



**Metropolitan Action Committee on
Violence Against Women and Children**

158 Spadina Road, Toronto, ON, M5R 2T8
Phone 416-392-3135 | TTY 416-392-3031
Fax 416-392-3136 | E-mail info@metrac.org
Web www.metrac.org | www.owjn.org

METRAC's Workplace Justice Booklet Series:

Exotic Dancers Experiencing Sexual Violence and Harassment; Domestic Workers and Live-in Caregivers Experiencing Sexual Violence and Harassment; Women Health Care Workers; Experiencing Sexual Violence and Harassment; Women Migrant Farm Workers Experiencing Sexual Violence and Harassment; Women Temporary Help Agency Employees Experiencing Sexual Violence and Harassment

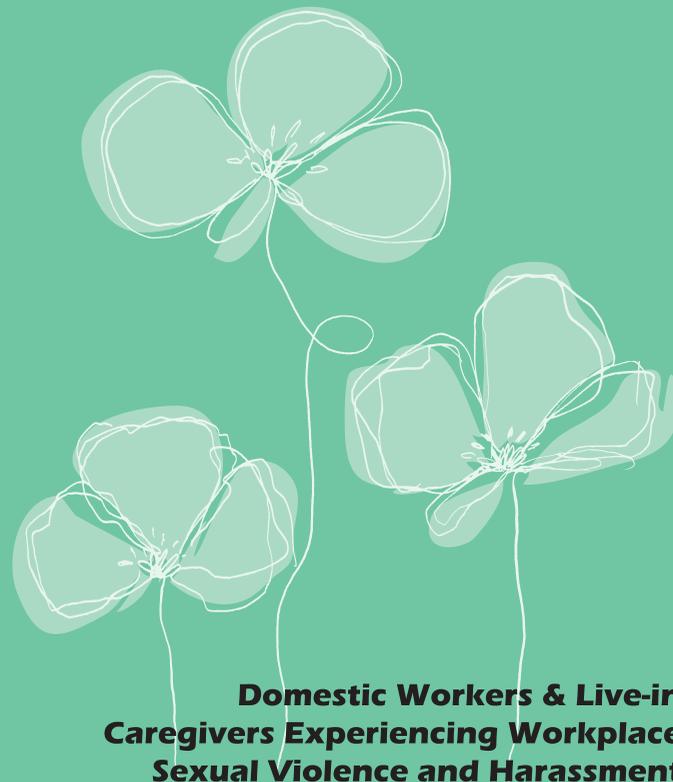
To order copies, please contact METRAC.



The Law Foundation of Ontario
Building a better foundation for justice in Ontario

Produced December 2008; revised October 2009

METRAC'S Workplace Justice Series



**Domestic Workers & Live-in
Caregivers Experiencing Workplace
Sexual Violence and Harassment**

We hope this handbook will support domestic workers and live-in caregivers to have accurate and useful information, and we hope it will help women know their basic rights in situations of abuse as well as where they can go for help.

This handbook is not intended to encourage women to make a particular decision. There is no right or wrong way for a woman to respond to violence. At METRAC, we support women in the choices and decisions they make.

This handbook contains general legal information only and is not intended to replace independent legal advice and representation.

You should get legal advice about your own situation.

The Workplace Safety and Insurance Board

200 Front Street West

Toronto, ON, M5V 3J1

Phone: 416-344-1000

Toll-free phone: 1-800-387-5540

Toll-free phone (Ontario): 1-800-387-0750

TTY: 1-800-387-0050

Website: www.wsib.on.ca

Criminal Injuries Compensation Board

439 University Avenue, 4th Floor

Toronto, ON, M5G 1Y8

Phone: 416-326-2900

Toll-free phone: 1-800-372-7463

Lawyer Referral Service, Law Society of Upper Canada

(provides the name of a lawyer who will provide a free consultation of up to 30 minutes)

Osgoode Hall

130 Queen Street West

Toronto, ON, M5H 2N6

General phone: 1-900-565-4LRS (4577) (\$6 charge/call)

TTY: 416-644-4886

Phone for callers who are incarcerated, institutionalized, under age 18, calling about Child Protection issues, or are in domestic abuse situations: 416-947-3330 | 1-800-268-8326 (toll-free)

Pro Bono Law Ontario

260 Adelaide Street East, PO Box 102

Toronto, ON, M5A 1N1

Phone: 416-977-4448

Toll-free phone: 1-866-466-PBLO (7256)

Website: www.pblo.org

E-mail: info@pblo.org

Introduction

In Ontario, the majority of domestic workers and live-in caregivers are immigrant women. These women play an important role in supporting their employers and their employers' families with essential care. They support homes, children, people with disabilities, and elderly people. Many employers of domestic workers and caregivers treat their employees well, but too often, domestic workers and caregivers face violence and harassment at work.

