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Women Migrant Farm Workers Experiencing Sexual Violence and Harassment

March 2014

Introduction

Women working in a rural or remote setting are most likely isolated from other workers and live in the same place or compound where they work. They often do not have access to a trade union's support or community organizations, women coworkers and individuals who could provide information about workplace rights and information about what to do if they experience workplace violence and/or harassment.

Some women migrant farm workers face chronic sexual harassment on the job, and they do not often report it because of fear about losing their jobs. Many migrant women farm workers face other forms of gender discrimination, including unequal pay for doing equal work and pregnancy discrimination. They are also often subject to health and environmental hazards, such as poor living conditions, farm accidents, and chemical poisoning.

Migrant farm workers do not have all of the rights and benefits of Canadian citizens and, unlike foreign labour programs in other areas, there are no clear paths to permanent residence and citizenship. Many workers might be in a situation where their employer has possession of their identification and immigration documentation, and may have provided the workers with incorrect information about their immigration status or economic situation.

Migrant farm workers may face challenges such as:

- a lack of or no access to social and medical services in the community;
- barriers to communicating with family back home. They may not be allowed to use farm phones and may have to pay multiple fees for making long distance calls, and/or their privacy may be an issue if long distance numbers appear on the phone bill;
- some workplaces are in remote areas and police or emergency personnel take a long time to respond to an emergency call;
- the isolation of living in a foreign culture and language can lead to increased levels of depression, loneliness, suicide, and alcoholism;
- language or communication barriers and the inability to access culturally appropriate services may prevent them from escaping workplace violence and/or harassment;
- difficulty finding and paying for transportation, particularly if they need to leave a situation quickly; and
- in small communities, transportation or emergency services are often provided by local people that your abuser knows or is close to. In such situations, it is very difficult to ensure confidentiality and safety.

Forms of Violence

Abuse in the workplace can include physical or mental mistreatment and any improper use of power meant to frighten, threaten, intimidate, and gain control over you. Violence is any behaviour or treatment that causes you harm or threatens to cause you harm. Violence can be emotional, financial, spiritual, psychological, sexual or physical.

It is important to note that while most women's organizations and advocates working to stop violence against women define violence very broadly, only certain forms of violence are against the law. Legally, the definition of violence will depend on the specific law being used. For example, the Ontario health and safety law defines violence as physical violence only. See the section below on "What the Law Says" for more information.

Bullying in the workplace is a form of harassment and violence in the workplace. Bullying is any behaviour that is intended to cause, or should be known to cause, fear, intimidation, humiliation, distress or other forms of harm to another person's body, feelings, self-esteem, reputation or property. Bullying can be direct or indirect, and can take place by written, verbal, physical or electronic means, or any other form of expression.

- Example: A group of women you share lodging with make mean comments about your sexuality and have told you several times that you will never be accepted.

Harassment in the workplace is any unwelcome action or comment by any person that humiliates, insults, or degrades you. It can come from your employer, a representative of your employer, a co-worker, or a visitor to your employer's home. "Unwelcome" or "unwanted" action is any action that the harasser knows or ought reasonably to know is not wanted.

- Example: Every time you and your coworkers load the truck with farm produce, the driver says, "Hurry up, you bunch of lazy good-for-nothing bitches!"

Sexual violence in the workplace is any unwanted sexual activity or sexual contact. It ranges from unwanted touching to forcing someone to have sex. Sexual abuse also includes harassment directed at women because they are women and/or because of their sexual orientation or gender identity/expression.

Sexual harassment can include but is not limited to:

- degrading words, pictures, objects, or gestures;
- physical contact;
- sexual demands;
- unwanted kissing or touching of a sexual nature; and
- forced penetration, either vaginal, anal, or oral.

Domestic violence includes a pattern of behaviour used by a person to gain power and control over his or her intimate partner. This pattern of behaviour may include physical violence, sexual, emotional, financial and psychological intimidation, verbal abuse and/or stalking.

What the Law Says

Criminal Code

In Canada, some forms of violence are crimes (also called criminal offences) under the *Criminal Code*, including:

- **Assault:** when a person applies force to another person, without permission. It can include threats or attempts. Assault is a crime even if you are not physically hurt.
- **Sexual assault:** any sexual touch or act that you do not give permission for.
- **Stalking (Criminal Harassment):** when someone does things to scare and intimidate you, like repeatedly watching or following you, threatening you, damaging your property, trying to talk to you or contact you when you have made it clear you do not want to have contact with the person etc.

