



# Top Human Rights Trends: Family Status and Gender Identity or Expression

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# Family Status





# Family status

- No statutory definition
- Guidelines: interpretation of « family »
  - Related through blood, marriage, adoption or legal guardianship and close emotional bonds if familial in nature
- Person filing a complaint must provide sufficient information to demonstrate familial relationship



# Family status – examples

- Refuse to hire/employ, demote, withhold a promotion
  - Related to particular person
  - Member of particular family
  - Caregiving obligations
- Harassment with regards to family status
- Job advertisement – people with children should not apply
- Unacceptable conditions, forcing employee to resign



# Family status – case law

- Childcare:

***Johnstone v. Canada (Border Services Agency)*, 2014  
CAF 110**

- Childcare obligations protected by law are those which a parent cannot neglect without engaging his or her legal liability, i.e. leaving a young child at home, without supervision
- Voluntary family activities (trips, sports, etc.) are not included.



# Family status – case law

- Eldercare responsibilities:

***Misetich v. Value Village Stores Inc.***, 2016 HRTO 1229

- Providing necessities of life for eldercare



# Gender identity or expression

- Provides protection for transgender, transsexual and intersex individuals
- Guidelines:
  - **Gender Identity:** internal and individual experience of gender; a person's sense of being a woman, a man, both, neither, or anywhere along the gender spectrum.
    - Same or different from birth-assigned sex
    - Different and not related to their sexual orientation
  - **Gender Expression:** Public expression of gender, includes behaviours and outward appearance such as dress, hair, makeup, body language, voice.
    - Chosen name and pronoun



# The Gender Unicorn

Graphic by:  
**TSER**  
Trans Student Equality Resources



To learn more go to:  
[www.transstudent.org/gender](http://www.transstudent.org/gender)  
Design by Landyn Pan

## Gender Identity



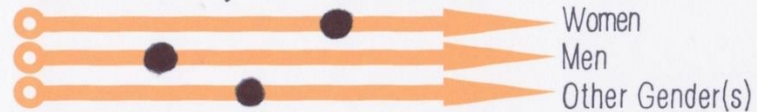
## Gender Expression/Presentation



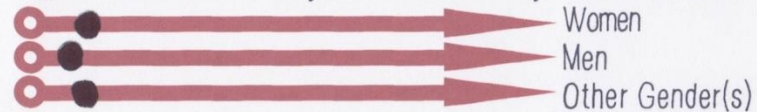
## Sex Assigned at Birth



## Sexually Attracted To



## Romantically/Emotionally Attracted To





# Gender identity or expression - examples

- Refuse to hire/employ, demote, withhold promotion based on gender identity or expression
- Prohibit trans person from using washroom that aligns with gender identity
- Dress code according to biological sex
- Refuse to refer to trans person by their preferred name or pronoun
- Taking advantage / **right to privacy** – i.e., threatening to disclose to others that the employee is trans



# Gender Identity or Expression – Case Law

- ***Vanderputten v. Seydaco Packaging Corp.***, 2012 HRTO 1977
- ***McMahon v. Wilkinson***, 2015 HRTO 1019
- ***Lewis v. Sugar Daddys Nightclub***, 2016 HRTO 347



# Gender identity or expression - recommendations

- Educate / open-mindedness
- Revise dress code
- More options in designating sex – male/female – or is it even necessary?
- Washrooms for all
- Privacy curtains in dressing/locker rooms





These materials are intended to provide brief informational summaries of legal developments and topics of general interest.

The materials should not be relied upon as a substrate for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law.

If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our firm to discuss your need for specific legal advice relating to the particular circumstances of your situation.

Due to the rapidly changing nature of the law, Stewart McKelvey is not responsible for informing you of future legal developments.