sexual harassment can occur in the form of homophobic bullying because others incorrectly see the person's gender expression as an expression of their sexual orientation or because of stereotypes about gender roles (e.g., taunting a male co-worker for being "feminine" based on stereotypes of masculinity).

Your actions speak loudest, not your intention. Sexual harassment is looked at both subjectively (e.g., the harasser's knowledge of how their behaviour is being received) and objectively (i.e. how a reasonable 3rd party would perceive the behaviour, which takes into account the

perspective of the person who is harassed). This means that even if you don't intend to sexually harass a person, but you make comments or act in a way that someone else would reasonably experience as unwelcome and/or see as sexual harassment then you could be found to have broken the law.

Who can be sexually harassed?

Anyone can be sexually harassed. Sexual Harassment can occur between individuals of a different sex/gender as well as between individuals of the same sex/gender. Sexual harassment can happen in all social and economic classes, ethnic groups, jobs, and places in the community. Sexual harassment can come from service recipients, colleagues, supervisory staff, as well as individuals providing services such as cleaners or trainers.

A person may be more vulnerable to sexual harassment if they identify by more than one *Code* ground. For instance, if the person is female and is also from a racialized community, has a disability, etc.

Members of the LGBTQ2S community may be subjected to forms of sexual harassment on the basis of their sexual orientation, gender identity, or gender expression. Members of the LGBTQ2S communities are employees, residents, visitors and most people know at least one friend or family member that is LGBTQ2S.

Note that LGBTQ2S stands for Lesbian, Gay, Bisexual, Trans, Queer, 2-spirit. LGBTQ2S is one of many acronyms used by various members in the community and is the City's preferred acronym when referring to sexual and gender minorities.

What does it look like?

Sexual harassment is often an ongoing series of comments or conduct but one incident can amount to sexual harassment if it is serious, extremely offensive, or poisons the work environment.

Sexual harassment can often be subtle. Because of power imbalances, a person who is being sexually harassed does not have to say "no" for the act to be considered sexual harassment. For instance, a hug can be understood as unwanted if the person turns away or does not reciprocate. *It is important to remember that it is your responsibility to create a professional work environment.*

Some examples of sexual harassment: (links to the legal decisions are on page 7)

- Making unnecessary physical contact, including unwanted touching (E.g., stroking hair, demanding hugs, or rubbing a person's back).¹
- Invading personal space.²
- Using language that puts someone down because of their sex, sexual orientation, gender identity, or gender expression.³
- Using sex-specific derogatory names, homophobic/transphobic epithets, slurs, or jokes.⁴
- Leering or inappropriate staring.⁵

- Gender related comments about a person's physical characteristics or mannerisms, comments that police or reinforce traditional heterosexual gender norms.⁶
- Targeting someone for not following sex-role stereotypes (E.g., comments made to a female for being in a position of authority).⁷
- Showing or sending pornography, sexual images, etc. (E.g., pinning up an image of a naked man in the bathroom).⁸
- Making sexual jokes, including forwarding sexual jokes by email.⁹
- Rough or vulgar language related to gender (E.g., "locker-room talk").¹⁰
- Spreading sexual rumours, "outing" or threatening to out someone who is LGBTQ2S (E.g., sending an email to colleagues about an affair between a supervisor and another employee)¹¹
- Making suggestive or offensive comments about members of a specific gender.¹²
- Sexually propositioning a person.¹³
- Bragging about sexual prowess.¹⁴
- Asking questions about sexual preferences, fantasies, or activities.¹⁵
- Demanding dates or sexual favours.¹⁶
- Verbally abusing, threatening, or taunting someone based on gender.¹⁷
- Threatening to penalize/punish a person who refuses to comply with sexual advances.¹⁸
- Intrusive comments, questions or insults about a person's body, physical characteristics, gender-related medical procedures, clothing, mannerisms, or other forms of gender expression.¹⁹
- Refusing to refer to a person by their self-identified name or proper personal pronoun, or requiring a person to prove their gender.²⁰
- Circulating or posting of homophobic, transphobic, derogatory or offensive signs, caricatures, graffiti, pictures, or other materials.²¹

The *Code* and *HRAP* prohibit reprisal (payback, retaliation) where a person raises issues or complains of sexual harassment. Reprisal includes being hostile to someone, excessive scrutiny, or excluding someone socially. Reprisal also includes negative behaviour directed at a person who has rejected a sexual advance or proposition.