Workplace Health and Safety Law

Employers in Ontario are required by the *Occupational Health and Safety Act* to make sure that workplaces are safe, that employees are given safety equipment, trained and aware of any workplace dangers. Employers are also required to develop their own workplace violence and harassment policies. Employers are responsible for:

- evaluating the risks of workplace violence and harassment;
- preparing appropriate policies to address the risks, including procedures on reporting and investigating complaints and procedures for emergency response;
- monitoring the effectiveness of the policies and procedures;
- updating the policies and procedures as required; and
- ensuring all employees are aware of the policies and procedures.

Under the *Occupational Health and Safety Act*, workplace violence and harassment have more specific and narrow definitions than those listed above.

- **Workplace Violence** is defined as the use of physical force against a worker in the workplace. This includes threats and attempts to use physical force.
- **Workplace Harassment** is any vexatious (harmful) comment or conduct against a worker in a workplace that is known or should reasonably be known to be unwanted.

You have the right to refuse work that is likely to cause you danger or harm, this includes workplace violence and/or harassment. An employer must give notice of this refusal to a Ministry of Labour inspector to investigate. The worker has the right to stay in a safe place until the investigation is over.

It is illegal for employers to fire or discipline workers because they use their rights under the law.

For more information about the *Occupational Health and Safety Act* workplace violence and harassment laws, see the article [Workplace Violence & Harassment - Occupational Health and Safety Act](#).

Human Rights Law

Under the Ontario *Human Rights Code*, everyone has the right to equal treatment in employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (in employment only), marital status, family status, disability, gender identity or gender expression. If your workplace falls under federal jurisdiction, you are protected from discrimination under the *Canadian Human Rights Act*.

This law protects workers from discrimination and harassment in the workplace because of any of the grounds listed above. The right to "equal treatment with respect to employment" covers every aspect of the workplace environment and employment relationship, including job applications, recruitment, training, transfers, promotions, apprenticeship terms, dismissal and layoffs. It also covers rate of pay, overtime, hours of work, holidays, benefits, shift work, discipline and performance evaluations.

You cannot be discriminated against in getting and keeping a job, a promotion, or a raise. You cannot be discriminated against in your working conditions or in workplace discipline.

You have the right to be free of harassment in the workplace, including sexual harassment. Sexual harassment is considered discrimination based on sex.

There are other laws that protect you at work and may be able to help you get compensation if you are injured at work, such as the *Employment Standards Act*, *Workplace Safety and Insurance Act*, or the *Workers Compensation Act*. For more information about these laws and your legal options, [see the related articles listed below](#).

What to Do If It Happens to You

Always remember that sexual harassment is not your fault. Responsibility for harassment is the harasser's. If possible, try to go to a safe place and get support or talk to someone you trust. You can call the **Assaulted Women's Helpline at 1-866-863-0511** to speak to a trained counselor who can provide support and information. The Helpline is open 24 hours/ 7 days a week and has interpretation services in many languages.

If you are being sexually harassed:

- Document (keep a journal) of every incident of sexual harassment you experience and include the date, time and description of what happened. Documentation is helpful if you choose to file a complaint or speak to your employer.
- Be informed. Get a copy of your workplace's sexual harassment policy, if there is one.
- Try to connect with a women's organization or community legal clinic or community organizations for help.
- If you decide to make a complaint, consult the reporting procedures in your workplace's policy. If your workplace does not have a sexual harassment policy, try to find a person in authority that you trust to tell about your problem.
- If the harassment continues or nothing is done about it, if possible, try to find someone you trust that is the next person in authority.
- You are not required to confront the harasser, especially if it is your supervisor.
- If possible, let the harasser know that their behaviour is not acceptable.
- Protect yourself by telling more than one person, and provide them with documentation of the incidents.
- Keep copies of all documents you submit and/or receive.

If you were assaulted (someone used physical force on you without your permission):

- It is your decision whether or not you want to report the assault to the police.
- If you need medical help, try to get help as soon as possible. Try not to change your clothes or shower to save any evidence in case you want to report to the police in the future. You can get medical help without having to report the assault and they can help you save any physical evidence.

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.

Toronto Police Services has a "Don't Ask" policy, which means they should not ask about immigration status. However, if the police find out your status, they have to report it to immigration authorities.

Note: If you decide to leave the farm, you will have to notify the Liaison Officer at the embassy/consulate of your home country. Workers who report violence could be at risk of being fired, even though this is against the law. Seasonal Farm Workers who are let go before the end of their contract are usually sent home without a chance to appeal or arrange for another job.

Employers cannot call Human Resources Canada and cancel OHIP health care coverage for workers. You have the right to be covered until your visa expires.

