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Ontario Human Rights Commission

"Preventing Sexual Harassment at Work."

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>>CART Captioner: Standing by.

>> Good afternoon. Welcome to today's live webinar "Preventing Sexual Harassment at Work.

I am part of the professional development team here at HRP.

Before we begin the presentation, I would like to alert you to a few of our programs. Next week, Wednesday, July 15, 12:00 noon to 1:30 p.m. we will deliver the online broadcast, "Work, Police, Discipline, and Performance Management" when used correctly, discipline in the workplace can be a very effective tool. Learn about the benefits of ensuring aggressive discipline, given the various goals that can be achieved. This will broadcast what employers ought to do and not to do when imposing disciplinary sanctions to ensure goals are met.

Thursday, July 21, over the lunch hour, developing resilience during times of change. This webinar explains why change can be challenging and how resilience, the ability to remain productive during turbulence, can help boost one's capacity to adapt. Learn the seven change muscles that help rid us, their energy more effectively moving through the adaptation process, as well as overview skills to help build the change muscles.

And finally Wednesday July 29, HRPAs will deliver reality based workplace, boosting employee value and driving results. This half day seminar introduces a revolutionary performance metric for quantifying employee value to the organization.

Discover five groundbreaking findings, and the new rules of the workplace that call for HR to completely change its approach to managing change, measuring performance, and creating engagement in order to truly support business missions and strategies. For more information on these and other PD programs, visit [www.HRPA.CA/professionaldevelopment](http://www.HRPA.CA/professionaldevelopment).

For a few housekeeping remarks. If you experience difficulties, PD webinars at HRPAs and issue throughout the Q and A panel. We encourage you to ask questions and a Q and A will be conducted at the end of the webinar. A link to the on demand version of the webinar will be sent to all registrants within a week or two. And you can download the presentations from your screen and on the online resources and documents, a portion of that. Don't

worry. If you are unable to download those resource, we will be sending those out to you in an e-mail that will come today.

Your feedback is important to us. Take a few minutes to complete the survey that will be sent within 24 hours. And the recertification code for those whom require it will be provided on the last question of the survey.

Now I would like to introduce you to today's speaker. Cherie Robertson is a lawyer who works as a senior policy analyst at the Ontario Human Rights Commission. She develops and drafts public policy on a range of Human Rights and social justice issues. She delivers public education and undertakes consultation with stakeholder groups and the public. The author of the OHRC's policy on preventing sexual and gender based harassment. And I would like to introduce you to Dora Nipp, the Human Rights education and change specialist who will be assisting Cherie today.

>> Dora: Thank you, Nancy. I would like to start

today's webinar with a quick poll, which will pop up on your screen shortly. We thought it would be interesting to get a sense of the group ask who is taking part today. And to submit an answer, click on the radio buttons and I will broadcast the results. Are you attending as an employee, an employer, a service provider, a housing provider, lawyer, or paralegal, student, other or for general interest?

Okay. I will just broadcast the results now. It seems like we have a pretty good cross section, but really most of our participants today are employers. Very good. Let's get started then. I'll pass it over to Cherie.

>> Cherie: Good afternoon, recent events have triggered a medication wide discussion being harassment. The Ontario government announced a far-reaching plan on sexual harassment in March of this year. The Ontario Human Rights Commission, or the OHRC, has long recognized the impact of sexual harassment. Sexual harassment can limit a person's ability to earn a living, get housing, get an education, feel safe and secure, and take part fully in society. Victims of sexual harassment can have serious physical and emotional effects including anxiety,

depression, and inability to sleep, withdrawal from relationships, self-blame, reduced self-esteem, and post traumatic stress disorder.

The Human Rights Code is very clear, sexual harassment is against the law, and sexual harassment in employment is specifically prohibited. Most incidents of sexual harassment go unreported. A 2014 Angus Reid Survey reported that while 28% of Canadians say they've experienced sexual harassment at work, 80% of the people did not report it. The reasons given for not reporting included a fear of coming forward or that no one would believe them, not wanting to revisit it, embarrassment, and fear of losing their job or hurting their career. Yet, employers have a proactive legal duty to maintain poison free environments free of discrimination and harassment whether or not someone formally complains. Not taking action, decreased productivity, low morale, increased absenteeism, and potential legal expenses. Dora, let's take a moment for a quick poll question.

>> Dora: Thanks, Cherie. ~~Sexual harassment it may not be open, and often not how prevalent do you think it is in the workplace?~~ Sexual harassment - it

may not be obvious, and it often does not take place in the open. How perseverant do you think it is in the workplace?

