

Legislation

Human Rights in the Workplace

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What are human rights?

Human rights are protected in Canada through the Constitution, and federal, provincial and territorial laws. Everyone has human rights that entitle them to equality, dignity, and freedom from discrimination. The purpose of human rights legislation is to give every individual the opportunity to participate in society to the fullest extent possible, whether this participation is at work, school, or elsewhere.

Building an inclusive workplace requires that employers respect the unique needs and potential of all people. An employer is responsible for identifying and eliminating barriers that prevent people from accessing or being included in the workplace. A fully accessible workplace is the underlying objective that should guide an employer's approach to inclusion.

Human rights legislation makes certain kinds of conduct a “discriminatory practice.” Discriminatory practice occurs when one or more of an individual's personal characteristics or “grounds” are a factor in conduct that has a negative impact on them. The *Canadian Human Rights Act* does not allow discrimination on the following 13 grounds or personal characteristics: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered. Each jurisdiction may use slightly different words to describe similarly protected grounds. They may also have additional protected grounds like lawful income sources and political beliefs.

The *Canadian Human Rights Act* also outlines 10 discriminatory practices, including discrimination in employment. For example, the Act makes it a discriminatory practice to refuse to employ an individual, to terminate an individual's employment, or to differentiate adversely in relation to a worker based on a prohibited ground of discrimination. Discrimination in employment is prohibited by all human rights legislation across Canada.

Please note: Always seek legal advice before making decisions based on human rights.

CCOHS is not a regulatory authority. This document is guidance only and may not apply to every situation. Evaluate the specific circumstances for your organization in your jurisdiction, and seek the advice of legal professionals with knowledge of human rights as applied to the workplace.

What is meant by building an inclusive workplace?

Human rights legislation requires employers to build equality into workplace standards so that, as much as reasonably possible, the governing of the performance of work is designed to reflect all members of society. Employers and service providers have an obligation to enable a worker to participate fully. This obligation may include the need to adjust rules, policies, practices or physical spaces that negatively impact individuals or groups when based on one or more prohibited grounds of discrimination. This obligation is called the duty to accommodate. It is a legal requirement.

The duty to accommodate often requires treating someone differently to prevent discrimination. Treating everyone the same, or "equally", often results in discrimination. For example, asking all job applicants to pass a written test may not be fair to a person with a visual disability. In such cases, the duty to accommodate may require that alternative arrangements be made to ensure that a person or group can participate fully. The Supreme Court of Canada has explained that the essence of true equality is to be treated according to one's own merit, capabilities, and circumstances. True equality requires that differences be accommodated.

However, human rights are not "absolute". Reasonable limits can be placed on these rights when the accommodation would create an undue hardship for the employer. Claims of undue hardship must be based on the considerations listed in the human rights legislation for your jurisdiction. The typical considerations are health, safety, and cost. An example of a health and safety consideration regarding the duty to accommodate may involve not permitting an accommodation for an individual who has sincerely held religious beliefs which restrict them from wearing protective safety items or being vaccinated when these beliefs have an undue impact on the health and safety of other individuals in the workplace. The duty to accommodate ends when "undue hardship" is reached. The workplace rule at issue must be a bona fide occupational requirement.

Where can I find human rights legislation in Canada?

Please see the OSH Answers [Employment and Human Rights](#) document for a list of contact information for each jurisdiction. Table 1 links to each jurisdiction’s human rights legislation.

Table 1: Jurisdiction and their corresponding human rights legislation.

Jurisdiction	Human Rights Legislation
Canada	Canadian Charter of Rights and Freedoms
Federal Work Places	Canadian Human Rights Act
British Columbia	Human Rights Code
Alberta	Alberta Human Rights Act
Saskatchewan	The Saskatchewan Human Rights Code, 2018
Manitoba	The Human Rights Code
Ontario	Human Rights Code
Quebec	Act Respecting Equal Access to Employment in Public Bodies
New Brunswick	Human Rights Act
Nova Scotia	Human Rights Act
Prince Edward Island	Human Rights Act
Newfoundland and Labrador	Human Rights Act
Yukon	Human Rights Act
Northwest Territories	Human Rights Act
Nunavut	Human Rights Act

What is meant by the duty to accommodate?

Accommodation is a modification to rules, policies, practices, or tasks to make sure that a person can fully participate in the workplace without discrimination. Human rights legislation specifies that employers have a duty to accommodate a worker’s needs in relation to a disability (either mental or physical) or any other personal characteristic protected from discrimination by the relevant human rights legislation. Each situation is unique, and any accommodation would need to be evaluated on a case-by-case basis. This process is called an individualized assessment.

To demonstrate that the duty to accommodate has been fulfilled, the employer must document the process that was used and what was both considered and acted upon to assist with the worker's request for accommodation.

Employers are required to make every reasonable effort, short of undue hardship, to accommodate a worker. This statement means that there is a reasonable limit to how far an employer needs to go to accommodate. If accommodation is not possible due to a health and safety risk or if costs are unreasonable, the employer can claim undue hardship. An employer would need to provide sufficient evidence that an accommodation would cause undue hardship. The hardship claimed is evaluated on a case-by-case basis. An accommodation expense that may cause undue hardship for one employer may not meet the threshold for more financially successful employers.