What does the workplace include?

Sexual harassment in the workplace refers to comments and conduct that occurs in the physical work environment during work hours, or after hours if it can be established that the individuals were gathered because of their employment relationship i.e. city baseball leagues, holiday gatherings, training seminars, conferences, online interactions, etc. Conduct that has work-related consequences regardless of where it occurred can also be considered workplace sexual harassment (E.g., twitter or Facebook posts).

Why does it matter?

Not only is it against the law, but sexual harassment can have long lasting effects on the individual who is discriminated against. Sexual harassment can make a person feel unwelcome in their work environment, feel unsafe, and have serious physical and emotional effects.

A poisoned work environment can be a form of sexual harassment and refers to a workplace where comments or behaviour create a hostile or offensive environment for individuals or groups. A poisoned work environment creates conditions that discourage and silence individuals who may want to stop inappropriate sexual conduct that they are aware of but not directly subjected to for fear of being seen a disloyal or not being 'one of the guys'.

Sexual harassment continues to occur in Canadian workplaces as polls show 43 per cent of women and 12% of men have said they have been sexually harassed at work and three out of 10 Canadians say they have been on the receiving end of unwelcomed sexual advances, requests for sexual favours, or sexually charged talk while at work. Further, over a million Canadians experienced some form of sexual harassment at work in 2013 and 2014.¹ These statistics are useful but only tell part of the story as instances of sexual harassment and sexual violence are underreported.

The Hate Crimes Unit of the [Toronto Police Service](#) reports that religion, race and sexual orientation/gender identity and expression are the most frequently reported motivation factors for hate crimes. The report found that LGBTQ2S communities are the most victimized group for assault, while hate crimes motivated by race or religion are victimized by mischief to property or criminal harassment.² Further, a survey of trans people in Ontario found that two-thirds of the respondents avoided public spaces such as malls, restaurants, gyms, and washrooms because of fear of harassment, being perceived as trans, or being "outed."³

It is important to remember that all City of Toronto employees are bound by the Human Rights and Anti-Harassment/Discrimination Policy to respect the dignity and rights of their co-workers as well as service recipients.

What should I do if I am sexually harassed?

If you have experienced sexual harassment it is important to speak with your supervisor/manager *as soon as possible*. Management has an obligation to maintain a harassment free work environment. However, if you are not comfortable or it is not appropriate, you can speak with a manager at the next level or contact the Human Rights Office (HRO). Your complaint will be treated confidentially in accordance with section A-1 of the [Complaints Procedure](#). It is important to know that management/HRO have an obligation to investigate complaints of workplace sexual harassment to ensure that issues are resolved and the workplace is harassment and discrimination-free. Employees are protected from retaliation for making a complaint, and should contact management or the HRO immediately if they believe they are experiencing reprisal.

¹ Angus Reid Poll on Workplace Sexual Harassment, 2014 <<http://angusreid.org/sexual-harassment>>

² Toronto Police Service 2015 Annual Hate/Bias Crime Statistical Report
<<http://www.torontopolice.on.ca/publications/files/reports/2015hatecrimereport.pdf>>

³ A. Scheim, G. Bauer & J. Pyne, *Avoidance of Public Spaces by Trans Ontarians: The Impact of Transphobia on Daily Life*, Trans PULSE e-Bulletin, 16 January, 2014. 4(1). <www.transpulseproject.ca>

You can also contact the HRO for further guidance. The HRO dispute resolution and investigation process is confidential and expeditious. The HRO can provide expert advice and information on what options you have to address sexual harassment. Typically, most incidents of sexual harassment can be resolved quickly and confidentially through the internal complaint process. Please see the [Complaint Procedures](#) for more details on HRO services. You can also use the online [complaint form](#) to file a complaint or contact the HRO at 416-392-8383 or humanrights@toronto.ca.