Somewhat, not at all, or it's a problem?

We'll broadcast the results. 62% of you are think it's somewhat of a problem. And 35% think it's a problem. Thank you. Cherie, we'll pass it back to you.

>> Cherie: The Ontario Human Rights Commission developed its 2013 policy on preventing sexual and gender based harassment to provide guidance to employers on how to fulfill their responsibilities under the Ontario Human Rights Code. The Policy is a vital resource. It can help you learn more and share information with staff and management about defining and identifying sexual and gender based harassment, preventing it, and addressing it when it does happen, your legal rights if you have experienced sexual harassment, and your organization's legal responsibilities. What to include in an anti-sexual harassment policy. For example, we include suggested consent tents on page 47 of our own document. And where to find further resources. Everything I speak to you about today is included in

the policy with much more detail.

Sexual harassment is a form of discrimination based on sex. A culture of sexism plays a significant role in the social processes that give rise to discrimination based on sex. The Ontario Human Rights Code prohibits sex discrimination, and prohibits sexual harassment. Men may be victims of sexual harassment but women are the ones most affected.

The Policy emphasizes that sexual harassment cuts across socioeconomic classes, ethnicities, professions, and social spheres. As one author notes, it can happen to executives as well as factory workers. It occurs not only in the workplace and in the classroom, but parliamentary chambers, and places of worship. Under the Ontario Human Rights Code, harassment is engaging in a course of -- comment or conduct that's known or ought to be known to be unwelcome.

Decision-making requires that more than one event take place for there to be a violation of the Code, however, more recent case law has established that in some circumstances one incident could be significant enough to be sexual harassment. For example, a tribunal found that one incident where a male employee, quote, flicked the nipple, end of quote, of a

he female employee was enough to meet the definition of sexual harassment. The reference to conduct or comment that is known, or reasonably known to be unwelcome establishes a subjective and objective test for harassment. The subjective part is the harasser's own knowledge of how the behavior is being received. The objective part considers from the point of view of a reasonable third party how such behavior would generally be received.

It's now well established that harassment and discrimination based on sex may not be always be of a sexual nature. Behavior not explicitly sexual play still result to harassment because of sex. A tribunal found the most common understanding is conduct making sexual advances, so listing, sexual favors, sexual touching, et cetera, the definition of sexual harassment includes conduct that den grades a women's sexuality or is aimed at a woman because of her sex. Undermining, humiliate, or reject a person based on sex, sexism, jokes or pranks would fall under the definition of sexual harassment. For example, spreading degrading sexual rumors or gossip about a female employee to undermine her credibility and professionalism has been found to be sexual

harassment. While sexual harassment occurs across different occupations and industry sectors, industry suggests it's more common in certain types of employment. Sexual harassment claims are high in traditionally male dominated work environments, such as the military, policing, firefighting, mining, and construction work. . In one police service case, a supervising police sergeant subjected a young female constable about ongoing comments about her body, and an interest in her whereabouts. When she did not return his interest and tried to avoid him, he got angry. He began to over-scrutinize her work performance, and accuses her of incompetent. And instead of titling her, PC, police constable, he referred to her as Mrs. Women performing jobs that are perceived to be subservient may experience high rates of sexual harassment. Healthcare workers, massage therapists, waitresses, and bar tenders. And women who work in relative isolation and have few if any coworkers are highly vulnerable to sexual harassment. For example, research shows that live-in domestic caregivers experience high rates of sexual harassment. Unions are also responsible for making sure that they don't discriminate against or

harass their members. A person may be especially vulnerable to sexual harassment when they are identified by more than one code ground. Tribunals and courts have increasingly used what is called an intersectional approach in the Human Rights cases they hear. For example, racialized women, young women, and people with disabilities may be especially vulnerable to sexual harassment.

In one case, a woman working at a coffee shop was asked out on a date by her employer on her second day at work. She declined the invitation. When her employer learned she was a lesbian, his interest intensified and he tried to persuade her to have a heterosexual relationship with him. They found that it was sexual harassment because of the conduct and harassment. Sexuality is often intertwined with racism. Racial stereotypes about the sexuality of women have played a part in several sexual harassment claims. Racialized characters like, for example, they are more sexually available, more likely to be submissive to male authority, more vulnerable, et cetera. Legal decision makers are increasingly considering this when determining the amount of damages and appropriate remedies. In a decision

reached in May 2015. The sexual found that two work -- a Human Rights Tribunal found that two workers were. The company owner threatened to send her back to Mexico.

