

## METRAC'S Workplace Justice Series



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

This handbook is **not** intended to encourage women to make a certain 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.

We hope this handbook will support domestic workers/care-givers to have accurate and useful information, and to know their basic rights in situations of abuse, and where they can go for help.

**The information in this handbook is general legal information only and is not intended to replace independent legal advice and representation.**

**You should get legal advice about your own situation.**

## **Workers Compensation Board**

Head Office

2 Bloor Street East

Toronto, Ontario M4W 3C3

Tel: (416) 927-555

TTY: 1-800-387-0050

1-800-387-0750

1-800-387-5595

1-800-387-5540

## **Criminal Injuries Compensation Board**

439 University Avenue, 4th Floor

Toronto, ON M5G 1Y8

Toll Free: 1-800-372-7463

Tel: (416) 326-2900

Fax: (416) 326-2883

## **Occupational Health and Safety Branch**

Ministry of Labour

505 University Avenue, 19th Floor

Toronto, ON M7A 1T7

Tel: 1-800-268-8013

FAX (416) 326-7761

Website: [www.labour.gov.on.ca/english/hs/](http://www.labour.gov.on.ca/english/hs/)

Contact List/Regional Offices:

[www.labour.gov.on.ca/english/about/reg\\_offices.html](http://www.labour.gov.on.ca/english/about/reg_offices.html)

## **Law Society of Upper Canada – Lawyer Referral Service**

Osgoode Hall

130 Queen Street West

Toronto, Ontario M5H 2N6

Tel: (416) 947-3330

Toll Free: 1-800-268-8326

TTY: (416) 603-0663

## **Pro Bono Law Ontario**

130 Queen Street West

Toronto, Ontario M5H 2N6

Tel: (416) 977-4448

Toll Free: 1- 866-466-PBLO

Fax: 416-977-6668

Website: [www.pblo.org](http://www.pblo.org)

E-mail: [info@pblo.org](mailto:info@pblo.org)

## **INTRODUCTION**

In Ontario, the majority of domestic workers and live-in caregivers are immigrant women. Women play an important role in supporting employers and their families with essential care for children, members with disabilities, the elderly and the home. Many employers of domestic workers/caregivers treat their employees well, but too often, domestic workers/caregivers face violence, and harassment at work.

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

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

Women coming to Canada under the **Live-in-Caregiver Program (LCP)** face unique difficulties as employees because they are confined to live and work in their employers' home for at least two (2) years, and 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/caregivers at risk of unfair treatment and abuse by their employers, and makes it less likely that women will complain, leave or report the abuse, for fear of losing the opportunity to gain permanent resident status.

Domestic workers/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. They may choose not to report workplace violence, while others may choose to report.

## NON-STATUS WORKERS

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

### **Ontario Human Rights Commission**

Inquiry Service Representative at the following number(s):

Tel: (416) 326-9511

Toll-Free: 1-800-387-9080

TTY: (416) 314-6526

TTY (Toll Free): 1-800-308-5561

Website [www.ohrc.on.ca](http://www.ohrc.on.ca)

E-mail: [info@ohrc.on.ca](mailto:info@ohrc.on.ca)

### **Human Rights Legal Support Centre**

400 University Avenue, 7th Floor

Toronto, Ontario

Tel: (416) 314-6266

Toll Free: 1-866-625-5179

TTY: (416) 314-6651

TTY Toll Free: 1-866 612-8627

Website: [www.hrlsc.on.ca](http://www.hrlsc.on.ca)

### **Human Rights Tribunal of Ontario**

655 Bay Street, 14th floor

Toronto, ON M7A 2A3

Tel: (416) 326-1519

Toll Free: 1-866-598-0322

TTY: (416) 326-2027

TTY (toll free): 1-866-607-1240

Website: [www.hrto.ca](http://www.hrto.ca)

E-mail: [HRTO.Registran@ontario.ca](mailto:HRTO.Registran@ontario.ca)

### **Toronto Organization for Domestic Workers' Rights (Intercede)**

234 Eglinton Avenue East, Suite 205

Toronto, Ontario M6G 1A5

Tel: (416) 483-4554

Fax: (416) 483-9781

Website: [www.intercedetoronto.org](http://www.intercedetoronto.org)

E-mail: [info@intercedetoronto.org](mailto:info@intercedetoronto.org)

### **Ontario Women's Justice Network**

158 Spadina Road,

Toronto, ON M5R 2T8

Tel: (416) 392-3135

Website: [www.owjn.org](http://www.owjn.org)

### **Employment Standards Branch – for temporary visa workers**

Ministry of Labour

Tel: (416) 336-7160 (Greater Toronto Area)

Toll free: 1-800-531-5551

Fax: (416) 326-6546

TTY: 1-866-567-8893 (for the hearing impaired)

Website: [www.labour.gov.on.ca/english/es/](http://www.labour.gov.on.ca/english/es/)

Even though there are a few support networks for live-in domestic workers/ caregivers, in Ontario, non-status workers are at a disadvantage when dealing with abuse in the workplace, harassment and low wages. Without immigration documents, they are likely to make job decisions which reflect their concerns about immigration status, language, financial needs, sex, race, and family. Many times, these concerns result in women feeling trapped in abusive situations.

## **TEMPORARY WORKER STATUS**

Live-in domestic workers/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 their 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. Ms Scott is elderly and sickly.

