



Pocket Guide on **Human Rights**



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Other useful documents

- Membership Benefits
- Professional Institute By-Laws and Regulations
- Professional Institute Policy Manual
- Steward Manual
- Manual for Elected Officials
- Pocket Guide for Elected Officials
- Pocket Guide for Stewards
- Mentoring Guide for Stewards
- Pocket Guide on Leadership
- Pocket Guide on Consultation
- Pocket Guide to Employment Equity
- Pocket Guide on Bullying and Violence in the Workplace
- Pocket Guide on Harassment
- Pocket Guide on Occupational Safety and Health (OSH)
- Pocket Guide on Whistleblowing
- Proud Professionals
- Write that Resolution



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What are human rights?

“ **H**uman rights are commonly understood as being those rights which are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

- United Nations, Office of the High Commissioner for Human Rights

Human rights are founded on respect for the dignity and worth of each person. They are inalienable, universal, and indivisible. Human rights in Canada are legally protected by human rights laws and the Canadian Charter of Rights and Freedoms.

What is discrimination?

Discrimination means making distinctions or treating people negatively or adversely because of their race, age, religion, sex or other prohibited ground of discrimination.

Under the Canadian Human Rights Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

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A person cannot be denied employment, goods, services, facilities, or residential accommodation on the basis of a prohibited ground.

Discrimination occurs where an individual is negatively or adversely affected as a result of one of these characteristics. Discrimination can be intentional, for example, being directly excluded or treated differently on the basis of age, sex, race, etc. An example of intentional discrimination would be a practice of excluding older workers from access to job training. Or discrimination can be unintentional, when a rule, standard, or practice that appears neutral has an adverse impact on a particular group. An example of unintentional discrimination might be a rule that imposes a height requirement for a certain job – although this appears neutral, it may have the effect of excluding women.

Discrimination does not have to be intentional. Even if there was no intent to discriminate, an action, policy, or practice that has an adverse impact on persons in an enumerated group can still be considered discriminatory. It is the impact that matters and not the intent.

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What are human rights in the workplace?

Generally, employees have the following rights in the workplace:

- the right to be free from harassment and discrimination based on the prohibited grounds
- the right to opportunities to career development and career advancement without discrimination
- the right to accommodation

If an employee is denied any of these rights on the basis of a prohibited ground of discrimination, he or she can file a grievance, staffing complaint, or human rights complaint, as appropriate. Note that to establish a human rights violation there must be some evidence that the denial of a right was due, at least in part, to a prohibited ground of discrimination.

Note that “personal harassment” that is not based on a specified human rights ground may still be prohibited by the collective agreement or an employer policy even though no discrimination has occurred. For more information, please refer to the Pocket Guide on Harassment, or contact your regional office if you have questions about a particular case.



Legislation

Employees of federally-regulated employers are covered by the Canadian Human Rights Act. Federally-regulated employers include the federal government and related agencies, federal crown corporations, and employers in federally-regulated industries such as banking, telecommunications, air transportation, and interprovincial transportation. Employees of provincially-regulated industries are covered under their province's human rights legislation (for example, in Ontario, the *Ontario Human Rights Code*).

The *Canadian Charter of Rights and Freedoms* applies to government actions. For example, laws can be challenged under the Charter if they are discriminatory. Other examples include actions of the police as a government actor. The Charter can also cover the government acting as an employer. Normally, however, when a federal public service employee has a discrimination complaint against the employer he/she will rely on the *Canadian Human Rights Act* rather than the *Charter*.

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Overview of the Canadian Humanrights Act

(Federal public service and federally regulated industries only – if you are covered under provincial jurisdiction be sure to refer to your province’s legislation.)

The purpose of the Act, as set out in Section 2, is as follows:

The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

Section 3 of the Act sets out the eleven prohibited grounds of discrimination as identified above.

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Sections 5 to 14 set out what are discriminatory practices.

For example, with respect to employment, it is a discriminatory practice for an employer to do the following things on the basis of a prohibited ground:

- to refuse to employ or continue to employ an individual
- in the course of employment, to differentiate adversely in relation to an employee
- to establish policies or practices that deprive an individual or class of individuals of employment opportunities
- to pay male and female employees differently who are performing work of equal value
- to harass an individual Unions also cannot discriminate against individuals on the basis of a prohibited ground (Section 9).