Recognizing the extreme vulnerability, they ordered 1 radio thousand dollars of damages to one woman and \$50,000 of damages to the other. Dora, can we have a poll question before I go on to the section?

>> Dora: Sure can. Sexual harassment takes many forms. Do you agree or disagree or not sure?

100% agree. Okay. Cherie will discuss different forms of sexual harassment.

>> Cherie: In fact, it takes many forms. The *Code* specifically sets out a person's right to be free from unwelcome sexual advances or solicitation from a person who is in a position to grant or deny a benefit, such as supervisors, managers and job interviewers.

Possible benefits might include employment opportunities or advantages, a positive reference, and favourable working conditions.

Some of the forms that sexual harassment can take

include unwanted touching or invading personal space, leering or inappropriate staring, sex or gender based jokes, comments, taunts, or spreading sexual rumors, showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti or other sexual images, including online. Bullying based on sex or gender. Demanding dates for sexual favors. Bragging about sexual prowess. Acting paternally in a way that undermines a person's self-respect or position of responsibility.

The Supreme Court of Canada has defined sexual harassment to include conduct that creates a hostile or poisoned environment. For example, a tribunal found that a repetitive use, sweetheart, little lady sweetie, and dear to be termed of diminishment. And created a poisoned work environment, and violated a woman's right to be free from description in her workplace. Not addressing a sexualized atmosphere may open the door for more violent behavior. In one Quebec case, a repeated sexual behavior towards a female employee over a three to four month period at work culminated to him entering her home one morning and threatening to rape her. And employers have a duty to maintain an atmosphere that's free

from harassment. In one case, the Human Rights Tribunal found that a locker room mentality is not an excuse for sexual vexatious behavior, even if some of the participants accept or seem to enjoy it. The employer rejected that men in male dominated workplaces are expected to tolerate crude, and lewd environments. Gender based harassment is another form. Any behavior that polices and evening forces traditional -- and reinforces traditional gender norms. Those who don't confirm to traditional understandings of what it mean to be male, quote unquote, or female, quote unquote, may be singled out for harassment. Gender based harassment is not generally by sexual interest or intent. It's often based on gender bases who tilted and intended to make the person feel unwelcome in their environment. Commonly used to reestablish gender norms. Polarized masculinity and femininity. Puts a person that that's perceived to be quote, unquote, deviant, back into their place. In one case, outspoken, high performing woman in a male dominated professional accounting offers was denied partnership and told how to walk more femininely, dress more femininely, wear makeup, have her hair styled and wear jewelry. Treating a

woman negatively because of a perception that she's not physically attractive and doesn't meet a stereotypical ideal of beauty has been found to be sexual harassment. A tribunal found that an employee's negative and repeated comments about a coworker's appearance, and his view she was overweight led to a view of harassment. They had no other purpose but to communicate that the woman was physically un-attractive or sexually undesirable.

Male to male gender based harassment is often aimed at men, who appear to be effeminate, gay, young, inexperienced, to otherwise insufficiently masculine. Often involving homophobic slurs or taunting no matter the victim's sexual orientation, and it may be used as a form of bullying appear.

>> In one case, the tribunal found that a man was subjected to sexual harassment, and abasement, and he refused to view pornography during work hours with a supervisor and coworkers. Men may use gender based harassment to harm targets and prove their masculinity to other male onlookers. People who identify as transgender may be especially vulnerable. By not conforming to traditional sex reel

stereotypes. They may be subjected to gender policing and other forms of sexually harassing behavior.

>> Dora: I have two questions. Before Cherie explains the employer's responsibility to effectively respond to sexual harassment, I would like to know of your experience with drafting a sexual harassment policy. If you could just answer the question on the left first. Have you helped an employer draft a sexual harassment policy?

Yes, I have, or no, I haven't. A number of you have, but a good number have not -- about 60%, have not.

The next question. Have you delivered training on a sexual harassment policy and procedures? Please note that reading the Policy is not considering training.

Yes, no?

A good percentage of you haven't, and 40% of you.

Thank you. -- 40% of you have. Thank you.

Cherie?