Immigration Law and Your Work Permit

Under the Seasonal Agriculture Workers Program, you are given a temporary work permit visa, which ties you to one employer for a period of up to eight months. You can change employers, but you will need to find a new employer that is allowed to hire temporary foreign workers and you will have to get a new work permit.

Under the Temporary Worker Program, you are given a temporary work visa, which ties you to one employer for a period of up to two years. You can change employers, but you will need to find a new employer that is allowed to hire temporary foreign workers and you will have to get a new work permit.

Human Resource and Development Canada requires employers of farm workers to:

- supply them with housing that meets municipal building requirements and health standards set by the province of Ontario (this is paid by the employer for the Seasonal Agricultural Worker Program).
- ensure that you are registered with the provincial health insurance plan.
- provide free, on-the-job injury and illness insurance called "workers' compensation".

Taking Away and Holding Personal Documents

Your employer IS NOT permitted to keep your passport, medical card, or other personal documents for any reason. If this occurs, you can contact the embassy of your home country and speak with a government liaison officer immediately.

What if my workplace is not doing anything about my complaint?

It is recommended that you get legal advice to better understand your legal rights and options. Remember that whatever decision you make, try to get support from others if you can. Remember that you are not alone. Call your nearest Sexual Assault or Rape Crisis Centre or Sexual Assault Treatment and Care Centre for information and support ([see contacts at the end of the article](#)). Some options:

- Consider contacting the Ministry of Labour to make a complaint under the *Occupational Health and Safety Act* (protects from workplace hazards, including workplace violence and harassment) or the *Employment Standards Act* (hours of work, wages, benefits etc.).
- Consider contacting the Human Rights Legal Support Centre to get information on how to make a complaint to the Ontario Human Rights Tribunal. You can make a complaint within twelve months of the last incident of sexual harassment. Ask for a written response to your complaint. This can be a long process.
- Ask a legal clinic about helping you to get other forms of compensation under the *Workers Compensation Act*, *Workers Safety and Insurance Act*, or from the Criminal Injuries Compensation Board.
- Depending on the circumstances, you may consider suing the harasser in civil court or going to the police to press criminal charges.

For more information about these different options, [see the related articles listed below](#). [Contact information and resources to find help are also listed below](#).

Related Articles

- [What is Workplace Violence and Harassment?](#)
- [What Are My Basic Rights at Work?](#)
- [How do I make a claim under the Ontario Human Rights Code?](#)
- [How do I make a claim under the Canadian Human Rights Act?](#)
- [Workplace Violence & Harassment - Occupational Health and Safety Act](#)
- [Workplace Violence & Harassment - Civil Claims & Criminal Charges](#)
- [Prohibiting Discrimination Based on Gender Identity](#)
- [Responding To Women Who Have Experienced Workplace Violence and/or Harassment](#)
- [Workplace Violence & Harassment - Financial support if you have to leave your job](#)
- [Criminal Injuries Compensation Board](#)
- [The Criminal Justice System - Basic Legal Information for Women Experiencing Violence](#)

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Finding More Help

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

Justicia for Migrant Workers c/o Workers' Action Centre

720 Spadina Avenue, Suite 223
Toronto, ON, M5S 2T9
E-mail: info@justicia4migrantworkers.org
Website: www.justicia4migrantworkers.org

Niagara Region Sexual Assault Centre

43 Church Street, Suite 503
St. Catharines, ON, L2R 7E1
Phone: 905-682-7258

Crisis Line: 905-682-4584
Fax: 905-682-2114

Industrial Accidents Victims' Group of Ontario (IAVGO)

489 College Street, Suite 203
Toronto, ON, M6G 1A5
Phone: 416-924-6477
Toll-free: 1-877-230-6311
Website: www.iavgo.org

Ontario Coalition of Rape Crisis Centres

Website: www.occcc.ca

ENLACE

1-866-436-5223

Ontario Women's Justice Network

Website: www.owjn.org

Community Legal Clinics in Ontario

Phone: 416-408-4420
Website: www.cleo.on.ca

Employment Standards Branch, Ministry of Labour

Phone (Greater Toronto Area): 416-326-5300
Toll-free phone: 1-800-531-5551
Fax: 1-888-252-4684
TTY: 1-866-567-8893

Health and Safety Branch, Ministry of Labour

Toll-free: 1-877-202-0008
TTY: 1-855-653-9260
Fax: 905-577-1316
Website: <http://www.labour.gov.on.ca/english/>

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.hrsc.on.ca

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

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)
TTY: 416-944-4886

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)

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