Some domestic workers and caregivers work only in their employers' homes, but do not live there. Others must work and live in their employers' homes away from their own family, friends, and communities. As a result, many live-in domestic workers and caregivers are alone and unaware of their rights under Canada's and Ontario's laws. They do not often have support from coworkers and protection from labour unions when dealing with abuse in the workplace.

This handbook gives basic legal information about the *Employment Standard Act of Ontario*, *Ontario Human Rights Code*, *Workers Safety and Insurance Act*, *Occupational Health and Safety Act*, *Immigration Act*, and the *Criminal Code of Canada*. It explains how these laws can affect domestic workers and caregivers experiencing violence and harassment in the workplace.

Women coming to Canada under the **Live-in Caregiver Program (LCP)** face unique difficulties because they are confined to live and work in their employers' homes for at least two (2) years. During this time, they are dependent upon their employers for wages, food, shelter, health care, and a good work reference to help them gain permanent resident status. Their dependent and temporary worker status puts live-in workers and caregivers at risk of unfair treatment and abuse by their their employers. It also makes them less likely to complain, leave, or report the abuse for fear of losing the opportunity to gain permanent resident status.

Domestic workers and caregivers live and work under different situations and may respond differently to abuse at work based on a number of factors, including their immigration status and country of origin, sex, language, race, age, financial needs, supports, and geographic location of employment. Some may choose not to report workplace violence while others may choose to report.

Non-Status Workers

Live-in domestic workers and caregivers with no immigration status at all (e.g. expired visa or no visa) are most at risk of being removed from Canada. It is important to get legal advice, as there may be legal steps workers might be able to take to stop their removal.

Human Rights Tribunal of Ontario

655 Bay Street, 14th floor

Toronto, ON, M7A 2A3

Phone: 416-326-1519

Toll-free phone: 1-866-598-0322

TTY: 416-326-2027

Toll-free TTY: 1-866-607-1240

Website: www.hrto.ca

E-mail: HRTO.Registrar@ontario.ca

Occupational Health and Safety Branch, Ministry of Labour

505 University Avenue, 19th Floor

Toronto, ON, M7A 1T7

Toll-free phone: 1-800-268-8013 (general inquiries)

Fax: 416-326-7761

Website: www.labour.gov.on.ca/english/hs/

Contact List/Regional Offices:

www.labour.gov.on.ca/english/about/reg_offices.html

Ontario Women's Justice Network (OWJN)

Website: www.owjn.org

Employment Standards Branch, Ministry of Labour

(for temporary visa workers)

Phone (Greater Toronto Area): 416-326-5300

Toll-free phone: 1-800-531-5551

Fax: 1-888-252-4684

TTY: 1-866-567-8893

Website: www.labour.gov.on.ca/english/es/

Ontario Human Rights Commission, Head Office

180 Dundas Street West, 8th Floor

Toronto, ON, M7A 2R9

Phone: 416-314-4500

TTY: 416-326-0603

Website www.ohrc.on.ca

E-mail: info@ohrc.on.ca

Human Rights Legal Support Centre

400 University Avenue, 7th Floor

Toronto, ON, M7A 1X8

Phone: 416-314-6266

Toll-free phone: 1-866-625-5179

TTY: 416-314-6651

Toll-free TTY: 1-866 612-8627

Website: www.hrlsc.on.ca

Even though there are a few support networks for live-in domestic workers and caregivers in Ontario, those who do not have immigration status are at a greater disadvantage when dealing with abuse, harassment, and low wages in the workplace. Without immigration documents, they are likely to make job decisions that reflect their concerns about their status, language, financial needs, sex, race, and family. Many times, these concerns can make women feel trapped in abusive situations.

Temporary Worker Status

Live-in domestic workers and caregivers under the Live-in Care Program (LCP) receive temporary worker status with the following conditions.

