



QUEER AND TRANS YOUTH COMING OUT AT WORK*

You have a right to be free from discrimination and harassment at work should you decide to come out. As a queer, gender non-conforming and/or trans person, it's important for you to know your rights in the workplace; in particular, knowing your rights is important for youth who are looking for or starting their first job.

Common Questions and Concerns for Queer Youth at Work

What is discrimination?

Discrimination is generally understood to mean treating a person or group of people differently based on race, sex, gender identity/expression, sexual orientation, disability, etc. Discriminatory treatment results in a situation of unfairness or disadvantage for the person or group of people impacted by the behaviour.

What is harassment?

Harassment is a form of discrimination. It involves repeated comments or behaviours that have no legitimate purpose in the workplace; for instance, calling someone names or pushing people around is not okay and may rise to the level of harassment. You have the right to be free from harassment on the job.

It is not up to the "target" of harassment to say "STOP". The harasser ought to know when comments or behaviours are unwelcome and could cause offense, embarrassment or upset. In particular, persons in positions of power have a greater responsibility to know when their actions may be unwelcome.

What legal protection do I have at work?

The Ontario Human Rights Code (www.ohrc.on.ca) states that every person in Ontario has the right to equal treatment and freedom from discrimination in the workplace because of:

- Age
- Ancestry
- Citizenship
- Colour
- Creed (religion or belief system)
- Disability (visible and invisible)
- Ethnic origin
- Family status
- Gender identity and gender expression
- Marital status (including same sex partnership status)
- Place of origin
- Race
- Record of offences
- Sex (including pregnancy)
- Sexual orientation

The Employment Standards Act (www.labour.gov.on.ca) sets out basic minimum employment rights; for example, the Act covers minimum wage, overtime, termination and severance pay, pregnancy and parental leave, vacation, public holidays and hours of work.

Ontario Labour Relations Act (www.labour.gov.on.ca) has to do with unionized workplaces. It provides most workers with the right to organize a union. It makes it illegal for your employer to fire you for attending union meetings. Once a union is formed in your workplace, there are rules and procedures for negotiating a collective agreement (an employment contract between the employer and the union representing the workers), and for resolving disagreements. This Act requires all collective agreements to contain a “non-discrimination clause”.

The Occupational Health and Safety Act (www.labour.gov.on.ca) sets out the responsibilities of the employer in ensuring that the workplace is safe and free from both harassment and violence.

Is it legal if my boss fires me for coming out at work?

Absolutely not! The Ontario Human Rights Code protects you from discrimination on the basis of your gender identity, gender expression, sexual orientation or your same-sex or gender-queer partnership status. You have the right to come out at work. You also have the same right as your straight colleagues to talk about your partner(s), put up photos of your family and friends and to talk about what you did on the weekend.

I identify as transgender. Recently, my manager told me that I was “freaking out the customers”. He told me that I have to start looking and acting more “male” or “female”. Can he do this?

If your boss does this, he could be found to be in violation of the Ontario Human Rights Code. The Code includes “gender identity” as a protected group.. What this means is that workers who identify as transsexual, transgender, gender non-conforming or intersex have legal protection from workplace discrimination. Your boss might argue that he does not mean to discriminate against you but that he needs to please his customers. However, previous legal decisions have stated that a boss can’t use customers’ prejudices as an excuse for discrimination.

During a job interview at a fast-food restaurant, the manager told me that if I wanted to work there, I’d have to take an HIV test. Is this legal?

No. According to the Ontario Human Rights Commission’s policies, you should not be asked to do any form of medical testing before you are actually hired. After you are hired, you can only be asked to take a medical test if the employer has a reasonable and genuine concern that such a test is necessary. It’s important to remember that studies have shown that the risk of HIV and AIDS transmission is very low in most workplace settings. Finally, legal decisions have made it clear that HIV and AIDS are considered to be “disabilities”. This means that if you are HIV positive or have AIDS, it is illegal for your employer to treat you differently on that basis.

A group of guys where I work gives me a hard time about being a lesbian. Every time I walk by them, they whisper words like “dyke”. When I told my supervisor, she said that she wasn’t going to fight my battles for me and that I should just “suck it up”. I also talked to my union rep but she said that there was nothing she could do about it. Is this true?