>> Cherie: In appropriate sexual behavior occurs over time. Violence is often the culmination of ongoing acts of harassment. Ontario, tragically, this was

shown in several cases where workplace sexual harassment has escalated to the point where women were ultimately murdered by harassers. Gender based may escalate to violence. Targets of the violence may be male or female. In the firm, same sex sexual harassment case heard in the United States, an offshore oil rig worker was subjected to constant ridicule and derision by his coworkers and he was then sexually assaulted in a locker room. Sexual harassment can take other forms. In its more subtle forms, sexual harassment play include sexual jokes and Yelled, and un--- and innuendo, and unwanted jokes and attention. It can evade a person's life, and escalate to stalking and violence. Sexual harassment is also happening at alarming rates through online technology. E-mail, blogs, social networking sites, chatrooms, dating websites, cellphone, text message, et cetera, are all possible domains for sexual harassment. Social networking sites, for example, provide a possible forum for public humiliation and may be used for any number of sexually harassing behaviors, personal videos, photos and spreading rumors and gossip. A potential for online postings to go viral and the contented very difficult if not

impossible to remove.

In one case, in 2011, the B.C. Human Rights Tribunal awarded a woman \$40,000 after being forced out of her job because of unwanted text messages from her boss. The anonymity formed by online may make it a vehicle of choice for harassers. Employers should be aware of the potential discriminatory affects when online technology is used for sexual harassment in and outside of the physical workplace. Electronic media accessed outside of the employer's premises may be an extension of the workplace where sexual harassment communicated electronically has connections to employment. Labor arbitrators have confirmed that employees may be subject to discipline, up to and including termination for inappropriate social media postings outside of the workplace. For example, one arbitrator upheld the termination of a firefighters for off-duty tweets from his personal accounts for sexist, misogynistic, and racist, and arbitrary to the Human Rights Code. He stated in Canada, in 2014 a reasonable person in my view would consider Human Rights violations to be very serious misconduct, injurious to the employer's representation. They have a duty to ensure that

sexual harassment is not taking place in their workplace. Employers must take immediate action to remedy the situation. If employers are satisfied, the harassment has happened, they must consider both disciplinary action and further prevention steps such as training and education been

Under the Human Rights Code, an employer will be held responsible for discrimination committed by employees or agents in the course of their employment. This is vicarious liability. So an employer may be held responsible for discrimination arising from the acts of its employees or agents whether or not it has any knowledge of, participation in, or control over these actions. Vicarious liability applies where an employer has failed to maintain a harassment free work environment, which is a form of discrimination. The organic theory of corporate liability may also apply. This means an organization may be liable for acts of harassment carried out by its employees if proven it was aware of the harassment, or the harasser is shown to be a part of the management, or directing mind of the organization. The organization will be liable for the

decisions, acts, or omissions of the employee where the employee as part of the directing mind engages in harassment or inappropriate behavior violating the Code. Where the procedure who is part of the directing mind does not respond adequately to harassment or inappropriately behavior they are aware of or ought to be aware of. Employers may also have a responsibility for sexual harassment by a third parties in the workplace, contractors, customers, or clients, service or repair people, et cetera. Under the Occupational Health and Safety Act, employers in workplaces with five or more employees must have written policies and review them at least once a year. The Occupational Health and Safety Act requires employers to do risk assessments to prevent workplace violence. The recent plan includes a commitment to strengthening the Occupational Health and Safety Act to better address sexual harassment.

When we talk about sexual harassment in the workplace, the workplace is defined broadly in the case law. It includes events that happen outside of normal business hours or off business premises but linked to the workplace. In one case, a tribunal found

that an employers' unwanted phone calls and visits to a woman's home were all part of a course of conduct that started in the workplace, and extended to her home. An employer may also be liable for incidents that take place during business trips, company parties or other company related functions.

In one case, a restaurant manager made repeated explicit, and intimate advances and sexual comments to a waitress. Some comment made during an after-hours card game with coworkers, and some in a text message, and voice mail he September to her while in a late night party attended by other male staff members. The tribunal concluded that while not all incidents occurred at work or during work hours, they were sufficiently connected to the works place to engage the Code's protection. In that case, the tribunal stated that all of the incidents, regardless of where they occurred, had job related consequences for the am can't. Replace the -- the am can't.

Perhaps the clearest example, the evidence that she could not return to the restaurant knowing that her boss and coworkers have thought and talked about her as described in the voice mail message.

What if you or someone you know experiences sexual

harassment?

The Commission tells people that if they believe they've experienced sexual harassment they should try, where possible, to resolve the problem through any internal policies or mechanisms that exist. If the person is in a union, they can contact the union for help. A person who is sexually harassed at work may have recourse under the Occupational Health and Safety Act, and our policy provides greater detail on the option. And in some cases, sexually harassing behavior is amounting to a criminal offense. For example, a crime if it involves attempting or actual physical assaulting, include sexual or threats of an assault. And stalking is a crime called criminal harassment. Where sexual harassment includes any of those things, a person can contact their local police service to inquire on filing criminal charges. Of course, victims of sexual harassment can file a Human Rights complaint with the Human Rights Tribunal of Ontario, within one year of the last incident of harassment.

