

Ertl Lawyers

WORKPLACE DISCRIMINATION & HARASSMENT



By Toronto Employment Lawyer David Ertl

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ONTARIO'S *HUMAN RIGHTS CODE* and the *CANADIAN HUMAN RIGHTS ACT*.

The legislation of every jurisdiction in Canada prohibits discrimination with respect to employment.

Ontario's **Human Rights Code** is the legislation that protects employees against discrimination (and harassment) in provincially regulated workplaces. The vast majority of workplaces are provincially regulated.

The **Canadian Human Rights Act** is the legislation that protects employees against discrimination (and harassment) in federally regulated workplaces, such as banks, airlines and telecommunication companies

WHAT TYPE OF EMPLOYMENT DOES ONTARIO'S CODE APPLY TO?



The Ontario Human Rights Commission (the Commission) considers "employment" to include:

- full-time work
- part-time work
- contract work
- probationary periods
- temporary work for an agency

"Employment" may even include volunteer work.

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DISCRIMINATION

Human rights legislation prohibits the employer from using a prohibited ground as the basis of a distinction in hiring or employment conditions.

Under the Ontario's Human Rights Code, the following prohibited grounds are:

- race
- ancestry
- place of origin
- colour
- ethnic origin
- citizenship
- creed (this is essentially the same as "religion")
- sex, including sexual harassment, pregnancy, and gender identity
- age
- record of offences
- marital status
- family status
- sexual orientation
- disability

It also prohibits:

- Discrimination because a person has a relationship, association or other dealing with a person or persons who are identified by one of the prohibited grounds.
- Reprisal, or threats of reprisal, because a person has claimed rights, or taken part in a proceeding under the Code, or refused to infringe another's rights.
- Sexual solicitation or advances by a person who is in a position to give or deny a benefit, and reprisal or threats of reprisal for rejecting a sexual solicitation or advance.

WHAT IS ACCOMMODATION AND UNDUE HARDSHIP?

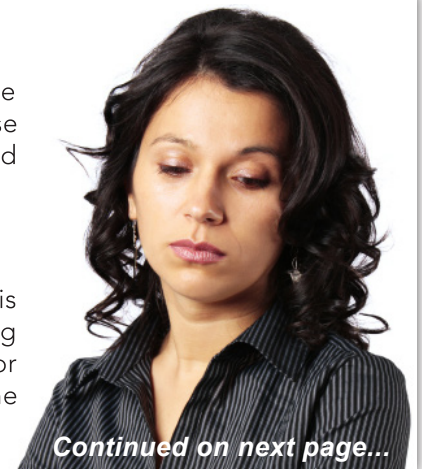
Under the Code, employers are required to accommodate (i.e. make alternate arrangements for) human rights related needs unless doing so would cause undue hardship due to cost or health and safety concerns. Some examples of accommodations include providing sign language interpreters for persons who are deaf when receiving medical treatment at a hospital, providing time off work to attend pregnancy-related medical appointments, or modifying dress codes to allow the wearing of religious clothing.

HARASSMENT

Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.

Harassment includes:

- any comment, memo, gesture, behaviour, contact or other activity, which is unwelcome, personally offensive, injurious to morale, creates a hostile, intimidating or offensive environment, or which could adversely affect the work performance or work environment or psychological well-being of a reasonable person in the complaining person's situation.



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HARASSMENT (CONT'D)

- unwelcome sexual advances, requests for sexual acts or favours, or other unwelcome verbal and physical conduct of a sexual nature;
- any statement or implication that an individual's submission to or rejection of such sexual conduct may or could be used as the basis for any employment decision affecting the individual.

WHAT ARE THE REMEDIES UNDER THE CODE?

The purpose of human rights legislation is not to find fault but to eliminate discrimination and to provide redress. It is meant to be preventative and remedial, rather than punitive. A remedy to a human rights application might include restoring the person to a position the individual would have held had the Code not been violated. It may consist of compensation for loss of earnings or job opportunities, or damages for mental anguish suffered as a result of the violation.

WHAT IS BILL 168?

Bill 168 is an amendment to *Ontario's Occupational Health and Safety Act (OHSA)*. Bill 168 provides additional protection for workers from workplace harassment (and violence).

Workplace harassment means:

- Engaging in a course of vexatious comment or conduct against a worker in a workplace

that is known or ought reasonably to be known to be unwelcome.

The most significant amendment is that employers must:

- Prepare policies with respect to workplace harassment,
- Develop and maintain programs to implement their policies, and

- Provide information and instruction to workers on the contents of these policies and programs.

Ministry of Labour health and safety inspectors will enforce the new OHSA provisions for workplace violence and workplace harassment and determine if employers are complying with

WHAT SHOULD I DO IF I BELIEVE THAT I HAVE BEEN HARASSED OR DISCRIMINATED AGAINST?

First, you should consult an employer lawyer.

Filing a Complaint

If the facts of your matter support an allegation of discrimination or harassment, we may recommend the filing of a complaint with the Ontario Human Rights Tribunal. Once a complaint is filed, your employer cannot terminate you or treat you differently for having filed the complaint. Not all complaints are accepted by the Tribunal. However, if your complaint is accepted, the Tribunal has extensive powers to remedy your problem.

Commencing a Lawsuit

If the discrimination or harassment resulted in a constructive dismissal or you were outright terminated based on a prohibited ground of discrimination, we may recommend commencing a lawsuit (instead of filing a complaint) to enforce your rights. In addition to awarding damages for wrongful dismissal, our courts have the jurisdiction to award human rights remedies.

WHAT INFORMATION SHOULD I GATHER BEFORE MY FREE CALL BACK WITH ERTL LAWYERS?

KEY DETAILS	WRITE YOUR COMMENTS HERE
Name of employer	
Your most recent job title	
Your length of employment (i.e. start date and termination date)	
If there were any gaps in your employment with your employer	
Your compensation (e.g. salary, bonuses, commissions)	
Your benefits (e.g. health benefits, insurance, RRSP, pension, car allowance, stock purchase plans, etc.)	
Did you sign an employment agreement or job offer letter? If so, do you have a copy of it?	
How have you suffered discrimination or harassment?	

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Disclaimer:

This guide is intended to provide basic information to help you better understand workplace discrimination and harassment.

It is not legal advice.

For legal advice, please contact:



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