No. Both your employer and your union representative have failed to live up to their responsibilities to participate in the creation of a harassment-free workplace. Under the Ontario Human Rights Code, your employer is required to look into your complaint and to take appropriate action to intervene if harassment is taking place. Also, under the Labour Relations Act, your union has a duty to represent you fairly. By not taking

your concerns seriously, both your supervisor and your union failed to live up to their responsibility to ensure a harassment-free workplace for you and other workers.

Now that I know my rights, how do I prove that I am being discriminated against?

Sometimes it's difficult to tell exactly why you are being treated differently or badly at work. This makes it difficult to prove that you were discriminated against for a particular reason. As a queer or trans employee, it is possible that you've been treated unfairly because your boss or your co-workers are homophobic or transphobic. It may also be due to their prejudice towards people of your race, religion, culture, economic background, age or a combination of your different identities.

Here are some important first steps:

- Document. Write down what happened and when it happened and who was around to see it happen. Write down as much detail as you can remember. It may help to get it out and it also gives you a detailed record of what happened if you go forward with a complaint later on. Remember to write down how it made you feel and why and who you told.
- Tell someone. If possible, tell someone you work with about the incident. Hopefully, you have a co-worker in whom you feel you can confide. If you can't tell a co-worker or a friend, maybe you can tell your spiritual/faith advisor, elder, counselor or family doctor. The more people who know what happened to you, the stronger your position may be if you decide to take action later on.

Think about the following:

- Find out if your workplace has an anti-harassment policy or a respectful workplace policy.
- If you are unionized, talk to your union representative about your options.
- Seek out support from trusted co-workers who will respect your confidentiality until you decide what you want to do.
- Speak to a youth employment worker or community worker for more support.
- If possible, talk about the issue with your supervisor.
- If your workplace has a human rights officer, make an appointment to talk to them about the options that are available to you so that the situation can be resolved.

Find Support:

- Remember that you have a right to work in a safe and respectful work environment. Sometimes when we experience discrimination, we may feel like we've somehow caused the situation. You are not to blame for someone else's actions against you based on their transphobia, biphobia, lesbophobia, or homophobia.
- Whether you go forward with an informal or formal complaint within your workplace, or whether you seek support through the Human Rights Legal Support Centre (www.hrlsc.on.ca), receiving emotional support and understanding about your experience can help. It can help you through a really difficult situation.

How do I find a queer - and/or trans-positive employer?

A little research can help provide you with some useful information during your job search:

- Ask your friends and other contacts about places that might be hiring and that have a reputation for being queer- and/or trans-positive.
- Talk to a youth employment counselor. They may have heard about different workplaces that are respectful of diversity and are actively working to become more inclusive.

- Visit the workplaces you are interested in. Look for visible signs of being positive such as rainbow stickers, anti-discrimination messages or brochures that include persons from diverse backgrounds. Pay attention to whether the brochure reflects the reality of the workplace; i.e., do you see others who “look” like you?
- Is the workplace involved in the queer and/or trans communities in any way; for instance, sponsoring events, participating in Pride Parades, donating to queer groups or advertising in queer media?
- Find out if prospective employers have a website and then check it out.
- Do internet research. Some organizations have researched larger workplaces and produced information on queer- and/or trans-friendly workplaces.

Finding a job that meets all your expectations is really tough! Do a bit of thinking beforehand about what is important to you:

- Make some decisions prior to looking for work about what you are willing to compromise on.
- Check out the environment of the workplace. Is it more casual or very formal? What works best for you?
- If the workplace requires that you wear a uniform or has rigid gender-specific dress requirements or rules around tattoos and/or piercings, how does this affect you? Will you be required to take out your piercings or change your hair style in order to “fit in”?
- How do you feel about this?

Helpful Resources:

The Well: LGBTQ Health & Wellness Centre, Hamilton (www.thewellhamilton.ca)

The McMaster University Office of Human Rights & Equity Services (www.hres.mcmaster.ca),
hres@mcmaster.ca or 905-525-9140 x27581

McMaster Student Success Centre (www.studentsuccess.mcmaster.ca)

McMaster Student Union Queer Student Community Centre (QSCC) (www.msumcmaster.ca/qsc)

McMaster Student Union Women and Gender Equity Network (WGEN) (www.msumcmaster.ca/wgen)

Lesbian Gay Bi Trans Youth Line (www.youthline.ca) 1-800-268-9688

Pride at Work (prideatwork.ca)

*This handout borrowed heavily from the “Out To Work” pamphlet created by a team from Toronto Youth Agencies.