Under the Human Rights Code, the person bringing the sexual harassment claim has to prove on a balance of probabilities. Since sexual harassment does not

usually occur in full public view, and since there are often no witnesses leaving a he said, she said, situation, credibility issues often arise. Repeated conduct directed at one person is not needed. For example, a pattern of conduct directed at several people may also be sexual harassment.

Where credibility is at issue, what is known as similar fact evidence, may be introduced to show that a pattern of behavior occurred.

The intention of the harasser does not matter when deciding if sexual harassment has occurred. The Supreme Court of Canada has held that a lack of attention is no defense for discrimination. It's enough if the conduct has a discriminatory effect and the focus should be on the impact of the behavior on the person who experienced it. A person doesn't have to object to the harassment at the time it happens to claim the rights under the Human Rights code. A power imbalance may make it very difficult or even unsafe to object. Further, even though a person being harassed may take part in sexual activity or other related behavior, it doesn't mean they welcome it. Courts and tribunals find that a power balance can negate the sense to the sexual activity

and past consent does not equal present consent when it is clear that one party doesn't welcome the physical action. In a situation where two people have been resolved at one time, and the relationship ended but the one party continues to pursue the other party in ways that are not welcome. -- continues to pursue the other party.

And the ultimate responsibility for maintaining an environment free from sexual harassment rests with employers. It's not -- with employees. It's not acceptable to ignore whether or not someone has formally complained. Employers must take proactive steps, maintain a safe environment, and respond immediately when they hear of sexual harassment. Human Rights legal decisions are full of findings of liabilities in cases where employers and other responsible organizations have failed to respond appropriately to address sexual harassment. Our policy emphasizes that organizations can go a long way toward promoting a harassment free environment by having a clear, comprehensive, anti-sexual, and gender based policy in place. Limits harm and reduce the liability. Organizations should ensure that all

employees, managers, HR staff, and others, have the Policy and are aware of their rights and responsibilities not to engage in harassment. They should also train everyone in positions of responsibility in their Human Rights obligations. When deciding if an employer responded appropriately, a Human Rights Tribunal is likely to look at what procedures were in place to deal with discrimination and harassment, how quick the response was, how seriously the complaint was treated, the resources made available to deal with it, whether the employer provided a healthy environment for the person who complained and how with the person was kept updated about the status of their complaint, the actions taken, et cetera. So in conclusion, the Ontario Human Rights Commission policy is a tool to help prevent sexual and gender based harassment before it occurs and to deal with it when it happens. It outlines the steps to take to make sure that sexual harassment does not take root and is not allowed to grow.

>> Dora: Thanks, Cherie. We're now going to start the question and answer segment of the webinar. We

cannot provide legal vice. If you have a Human Rights complaint, you may want to consult with the Human Rights Legal Support Centre. If you are an employer, or service provider, you may wish to consult with your own legal counselor.

During the Q and As we may pause, and there may be silence on our ends, and that's only so we can take a bit of time to answer the question. And here are some questions that frequently arise. While Cherie and I are discussing these questions, you can post your questions. Cherie, say I'm an employer, my employee who has spoken to me about being sexually harassed, they want to remain anonymous.

>> Cherie: So Ontario employers have a legal duty to prevent and respond to sexual harassment as I've just detailed. There can be an expectation of confidentiality to a point. However, once you as the manager are aware that things are happening in the workplace, it can trigger your liability, or organizational responsibility to respond. So if issues around harassment have been raised, whether or not the person wants to file a formal complaint, in which case they identify themselves as a complainant, it becomes the manager's responsibility to ensure that

the work environment is safe and free from harassment.

>> Dora: Okay. And we had a question earlier about sexual harassment investigations. Sexual harassment usually involves he-said- or she-said-type of allegations. How should I proceed in the investigation?

>> Cherie: When complaints are formally filed, and there are no witnesses, outcomes depend to a great extent on the credibility of the parties. If a complaint is heard by the Ontario Human Rights Tribunal of Ontario, and there are no witnesses, credibility becomes a key factor. The individuals give their testimony, and they're subject to examination and cross examination. And whoever is the most credible in their version of events can determine how these types of complaints are ultimately resolved. Where more than one person, however, has experienced similar behavior from the same individual, similar fact evidence can be introduced as evidence to substantiate the allegations.

>> Dora: I would like to give you another situation.

