

# Legal Update: Employer's Duty To Investigate Sexual Harassment Claims



*S.E. v. 2474489 Ontario Inc. (o/a Opa! Souvlaki)* – A Cautionary Tale for Employers

A recent decision of the Human Rights Tribunal of Ontario (“HRTO”) in the case of *S.E. v. 2474489 Ontario Inc. (o/a Opa! Souvlaki)*, 2024 HRTO 343 serves as a stark reminder of an employer’s legal obligation to investigate and address sexual harassment claims in the workplace. This case highlights the severe consequences of failing to take appropriate action when faced with such allegations.

The case involved an employee (S.E.) at a restaurant franchise who filed a complaint with the HRTO alleging workplace discrimination based on sex, including sexual harassment, sexual solicitation or advances, and reprisal. The allegations centered around the behavior of a newly hired manager who allegedly engaged in persistent sexual harassment, including inappropriate and unwelcome comments, questions, jokes, and requests for sexual favors. The situation escalated to two incidents of sexual assault.

What makes this case particularly noteworthy is the employer’s inadequate response to the S.E.’s complaints. When S.E. reported the harassment to the owner, no proper investigation was conducted. Instead, the owner offered to move S.E. to a new location. The new location had not opened yet (meaning that S.E. would lose income if she switched locations) and was going to have the same manager. Even after the sexual assaults were reported, the owner simply said he would talk to the manager, but “couldn’t do anything” about the complaint.

The HRTO had no trouble concluding that the employer had breached its duty to investigate, which is a crucial component of an employer’s obligation to provide a harassment-free workplace under the Ontario *Human Rights Code*. The adjudicator emphasized that employers have a responsibility to undertake prompt, serious, and thorough investigations when faced with harassment allegations. This duty is not merely a formality; it is a legal obligation that, if neglected, can lead to significant liability.

The Tribunal’s findings paint a disturbing picture of a poisoned work environment where sexual harassment was allowed to persist unchecked, ultimately leading to serious sexual assaults. The employer’s failure to provide any training on harassment policies further underscored its negligence in fulfilling its legal obligations.

The final complaint was that the employer retaliated against S.E. When S.E., understandably distressed, communicated that she couldn't attend her shift after the sexual assaults, the owner threatened to fire her. The Tribunal concluded this amounted to reprisal as the employer had previously tolerated last-minute absences without issue. This threat of termination, coming shortly after S.E.'s complaint, suggested that the employer had begun to view S.E. as "a problem" for attempting to assert her rights.

The consequences for the employer were severe. They were ordered to pay compensation of nearly \$40,000 for lost wages and infringement of S.E.'s rights, as well as undergo mandatory anti-harassment training. This outcome sends a clear message: employers who fail to take harassment complaints seriously and fulfill their duty to investigate will face significant financial and reputational repercussions.

This case serves as a crucial reminder for all employers. It underscores the need for robust anti-harassment policies, thorough staff training, and most importantly, a commitment to taking all harassment complaints seriously. Employers must be prepared to conduct prompt, thorough, and impartial investigations when allegations arise, and to take appropriate corrective action based on the findings of these investigations.

There is no room for complacency when it comes to addressing sexual harassment. Employers must be proactive in creating a safe and respectful work environment for all employees. This includes not only having policies in place, but also ensuring that these policies are understood, implemented, and enforced at all levels of the organization.

Employers who prioritize a respectful workplace culture and respond appropriately to harassment allegations not only fulfill their legal obligations, but also foster a more productive, loyal, and engaged workforce.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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