- ◆ They must live and work in their employer's home during the period covered by the contract.
- ◆ They must work for 24 months within a 39-month period before they can apply for permanent resident status.
- ◆ Failure to follow the requirements of the LCP could result in immediate removal from Canada.

Tip: LCP workers are covered by the same labour legislation and have the same rights as workers who have permanent resident status.

Perla's Story

Perla is a live-in caregiver who came to Canada from the Philippines under the LCP. She is employed by the Scott family and her job is to take care of Ms. Scott, who is elderly and living with an illness.

Perla lives with Ms. Scott and has her own room in the basement. Ms. Scott's son, Richard, comes by on a regular basis to check-in on his mother and to bring groceries and other supplies. Richard often goes close to Perla when he talks and touches her hands and shoulders. A few times, he entered her room by surprise and made sexual comments about Filipina women. She thinks his comments and touching are inappropriate.

Finally, Perla gets the courage to tell Richard that his behaviour makes her feel uncomfortable. He responds to her by threatening to fire her and have her deported.

Some employers may threaten to deport domestic workers and caregiver if they refuse to do extra work, reject sexual advances, or attempt to go back to their homes.

As you read the information in this booklet, think of how the following questions apply to Perla's story.

Resources

The Assaulted Women's Helpline (24 hours)

Phone: 416-863-0511

Toll-free phone: 1-866-863-0511

TTY (for people who are Deaf and Hard of Hearing):

1-866-863-7868

Canadian Caregivers Association

440 Laurier Avenue West, Suite 200

Ottawa, ON, K1R 7X6

Phone: 613-686-6218

Website: www.cca-acaf.org

E-mail: info@cca-acaf.org

The Ontario Coalition of Rape Crisis Centres

Website: www.occcc.ca

INTERCEDE for the Rights of Domestic Workers, Caregivers and Newcomers

845 Wilson Avenue Suite 202

Toronto, ON, M3K 1E6

Phone: 416-483-4554

Toll-free phone: 1-877-483-4554

Website: www.intercedetoronto.org

E-mail: info@intercedetoronto.org

the bully reprimanded, transferred, or terminated.

- e) You may decide to file a civil suit in relation to the incident(s) of harassment.
- ◆ If you have information about the harasser, you can sue for assault, battery, or intentional infliction of emotional stress and other issues related to the harassment.
- ◆ If you are fired from their job, you may be able to sue your employer for “wrongful dismissal”.
- ◆ If your employer was the harasser, you may be able to sue the employer for “breach of fiduciary obligation”.
- ◆ You may also sue your employer if they knew about the assault or harassment but made no attempt to prevent it.
- ◆ You may also sue third parties for negligence if you believe it led to your experience of sexual assault.

Contact a lawyer or Pro Bono Law Ontario to find out how to file a civil suit.

- f) You can apply for compensation under the *Compensation for Victims of Crime Act* if you are injured because of an assault.
- ◆ An application for compensation must and should be made to the Criminal Injuries Compensation Board within two years of the incident.

1. What forms of workplace violence and harassment is Perla experiencing?
2. What laws apply to Perla’s story?
3. What could Perla do?
4. What could the employer do?
5. What resources can Perla use?

1. Forms of Violence

Abuse in the workplace is any act of violence and control. The person doing the abuse does so to frighten, threaten, intimidate, and gain control over you. When someone is being violent, they intend to hurt you emotionally, financially, spiritually, and/or psychologically or damage your property by using or threatening to use physical and/or sexual force. Abusive behaviour can create fear.

Example: Your employer destroys your belongings, such as pictures of your family that were sent to you from back home, withholds your mail, and makes you work excessively long hours without extra pay.

Bullying in the workplace is a form of harassment and violence in the workplace. Bullying can be based on the grounds set out in the *Ontario Human Rights Code*, or it can be another form of psychological or personal harassment. Bullying can include humiliation or intimidation and it can be cruel and aggressive. A

bully may constantly criticize and create fear.

Example: Your employer constantly comments on the way you iron shirts and says, “If you don’t iron the way I want you to, I’ll send you back to your country.”

Harassment in the workplace is any unwelcome action or comment by any person that humiliates, insults, or degrades you. It can come from an employer, representative of an employer, customer, client, coworker, or visitor. “Unwelcomed” or “unwanted” action is any action that the harasser knows or ought reasonably to know is undesired. Harassment can take place while you go to or from work or while you are on the job.

