Discrimination Based on Sexual Orientation and Gender Identity at Work



In Canada, the federal government notes persistent inequality for 2SLGBTQI+ people, including income gaps and higher rates of poor mental health relative to non-2SLGBTQI+ populations. 2SLGBTQ+ people comprise 4.4% of Canadians aged 15+, with trans and non-binary people representing 8.1% of that group. A recent Government of Canada study aligns with advocacy data showing high discrimination rates for Two-Spirit, trans, and non-binary (2STNB) workers; one survey cited 72% of 2STNB participants reporting workplace discrimination.

Who is Most Impacted—and How

- **Trans and non-binary workers** report the highest rates of not being hired, not being promoted, being fired, and experiencing verbal, physical, or sexual harassment because of identity according to the Williams Institute.
- **LGBTQ employees of colour** report roughly double the past-year discrimination/harassment compared to white LGBTQ colleagues, indicating intersectional risks HR must address.
- **Women (including lesbian, bi, trans women, and non-binary people assigned female at birth)** face compounding barriers (e.g., sexual harassment, motherhood penalties). Employers should treat gender-based and SOGI-based risks as overlapping, not separate silos. Canadian federal briefs also point to persistent income and advancement barriers according to the Government of Canada.

Where Discrimination Happens

1. Recruitment & Hiring

- **Scenario:** A qualified trans candidate is repeatedly “screened out” after interviews where panelists misgender them or fixate on name/pronoun changes.
- **Action:** Use structured interviews and job-related criteria. Ensure every interviewer practices correct names/pronouns. Remove deadname fields, explain background check processes that respect legal names vs. chosen names, and document decisions.

2. Day-to-day conduct & microaggressions

- **Scenario:** An employee is consistently misgendered; colleagues make “jokes” about pronouns; a manager suggests the employee “tone it down” with customers.
- **Action:** Treat misgendering as a performance/behaviour issue, not a debate. Coach once, then escalate if it continues. Provide scripts for bystander intervention. Include pronoun and respectful-language expectations in your code of conduct and anti-discrimination policies.

3. Facilities, uniforms, and dress codes

- **Scenario:** A non-binary employee is told to use the men’s restroom or women’s restroom “based on appearance,” or to follow a gendered uniform standard.
- **Action:** Allow employees to use facilities consistent with their gender identity and provide single-user options without mandating them. Make dress codes gender-neutral (focus on safety/brand, not gender).

4. Promotion & pay

- **Scenario:** An openly gay employee is passed over for stretch assignments and client-facing work due to biased assumptions about “fit.”
- **Action:** Track access to prime work, promotions, and pay by gender and SOGI where lawful. Use calibrated talent reviews, and require written, job-related rationales for decisions.

Client-facing backlash

- **Scenario:** A customer complains about a trans employee’s appearance or pronouns; a supervisor reassigns the employee “to avoid issues.”
- **Action:** Support the employee and reinforce your anti-discrimination policy to the client. Do not transfer or penalize the worker for others’ bias and escalate serious client violations.

Build Prevention into your Systems

1) Policy & Law Alignment
Affirm protections for sexual orientation, gender identity, and expression explicitly in anti-harassment, equal employment opportunity, and accommodations policies. In Canada, human rights laws cover gender identity/expression across jurisdictions (e.g., Ontario Human Rights Code).

2) Reporting Without Retaliation
Offer multiple confidential reporting channels (manager, HR, hotline, digital). Communicate anti-retaliation rules. Acknowledge reports within 24–48 hours and provide a timeline for investigation steps.

3) Investigations That Work
Use trained, impartial investigators, separate credibility assessments from stereotypes about LGBTQ people, interview witnesses promptly, preserve evidence (emails, chats, access logs), and document findings and corrective actions.

4) Training for Managers & Recruiters
Teach pronoun use, inclusive language, and how to interrupt bias. Give managers playbooks for common scenarios (misgendering, “religious objection” claims, hostile customer requests). Role-play responses and document completion.

5) Benefits, Forms, & Systems

Update HRIS and payroll fields to accept chosen names and non-binary gender markers where allowed, and align benefits (e.g., gender-affirming care access in the U.S. where plan-permitted; inclusive family-building benefits). Canadian federal guidance emphasizes collecting gender data inclusively and recognizing all genders under human rights law. (Source: Publications Canada.)

6) Metrics & Accountability
Track complaints, resolution times, promotions, and turnover by department. U.S. employers should watch legal risk signals (high harassment complaints, repeat offenders) given EEOC charge volumes; Canadian employers should monitor harassment indicators highlighted in federal/StatsCan releases.

Responding Promptly: A 5-Step Manager Checklist

1. **Ensure safety.** Ask what immediate support is needed.
2. **Preserve evidence.** Capture dates, witnesses, and messages.
3. **Loop in HR promptly.** Use the designated intake process and avoid “quiet fixes.”
4. **Interim measures.** Adjust seating, schedules, or reporting lines (without penalizing the complainant).
5. **Close the loop.** Communicate the outcome you can share and monitor for retaliation.

Key takeaway: Put clear protections on paper, train workplace leaders, fix your systems, and act quickly on reports. Building an environment where women, LGBTQ+, trans, and non-binary employees are respected is both a human rights obligation and a performance imperative.