If you have been threatened or sexually assaulted you should contact the police at **9-1-1** and inform management so that safety measures can be taken.

Contacting the Human Rights Office does not limit your ability to later exercise your rights under other legal avenues. You may file a grievance with your union. You may also file a complaint to the Human Rights Tribunal of Ontario within one year of the last incident of sexual harassment. You can contact the provincial Human Rights Legal Support Centre for assistance with filing an application at (416) 597-4900. It is important to note that unlike the HRO process, the Tribunal process is not confidential as there is a public hearing and the process can be lengthy. If you believe management has failed to appropriately respond or investigate sexual harassment in the workplace you may also contact the Ministry of Labour. If you do file an application before the Human Rights Tribunal of Ontario or a grievance with your union, the HRO will no longer be able to intervene.

Should I do anything if almost everyone in my workplace jokes about sexualized things?

Yes, it is not a defence to an allegation of sexual harassment that everyone else did it. A poisoned work environment can be created where sexual jokes are made, sexual images are sent around by email, or by teasing a colleague because they do not meet certain gender-stereotypes. Creating a sexual/poisoned work environment is sexual harassment, even if all individuals present are of the same sex/gender. It can make some individuals feel unwelcomed or feel treated as less than equals. It can make others who are not targets of discrimination feel uncomfortable.

It is important to treat everyone at work with dignity and respect. If your work environment is sexualized you should reflect on your own actions and how they could be perceived as unwanted, humiliating, or excluding to your colleagues. It is important to act in accordance with workplace policies and participate in creating a healthy and safe work environment. If comfortable, you should also speak to your manager if you believe there is a poisoned work environment so that they are aware of the situation. All employees can consult the Human Rights Office (HRO) confidentially about actions that may contribute to a sexualized workplace.

It is important for managers/supervisors to note that even if there is widespread participation in the sexualized or harassing behaviour, and no one has complained, management has a legal obligation to stop it. Get advice from HRO on how to address and/or prevent a work environment from becoming poisoned at 416-392-8383 or humanrights@toronto.ca.

What will happen if I sexually harass someone?

Participating in sexual harassment is very serious and can lead to a variety of outcomes such as requiring counselling, coaching, being moved from the work area, a change of supervisory duties, as well as discipline up to and including dismissal, and/or criminal charges. As an employee of the City of Toronto you are bound by City policies and are prohibited from engaging in sexual harassment, which includes creating a poisoned work environment on the basis of sex, sexual orientation, gender identity and gender expression.

If you are unsure if your behaviour may be considered sexual harassment you should contact the Human Rights Office in confidence at 416-392-8383 or at humanrights@toronto.ca.

What are my obligations as a manager?

It is management's responsibility to set standards of appropriate workplace conduct, ensuring a harassment free workplace even if no one complains. Supervisors and managers should monitor their workplaces regularly to make sure they are free of sexually harassing behaviours. Management may wish to use the resources available through the HRO's 'Know the Line' campaign to raise awareness to prevent sexual harassment in the workplace.

If a complaint/concern related to sexual harassment is raised to management, management *must* advise the HRO, who will provide advice and assistance for managers to appropriately respond to the complaint. The HRO may also intervene to investigate the complaint. Complaints of workplace sexual harassment must be investigated under the *Occupational Health and Safety Act*. Refer to the Management Guideline and accompanying Guide for more information on legal obligations and procedural requirements. Managers are also required to investigate instances of workplace sexual harassment. This means that if a manager witnesses, becomes aware of, or hears a rumour about an occurrence that would amount to sexual harassment, they must investigate regardless of whether they received an actual complaint.