Let's say that Bob hugs Jane. Jane does not feel harassed. But Sara sees the hug. And does not feel comfortable. She notified the employer. Is this harassment?

>> Cherie: So a certain amount of common sense has to be used in the workplace. One of the requirements for sexual harassment is whether the behavior is unwanted by the person on the receiving end. And in this case, if Jane doesn't feel harassed, it wouldn't amount to sexual harassment. Having said that, other types of behavior could take place that would poison the environment for other workers. If Sara saw other types of behavior, for example, online sharing of sexual images, she may not be directly involved in the exchange but could have her work environment poisoned none the less. Once again, a hug, to two people consenting to the inter-reaction and that's the extent, it would not likely amount to sexual harassment.

>> Dora: Chery, what happens when the relationship is initially consensual, and then ongoing for some time, but one of the employees claims sexual harassment?

>> As I mentioned, past consent doesn't amount to present consent. In a situation where they've been involved in a relationship, and the relationship breaks down, the person who may have initiated the breakup can expect not to be harassed. Ongoing consent, and assurance that the behavior is not wanted needs to be ensured to avoid behavior that could be characterized as sexual harassment.

>> Dora: How would you identify an offensive or unwelcome comment?

What if the perpetrator makes a sexually suggestive comment, but he or she meant as a compliment?

>> Cherie: I think that's where the subjective, and objective side of comes into play. The subjective side, whether they experienced it as offensive and indicated in some way that they perceived the behavior in that way, and the objective side of the test is whether or not a reasonable third party would find the behavior offensive. So the two perspectives will be considered in assessing whether harassment took place. Our policy offers extensive list of conducts and behaviors that have been found by tribunals and

courts to amount to sexual harassment.

>> Dora: We have a question on time requirements to file a Human Rights -- an application to the Human Rights Tribunal of Ontario. Can you comment?

>> Cherie: The Ontario Human Rights Code makes it clear that an application, a complaint, should be filed within one year of the last incident. Having said that, in some cases the Ontario Human Rights Commission has used its discretion to be flexible. In general, however, it's safe to assume that a complaint with Legal Support Centre, should be filed in the last date of the last incident -- a complaint filed to Human Rights Tribunal.

>> Dora: Is sexual harassment a gender specific issue?

>> Cherie: No. It's not. Men have been on harassed. And can file a complaint. That being said, women are disproportionately affected.

Commissions have all recognizes that sexual harassment is often an abuse of power that can reinforce a women's lower status compared to men. But, sexual harassment happens in all social and economic classes. Ethnic groups, jobs, and places in

the community, and men are definitely at times affected by it, and have filed Human Rights complaints. As I mentioned as well, it's important to keep in mind that a person may be more vulnerable to sexual harassment if they identify by other code grounds such as race, sexual orientation, disability, et cetera.

>> Dora: We have another question about third parties. What happens when the harasser is from a third party organization?

For example, contracted workers?

>> Cherie: As I touched upon in the presentation, employers have responsible for the behavior third parties, including contracted customers and workers. They can be held liable for the sexually harassing behavior. If third parties are coming in to do maintenance work and engage in sexual harassment the employer is responsible as part of their general obligation to maintain a harassment free work environment to address this immediately. Employers and other responsible parties need procedures for dealing with sexual harassment by third parties.

These procedures should show how people are expected to respond to the harassment, make sure serious or ongoing problems are brought to the person in charge's attention, and the people in charge take appropriate steps to address the situation and take remedial action.

>> Dora: What types of situation require calling the police?

>> Cherie: So where the behavior verges into the criminal. So where it involves threats of an assault, an actual assault, or behavior that amounts to stalking, for example. Then you are in the area of the criminal code. Anything that would amount to a crime in the context of the criminal code would be subject matter that would be appropriate to report to the police.

>> Dora: We have a couple questions on developing a sexual harassment policy. One of them is, should organizations have a sexual harassment policy that is separate from the workplace harassment policy required under the Occupational Health and Safety Act?

>> Cherie: So the Commission highly recommended that organizations develop and adopt in-house anti-sexual harassment relationship policies separate from a general harassment policy to make sure that all responsible parties and staff are properly informed, educated about the nature, the effects, and the cost of this type of behavior. An effective policy outlines everyone's rights and responsibilities relates to sexual harassment. Under the Ontario Human Rights Code, a person can be harassed because of any of the 17 different grounds of discrimination included in the legislation. The ground of sex which includes pregnancy and gender. That's one such ground. It's distinct from harassment that happens based on other code grounds. Section 7 of the Code deals specifically with sexual harassment. Should an employer have the sexual harassment policy approved by the OHRC?