Accommodation is a balance between the rights of a worker or candidate and the right of an employer to operate a productive workplace. Examples where accommodation may be suitable include:

- The worker is no longer able to perform a job or comply with current workplace policies or requirements as a result of changes in their situation. For example, the worker has developed a disability, has converted to a religion that imposes new obligations or has experienced a change in family status.
- A revised policy or requirement has been introduced by the employer, and the worker is unable to comply. For example, when a shift schedule is changed, a worker is not able to change their working hours because of a medical condition or family circumstances that limit the worker's ability to work at night.
- A worker is in the process of transitioning to identify publicly as their preferred gender. They no longer feel it is appropriate to use their assigned sex washroom but are not yet comfortable using the preferred gender identity washroom. The employer could consider interim solutions, such as installing private stalls. An "occupied" sign system is incorporated to alert other workers when the first worker is present. This practice is used until the organization is able to build a single-user gender-neutral washroom which could be used by any person, including a person who is transitioning, a person with a disability, or a person requiring care or assistance. The workplace may also develop a policy to address the rights of trans workers and provides education and training to all staff.

The New Brunswick Human Rights Commission notes that co-workers have a duty in the accommodation process to assist an employer in accommodating another worker who requires accommodation. For example, an employer may need to redistribute tasks between workers to make an accommodation feasible. However, undue hardship may be met if the accommodation would cause a health and safety concern for the other employee, such as repetitive strain injuries.

What is meant by bona fide occupational requirement?

The Saskatchewan Human Rights Commission defines bona fide occupational requirements as “a standard or rule that is integral to carrying out the requirements of a particular position within a workplace.”

As stated by the Alberta Human Rights Commission, “The law recognizes that, in certain circumstances, a limitation on individual rights may be reasonable and justifiable. Discrimination or exclusion may be allowed if an employer can show that a discriminatory standard, policy, or rule is a necessary requirement of a job, that is, if it is a bona fide occupational requirement.”

For example, to perform the job of driving a truck or taxi safely, persons employed as drivers must meet vision standards and have an appropriate driver's license. A legally blind person would be legitimately excluded from a position as a driver since they cannot meet these two bona fide occupational requirements. Perfect vision, however, would not be a bona fide occupational requirement if the person is able to meet the criteria for a driver's licence with corrected vision (e.g., glasses or contact lenses).

The Supreme Court of Canada established a three-part test to determine whether a workplace's standard, policy, practice, or physical layout (standard) is a bona fide occupational requirement. Employers must be able to demonstrate that the requirement:

1. Is rationally connected to the performance of the job,
2. Was adopted in an honest and with good faith that it is necessary for legitimate work-related purposes, and
3. Is reasonably necessary to accomplish that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate the individual's protected characteristics without imposing undue hardship upon the employer.

When designing a work performance standard, the following guidance from the Supreme Court may be helpful to develop a robust standard that meets the bona fide occupational requirement test:

- Have alternative standards been considered that do not have a discriminatory effect?
- Is it necessary to have all workers meet the single standard for the employer to accomplish its legitimate purpose, or could standards that are reflective of the group or individual differences and capabilities be established?
- Is there a way to do the job that is less discriminatory while still accomplishing the employer's legitimate purpose?
- Is the standard designed to ensure that the desired qualification is met without placing an undue burden on those to whom the standard applies?

What is meant by undue hardship?

Employers and service providers have a legal duty to take reasonable steps to accommodate individual needs to the point of undue hardship. To demonstrate a claim of undue hardship, an employer or service provider must show that they would experience a significant issue or expense, and that it would significantly affect the employer's viability.

For example, the Ontario Human Rights Commission states that the Ontario Human Rights Code "prescribes only three considerations when assessing whether an accommodation would cause undue hardship:

- Cost
- Outside sources of funding, if any
- Health and safety requirements, if any

Some steps towards accommodation are expected and should be provided. In many cases, accommodation measures are simple and affordable and do not create an undue hardship.

The employer must be able to prove any claim that undue hardship is expected to occur.

What are workplace examples that involve accommodation, bona fide occupation requirements, and undue hardship?

The situation for the scenarios below is the same: A laboratory stores and works with pathogens. The employer requires that all workers be fit-tested and wear N95 respirators while in the lab. The personal protective equipment (PPE) policy requires that individuals be clean-shaven to maintain the integrity of the respirator's seal. An individual who maintains a beard as part of their religious beliefs applies for work at the lab.

Scenario 1: A lab stores and works with the *Clostridium tetani* bacterium that causes tetanus.

Accommodation: The pathogen safety data sheet for [*Clostridium tetani*](#) recommends a lab coat, gloves, and eye protection. If any procedure produces aerosols or involves large concentrations, they must be done in a biological safety cabinet. A respirator would be considered an additional requirement and this worker may not be risking their health by refusing to wear an N95 respirator and shave their beard. Therefore, it may be an acceptable accommodation to allow this worker to work with the bacterium contained within a biosafety cabinet or by performing procedures that do not generate aerosols.

Scenario 2: A lab stores and works with ebolavirus that can cause severe illness and death.

Bona Fide Occupational Requirement: The Public Health Agency of Canada (PHAC) classifies ebolavirus as risk group 4, requiring containment level 4. An approved N95 or higher particulate respirator must be worn in the lab, making respiratory protection a bona fide occupational requirement.

Accommodation: The pathogen safety data sheet for [ebolavirus](#) recommends dedicated laboratory clothing and shoes, a positive pressure suit or a solid-front gown with tight-fitting wrists, two pairs of gloves, and an approved particulate respirator (e.g., N95 or higher). The integrity of the N95 mask's seal would be compromised with a beard, which is unacceptable given the high risk of infection when working with this virus. A respirator that offers a higher level of protection than an N95 respirator may be acceptable (e.g., a powered air-purifying respirator).

Undue hardship: The worker must work in the containment level 4 laboratory making an N95 mask or higher mandatory. If the employer can demonstrate that the cost of a powered air-purifying respirator is substantially unreasonable (to the point that it would significantly affect the organization's viability), accommodating the worker's request **may** be considered an undue hardship.

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