Management are expected to respond to sexual harassment complaints with sensitivity and promptness. Confidentiality is paramount because in a poisoned environment there is often collusion. It is managements' duty to make sure confidentiality is vigilantly upheld to foster confidence in the process and ensure individuals are not afraid to come forward. Employees should be assured that their complaints will be taken seriously and dealt with in accordance with the City's policies and procedures. Depending on the complaint, managers may need to take immediate action to ensure workplace safety. Managers may contact the HRO for further guidance at 416-392-8383 or humanrights@toronto.ca.

It is important to note that when deciding whether an employer has responded appropriately to a sexual harassment complaint, a human rights tribunal is likely to look at:

- How quickly the organization responded
- How seriously the complaint was treated
- If a healthy environment was provided to the person who complained
- How well the person who complained was kept informed about the status of the complaint, the actions taken, etc.

These are important things to consider when dealing with a sexual harassment complaint. Managers are required to ensure that the person who complained about sexual harassment is in a healthy work environment, free from reprisals by other co-workers and the person(s) complained about. Managers should consider group meetings or additional training and education for staff to resolve underlying problems of a poisoned work environment.

Applicable Legislation/Policies:

Human Rights and Anti-Harassment/Discrimination Policy
Human Rights and Anti-Harassment/Discrimination Complaint Procedures
Ontario Human Rights Code
Occupational Health and Safety Act
Criminal Code

Applicable Resources:

Know the Line Campaign
Positive Space
Summary of Manager's Guide to Addressing Employee Harassment/Discrimination Complaints & Incidents
Manager's Guide to Addressing Employee Harassment/Discrimination Complaints & Incidents

Relevant Case Law:

-
- ¹ *Arias v. Desai*, 2003 HRTO 1
 - ² *Harriott v. National Money Mart*, 2010 HRTO 353
 - ³ *Farris v. Staubach Ontario Inc.*, 2011 HRTO 979
 - ⁴ *Chovalo v. Toronto Police Services Board*, 2010 HRTO 2037
 - ⁵ *Mitchell v. 1042735 Ontario*, 2010 HRTO 1386
 - ⁶ *Lombardi v. Walton Enterprises*, 2012 HRTO 1675
 - ⁷ *Farris v. Staubach Ontario Inc.*, 2011 HRTO 979
 - ⁸ *Smith v. Menzies Chrysler*, 2009 HRTO 1936
 - ⁹ *Newton v. Toronto (City)*, 2010 HRTO 1023
 - ¹⁰ *Xu v. Quality Meat Packers Ltd.*, 2013 HRTO 533
 - ¹¹ *Heintz v. Christian Horizons*, 2008 HRTO 22
 - ¹² *Garofalo v. Cavalier Hair Stylists Shop Inc.*, 2013 HRTO 170
 - ¹³ *Smith v. The Rover's Rest*, 2013 HRTO 700
 - ¹⁴ *Harrison v. Nixon Safety Consulting and others (No. 3)*, 2008 BCHRT 462
 - ¹⁵ *J.D. v. The Ultimate Cut Unisex*, 2014 HRTO 956
 - ¹⁶ *C.U. v. Blencoew*, 2013 HRTO 1667
 - ¹⁷ *Smith v. Menzies Chrysler*, 2009 HRTO 1936
 - ¹⁸ *Vipond v. Ben Wicks Pub and Bistro*, 2013 HRTO 695
 - ¹⁹ *Vanderputten v. Seydaco Packaging Corp*, 2012 HRTO 1977
 - ²⁰ *Lewis v. Sugar Daddys Nightclub*, 2016 HRTO 347
 - ²¹ *Wesley v. 2252466 Ontario Inc. o/a The Grounds Guys*, 2014 HRTO 1591