Under the Human Rights Code, employers have this proactive responsibility to create policies. The Commission doesn't approve individual policies. We just don't have the resources to be able to do that for every individual organizations. But having said that, our policy on preventing sexual and gender based

harassment includes detailed guidance on what organizations should include in their anti-sexual harassment policies to make sure that they have covered off all of their responsibilities.

>> Dora: You know that we have a number of employers participating in today's webinar. And they're posing a number of questions. One of them is, does an employer have to wait for a formal complaint to conduct an investigation?

>> Cherie: No. As I said earlier, employers have a legal duty to prevent and respond to sexual harassment. And this duty is proactive. So employers have to make sure that they have poison free environments that respect Human Rights. It's not acceptable to ignore sexual harassment whether or not someone has formally made a complaint or not. An organization should conduct an investigation to collect as much evidence as they can, and once it comes to their attention that something is going on in the workplace that they should be concerned about.

>> Dora: When people find themselves in a situation where they are sexual harassment, oftentimes they don't come forward to complain right away. Why do

some wait too long before filing a complaint or making a complaint?

>> Cherie: I think there are many different reasons why people don't report immediately or at all.

Studies show that some of the reasons that people either don't report it or where they take a while to report it is that they are worried that they won't be believed. They know that in many cases it'll be their word against the other person's word. And I think that there has been enough coverage in the media to give people the impression that going down that road is not likely to be a pleasant experience. So there's a lot of reluctance to take that on. Sometimes people just want to try as best as they can to put the incident behind them. Sometimes people they wouldn't be able to prove the case. Maybe there were no witnesses. Typically, when this stuff happens, there aren't witness. It's a type of behavior that often occurs behind closed doors. Sometimes people feel traumatized and don't want to relive the experience. They may worry that to come forward would mark them as a trouble maker, that it might jeopardize their rear, they may feel embarrassed about the incident.

Even if they were the victim of the behavior. So there's a lot of complicated reasons why people really struggle with the decision to come forward and in most cases we know they don't.

>> Dora: And what should an employer do if a worker brings an allegation forward but doesn't want to file a complaint, doesn't want it to go any further?

>> Cherie: Well, think that's a situation that I think employers deal with regularly. Sometimes the person feels that they want to tell their manager. Maybe they are missing days of work and they feel that they want to explain why their work performance may have changed. But they don't have the -- they don't have the desire or the strength or what have you, to go through with the formal filing of a complaint. And I think -- as I mentioned, when an employer hears that there is behavior going on in the workplace that may amount to sexual harassment, it would be very prudent for that employer to proactively do a survey of their workplace to ensure that all employees, staff people, managers, et cetera, are aware of the employer's obligations under the Human Rights Code to make it clear to those in the workplace

that the employer takes the rights seriously. This can all be done without having to name individual names or violate the confidentiality of an employee who may have in confidence raised issues with their manager or their HR personnel.

>> Dora: And, again, several questions, similar question, about what should an employer do when they receive a complaint?

>> Cherie: So employer is obliged to deal with it directly. And promptly. Conducting an investigation, ideally interviewing both parties, if there are two parties involved, separately, and taking detailed notes. This is something we always employees and HR people do is keep a very sound paper trail of all of the actions taken, the time lines associated with any of those actions, because if further down the road the employee decides to file a Human Rights complaint or take further action, the employer or the HR person on behavior of the employer needs to be able to show that they acted responsibly and in accordance with the obligations that we discussed at length within our policy.

>> Dora: We're just going to take a couple seconds

here to consider some of the questions.

>> Cherie: Dora, I am looking at some of the newer questions that are coming in. Someone asked the question. Somewhat what happens if a sexual harassment claim is against someone with academic tenure? From the perspective of the Human Rights Code, and Human Rights law, a person with academic tenure is not entitled to engage in sexual harassment any more than anybody else in a workplace. So if it's at a university, for example, the university still has responsibility for a sexual harassment taking place within its environment. So in that type of a situation, the person should be treated as any other person about whom sexual harassment allegations have been raised.

>> Dora: I'm just going through some of the other questions that have come in [that was Cherie].

>> Cherie: So other things I have touched on. We had questions around third party harassment, and nonemployees. I have made it really clear about the employers' responsibility to address sexual harassment on the part of third parties. If there's any doubt or confusion about that, please refer to our policy. We have a separate section that deals with

that and makes it clear if it's not clear at this point.

>> Dora: So, Cherie, say I'm an employee. If I am being sexually harassed, who should I contact, the first point of contact?