Example: Your employer constantly insults you in front of her guests and makes you clean the floors many times a day, just because she wants to see you on your hands and knees.

Sexual violence in the workplace is any unwanted sexual activity and/or contact. It ranges from unwanted touching to unsafe sexual activity to rape. Sexual abuse also includes harassment directed at women because they are women and/or because of their sexual orientation.

- ◆ Sexual harassment can include but is not limited to:
 - ➔ degrading words;

investigation period.

- ◆ Furthermore, Ministry of Labour Inspectors should strengthen protections to ensure that the employer does not intimidate you into not reporting violent incidents.
 - ◆ If you contact the Ministry of Labour because your employer is not following a decision, the Ministry may continue to monitor the workplace.
- d) If you believe that you are a target of bullying, you may want to follow a three-point plan.
- ◆ Name it. Calling the behaviour bullying or psychological violence or harassment can help you view it as outside of yourself and reduce your sense of shame so that healing can begin.
 - ◆ Take time to check your physical health for stress-related complications; get mental health counseling; check for violations of employer policies and labour laws; and gather data to show the financial impact of the harassment or bullying.
 - ◆ If possible, present the above information to your employer, supervisor, or the highest ranking person in the workplace.

Taking a direct approach may not bring positive results. Of people who reported being bullied in the workplace, 17% of targets were transferred, 33% ended up leaving voluntarily, and 37% were terminated. In only 13% of those cases was

- ◆ year of the incident.
- ◆ Once reported, employers or supervisors must investigate the incident in your presence or in the presence of your representative. Until the investigation is completed, you may remain in a safe place.

It might take the Human Rights Tribunal up to one (1) year to investigate a complaint. During this time, you might be open to attack from the harasser, which can be stressful. Things may not get better in the short term and you may be very uncomfortable at the workplace while you wait for the complaint to be handled.

If you have a work permit or permanent resident status, submitting a complaint to the Human Rights Tribunal should not affect your immigration status.

- c) You may contact Ministry of Labour Inspectors if you believe your work or workplace is still unsafe after an investigation of a complaint against your employer.
- ◆ You may remain in a safe place, pending the Inspector's decision, or if possible, you may be assigned alternative work.
- ◆ Employers should continue to pay wages during the

- pictures, objects, or gestures;
- physical contact;
- sexual demands;
- unwanted kissing or touching of a sexual nature; and
- forced penetration, either vaginal, anal, or oral.
- ◆ The act does not have to result in any physical injury.
- ◆ If someone makes you do something sexual by using force, threats, intimidation, or coercion, it is sexual assault.

Example: Your employer's nephew, who regularly comes to the house where you work and keeps asking you for sexual favours even though you say no.

Violence in the workplace, as defined by the Canadian Centre for Occupational Health and Safety, includes any act of physical, verbal, or sexual abuse; and harassment (including sexual harassment) threats, intimidation, and anything that offends or humiliates you.

Workplace violence also includes:

- ◆ **Threatening behaviour:** shaking fists, destroying property, or throwing objects.
- ◆ **Verbal or written threats:** any expression of intent to inflict harm.
- ◆ **Harassment:** any behaviour that demeans, embarrasses, humiliates, annoys, or alarms that is known or would be

expected to be unwelcomed. This includes words, gestures, intimidation, and bullying.

- ◆ **Verbal abuse:** swearing, insulting, or condescending language.
- ◆ **Physical attacks:** hitting, shoving, punching, or kicking

Workplace violence can also include spreading rumours, pranks, arguments, property damage, vandalism, sabotage, pushing, theft, psychological trauma, anger-related incidents, rape, arson, and murder.

Example: Your employer pushes and kicks you when you try to help her out of her bed.

2. What the Law Says...

Employment Standards Act of Ontario (ESA)

The Act provides the minimum standards for working in Ontario. It sets out rights and responsibilities of employees and employers in Ontario workplaces. The ESA covers a wide range of employment standards, including:

- ◆ minimum requirements for workplaces;
- ◆ provisions to assist employees with family responsibilities;
- ◆ increased flexibility in work arrangements; and
- ◆ mechanisms for compliance and enforcement.