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 comes up close to Perla when he talks and tends to touch her hands and shoulders. A few times he came to her room by surprise and made sexual comments about Filipina women. She thinks his comments and touching are sexual and inappropriate.

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

Some employers threaten to deport non-status domestic workers if they refuse to do extra work, reject sexual advances, or attempt to return home.

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

- 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/should be made within two years after the date of the incident, to the Criminal Injuries Compensation Board.

## RESOURCES

### **The Assaulted Women's Helpline** (24 hours)

Tel: (416) 863-0511

Toll free: 1-866-863-0511

TTY: 1-866-863-7868

### **Canadian Caregivers Association**

45 Sheppard Avenue East, Suite 210

Toronto, Ontario M2N 5W9

Tel: (416) 628-8388

Fax: (416) 733-2491

Website: [www.cca-acaf.org](http://www.cca-acaf.org)

E-mail: [info@cca-acaf.org](mailto:info@cca-acaf.org)

**Taking a direct approach may not bring positive results. Of people who reported bullying in the workplace, 17% of targets were transferred, 33% ended up leaving voluntarily and 37% were terminated. In only 13% of those cases was 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 the employer knew about the assault or harassment but made no attempt to prevent the assault or harassment in the workplace
- ◆ You may also sue third parties for negligence if this led to sexual assault.

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

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 over another person. The behaviour is meant to frighten, threaten, intimidate and gain control over you. Violence involves the intent to injure or damage your property or you by either using or threatening physical or sexual force, emotional, financial, spiritual or psychological harm. Abusive behaviour creates fear.

**Example:** If 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 and not pay you.

**Bullying in the workplace** is a form of harassment and a form of violence in the workplace. Bullying can be based on the grounds set out in the Human Rights Code, or it can be other forms of psychological or personal harassment. Bullying can include humiliation or intimidation and it can be cruel and aggressive. A bully may constantly criticize and a bully’s behaviour may create fear.

**Example:** Your employer is constantly commenting on the way you iron shirts and says to you “if you don’t iron these shirts 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, including your employer, a representative of your employer, customer, client, co-worker or visitor of your employer that humiliates, insults, or degrades you. “Unwelcomed” or “unwanted” means any action that the harasser knows or ought reasonably to know is not desired. Harassment can take place while on your way to or from work or while on the job.

**Example:** Your employer constantly insults you in front of 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 may range from unwanted touching, unsafe sexual activity, to rape. Sexual abuse also includes harassment directed at you because you are a woman or because of your sexual orientation.

- ◆ Sexual harassment can include but is not limited to:
  - ➔ degrading words
  - ➔ pictures, objects or gestures
  - ➔ physical contact

- ◆ You may remain at a safe place, pending the Inspector’s decision or, if possible, may be assigned alternative work
- ◆ Employers should continue to pay wages during the investigation period
- ◆ Furthermore, the Ministry of Labour Inspectors should strengthen protections to ensure that the employer does not intimidate you to not report 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 feel you are a target of bullying may want to follow a three-point plan:

- ◆ Name it. Calling it bullying or psychological violence or harassment makes the problem external, reduces the shame so that healing can begin
- ◆ Take time to check physical health for stress-related complications; get mental health counseling; check for violations of employer policies and labour laws; and gather data showing the fiscal impact of bullying to the employers
- ◆ If possible, present the above information to your employer or supervisor, or the highest ranking person in the workplace.



b) If you face harassment or discrimination, you can make a complaint to the Ontario Human Rights Tribunal within one 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 four (4) years 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 the Ministry of Labour Inspectors if you believe the work or workplace is still unsafe following the investigation of a complaint against your employer.

- sexual demands
- unwanted kissing or touching of a sexual nature
- 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 employers' nephew, who comes regularly to your place of work and asks you for sexual favours, which you have turned down.

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

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, 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 always pushes and kicks you when you try to help her out of 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 the 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.

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

## 4. TIPS FOR DEALING WITH BULLYING AND SEXUAL HARASSMENT

- 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
- ◆ Are there any witnesses? Are others being harassed? If possible, talk to people you trust
- ◆ Tell your employer or supervisor. Write down what action your employer takes or didn't 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.

### 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 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.
- ◆ Bring a friend or counselor for support, when reporting 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. The victim will be called in as a witness.

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

The **Ontario Human Rights Code (the 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 in 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 Act permits domestic workers in the LCP to seek permanent residence after completing a total of two years of full-time employment in Canada as a live-in caregiver, within thirty nine months, after being admitted to Canada.

**Domestic workers/caregivers in Canada under the LCP, who have not yet completed the program requirements and have their status expire, may be here without legal status. Workers 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 they do not ask about immigration status. However, if the police find out your status, they might report you to immigration authorities.

### **Criminal Code**

You are protected by the Canadian Criminal Code 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 accompanying behaviours such as assault, stalking, and threats are covered.

### **Civil Lawsuit**

In a civil lawsuit, the victim goes to court for money damages against the offender or a third party for causing physical or emotional damage. This is regardless of the outcome of any criminal prosecution. Even if there was no criminal charges laid, crime victims can file civil lawsuits against offenders and other responsible parties.

### **Criminal Injuries Compensation**

The Criminal Injuries Compensation Board is an agency that awards compensation to victims of crimes of violence that occurred in Ontario.