>> Cherie: That will depend on the individual and their comfort level. There are many different ways to address sexual harassment. We have talked already about the recourse under the Human Rights Code and the possibility of filing a Human Rights complaint. So if a person feels that that's the route that they would like to take, in Ontario, the human rights Legal Support Centre provides legal advice and even legal representation in the cases that could be filed with the Human Rights Tribunal of Ontario. Our policy talks at length about some of the considerations that a person should be aware of if they do decide to file a Human Rights complaint. Prior to that though, often times if an employer has been proactive, has a good anti-sexual harassment policy in place, and the employees feel confidence in the ability of the employer to effectively handle an issue of sexual harassment, it may be the most appropriate thing.

And it maybe the quickest thing to use any internal policies that exist within the organization, if they're in a union, for example, they can contact the union.

And so that might be -- that could be the quickest way to resolve it if the person feels comfortable doing that.

Using an internal mechanism such as looking at the internal policy and bringing it to the employer's attention. That doesn't replace a person's right to file a Human Rights claim. So it's not as though if a person raises it informally with the employer that they're prevented in the future from filing a formal Human Rights complaint. And then we also talked a little earlier in the presentation about how where the behavior is criminal in nature. I have given examples of where that might be the case, contacting local police services is an on, particularly if the person feels their safety is in jeopardy. So we talk in detail about all of the different ways, depending on the circumstances, that a person can address a situation in which they feel they've been sexually harassed. I would direct people's attention to the Policy.

>> Dora: There was a question about online harassment. What do we do with online harassment in the age of social media?

>> Cherie: This is a growing issue, for sure, for employers. Social media is an area certainly where harassment takes place. We know that. Some of the concerns from employers is whether the media is being accessed. At the workplace, whether it has ties to the workplace, and implications for the workers. There are some jurisdictional issues around this which are not entirely clear until the law yet. There are cases making their way through the system, which are providing greater clarification, but we do know that the Human Rights Tribunal of Ontario has ruled on a few different sexual harassment complaints and given us some guidance on what it means to be in the workplace. The scope of behavior that's seen to be linked to the workplace is expanding. For example, if events that take place outside of the workplace, and I mentioned things like office parties, company trips, et cetera, have a link to the workplace, it's clear in the law that these will be soon in the workplace. And behaviors that take place online, through social media. What we say to employers, attempt to monitor what is happening in the workplace for sure, make sure that people's environments are not

poisoned through content through social media.

What we have seen, is this is slightly outside of the Human Rights Code, but we have seen a number of high profile incidents are employees have been fired by employers for behaviors which have taken place clearly on their personal time, well outside of the workplace, and arguably not clearly linked to the workplace. We have yet to see an employee challenge that kind of term nation, but I am sure that we will. We will see if that termination will be upheld. But there are all kinds of considerations now about behavior that employees engage in either in the workplace or outside of the workplace that can damage an employer's reputation. It seems that decision makers are quite sympathetic to employers. And there are complaints and decision that are evolving as we speak. We'll have more guidance in the future as these get litigated. But I would say that my observations have been that there is a lot of value placed in the employers need and ability to protect their reputation in the means that they see fit.

>> Dora: We have time just for a short comment.

Any updates on the action plan released in March?

>> Cherie: So the Ontario Human Rights Commission is a partner with the government of Ontario on the round table to implement their action plan on violence against women and sexual harassment. And I think

that the amount of money and resources that the government has directed to the subject is an indicator of how seriously the provincial government is taking this issue certainly I think in the past year there have been a number of incidents that have received wide seed coverage that have brought -- media coverage that brought these issues to the forefront of our conversations across the country and have certainly alerted employers to their responsibilities under the Human Rights Code and their obligations to prevent sexual harassment in their workplaces.

>> Dora: Thank you, Cherie, for thanking your expertise. I will pass the mic over to Nancy

>> Thank you so much for being here. A very [indiscernible] topic, and we have a number of questions. I know that we have not gotten to all of the questions. There are a number of online resources and documents that we will send a link to with the e-mail that is going to be sent out today for

the survey. We will send that out to you. And you will be able to listen to this version again in about a couple of a weeks. The on demand version will be sent to all of the registrants within a couple of weeks. As indicated, your feedback is important to us. Please take a few minutes to complete the survey that will be sent. We'll have links to the document with the survey. The recertification code if required for the individual, will be provided in the last question of the survey. If you have any PD questions, don't hesitate to e-mail HRP A at professional development at HRP A.CA. Thank you again, and have a wonderful day. Bye-bye.

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[Webinar has concluded].