4. Tips for Dealing with Bullying and Sexual Harassment

- a) Keep a journal of what happens. If possible, use a bound notebook. This way no one can add paper or change the order of the pages. Write down everything about the harassment, including:
 - ◆ dates, places, times, details, gestures, words, etc.
 - ◆ names and telephone numbers of everyone who saw or heard the harassment (these people are potential witnesses).
 - ◆ any emotional or physical reactions during or after the harassing incident.
 - ◆ names of others being harassed, if there are any. If possible, talk to people you trust to find out.
 - ◆ if you told the employer or supervisor, record actions the employer took or did not take.

Unfortunately, domestic workers under the LCP who report sexual violence or harassment in the workplace are at risk of being fired, which could affect their immigration status.

- b) If you face harassment or discrimination, you can make a complaint to the Ontario Human Rights Tribunal within one

believe are responsible for the damage.

Criminal Injuries Compensation

The Criminal Injuries Compensation Board gives compensation to victims of crimes of violence that occurred in Ontario.

3. Action Plan for Dealing with Sexual/Physical Assault

- ◆ Go to a safe place.
- ◆ Talk to a trusted friend and/or call a sexual assault treatment centre or rape crisis centre.
- ◆ Think about what to do next.
- ◆ Decide whether to report the assault or not.
- ◆ If a report is made to the police, they should provide access to medical help.
- ◆ If a report is made to the police, they will need evidence — do not change clothes or shower.
- ◆ You can bring a friend or counselor for support if you report the incident to police.
- ◆ The police can lay criminal charges if they feel there is enough evidence and a Crown Attorney will prosecute the case. As a victim, you may be called in as a witness.

An employer cannot intimidate, fire, suspend, or otherwise punish you or threaten any of these actions because you have asked for or about your rights under the *Employment Standards Act*. If this happens, you can contact the Ministry of Labour.

Note: Domestic workers and caregivers who work less than 24 hours a week are not covered by some or all sections of these laws.

Ontario Human Rights Code

The *Ontario Human Rights Code* protects all workers in Ontario from discrimination in employment based on the following protected grounds: race, colour ancestry, place of origin, ethnic origin, citizenship, religion, disability, age, sex (including pregnancy and gender identity), sexual orientation, marital status (including same sex partners), family status, and record of offences (in employment only).

Workplace Safety and Insurance Act

Under this Act, you are guaranteed compensation if you are physically or psychologically injured at work, regardless of who is to blame for the injury.

Most but not all workers are covered by workers' compensation. You can call the Workplace Safety and Insurance Board to find out if you are covered.

Employers are responsible for making sure domestic workers under the LCP are covered by medical and health insurance and workers' compensation when they arrive in Canada.

The *Occupational Health and Safety Act* is primarily intended to protect workers who work with dangerous machinery or hazardous chemicals. It is there to protect workers' safety. Health and Safety legislation is also there to ensure that workplaces are free from danger. The Act gives four basic rights to workers:

- ◆ the right to participate;
- ◆ the right to know;
- ◆ the right to refuse work; and
- ◆ the right to stop work.

Immigration Act

The *Immigration and Refugee Protection Act* permits domestic workers in the LCP to seek permanent residence after completing a total of two years of full-time employment as live-in caregivers within thirty nine months of being admitted to Canada.

Domestic workers and caregivers in Canada under the LCP who do not complete the LCP program requirements and have their status expire may be without legal immigration status. They

should get legal advice as soon as possible to discuss what immigration claims may be available to them.

Toronto Police Services has a “Don't Ask” policy, which means that they do not ask about immigration status. However, if the police find out that you do not have legal status, they might report you to immigration authorities.

Criminal Code of Canada

You are protected by the *Criminal Code of Canada* against assault, which is the “intentional application of force to another person without the person's consent”. Assault includes “attempts and threats to use force including gestures that imply a serious threat”. It is important to know that emotional or psychological abuse is not covered under the Criminal Code. However, behaviours that might accompany abuse, such as assault, stalking, and threats, are covered.

Civil Lawsuit

In a civil lawsuit, the victim goes to court against the offender or a third party for causing physical or emotional damage. If the case is successful, they can be given money or other compensation. Civil lawsuits can be started regardless of the outcome of a criminal prosecution. Even if no criminal charges laid, victims can file civil lawsuits against offenders and other parties they