Sections 15 and 16 set out certain exceptions. The following things are not considered discrimination according to the Act:

- an employer's refusal, exclusion, expulsion, suspension, restriction, condition or preference based on a "bona fide occupational requirement" (BFOR) (see section on "Duty to Accommodate")

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- mandatory retirement at the normal retirement age
 - special leave or benefits for female employees in connection with pregnancy or childcare
 - special programs that are designed to prevent or eliminate disadvantages by improving employment opportunities in relation to certain groups, for example employment equity programs

What is accommodation / the duty to accommodate?

The duty to accommodate refers to the obligation of an employer or service provider to take measures to eliminate disadvantages to employees, prospective employees or clients that result from a rule, practice or physical barrier that has or may have an adverse impact on individuals or groups protected *under the Canadian Human Rights Act* or identified as a designated group under the *Employment Equity Act*. In employment, the duty to accommodate means the employer must implement whatever measures necessary to allow its employees to work to the best of their ability.

The duty to accommodate recognizes that true equality means respecting people's different needs.

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Therefore, employers designing workplace standards must take into account differences between individuals when designing those standards.

Examples of standards that can be discriminatory and may require accommodation include:

- height requirements that may exclude women
- weekend shift requirements that may exclude people of certain religious faiths
- physical requirements that may exclude persons with disabilities

If a rule, practice, standard, policy, or physical barrier has the effect of excluding or otherwise negatively impacting individuals or groups protected under the Act (the 11 enumerated grounds), an employer has an obligation to adapt or modify it, unless it constitutes a “*bona fide* occupational requirement” (BFOR).

What is a “ Bona Fide Occupational Requirement” (BFOR)?

In order for the employer to establish that a requirement is a “BFOR”

- it must be rationally connected to the performance of the job,

- the employer must have adopted it in the honest and good-faith belief that it was necessary in order to fulfill that legitimate work-related purpose,
- and it must be impossible to accommodate the employee without “undue hardship”

If those three requirements are met, this means that the employer has not discriminated against an individual and the rule or standard can stand.

What is “undue hardship”?

It is important to note that some hardship can be incurred by the employer in fulfilling its duty to accommodate. However, if the hardship incurred by the organization is “undue then it will not be possible to accommodate and a failure to accommodate will not constitute discrimination. An assessment of undue hardship takes into account factors of health, safety and cost to the employer. To be considered undue hardship, the financial costs must be so great as to alter the essential nature of the enterprise or affect its viability. In practice, most workplace accommodations are not very expensive. According to the Ontario Human Rights Commission, “over two thirds of job accommodations cost under \$500, and many cost nothing at all.”

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Request for accommodation

When a request for accommodation is made, the duty to accommodate imposes certain obligations on employers, employees, and unions. Employers must take measures necessary to accommodate and adapt standards to individual needs and must not adopt or maintain standards that result in discrimination. However, employers are not obliged to create unproductive work, or to create the “perfect” accommodation. Employees must communicate their needs and restrictions to the employer and must accept reasonable accommodation. Unions must not block proposed accommodations and should facilitate or assist when it is appropriate and where employees have asked for their assistance.

Case scenario: example of accommodation in the workplace and Bona Fide Occupational Requirement (BFOR)

Factors to consider

The employer has a requirement that all social workers must hold a valid driver’s licence. Employee A develops a visual impairment, and he can no longer drive.

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What must the employer do?

If the employer simply applied the rule of having a driver's licence (which appears to be a neutral rule), and terminated this employee for failing to meet the job requirements, this would be discrimination based on the employee's disability.

Clearly, the requirement to have a licence would meet the first two criteria of the BFOR test (it is rationally connected to the job, and the employer adopted it in the good faith belief that it was necessary).

However, the third question must be asked - can this employee be accommodated?

The company must consider alternatives. The following questions must be asked:

- Can the employee perform his job with modifications? e.g., taking taxis or public transit for work travel, etc...
- Can duties be re-organized or reassigned between the social workers to ensure that this worker can be accommodated?
- If the employee cannot be accommodated in his current job, is there other work available that this employee can perform?

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- Are there existing jobs?
 - Can job tasks be “rebundled” to create a full position?
 - Can he be re-trained?
 - What would the accommodation cost?
 - Would it negatively affect the health or safety of this worker or other workers?

If the employer cannot find alternate work for this worker without incurring undue hardship because of health, safety, or cost factors, then the requirement to have a licence in this case is a bona fide occupational requirement and the employer is not required to accommodate this worker. However, if alternate work can be found, even if it causes some hardship to the company (or to other employees), then the company must accommodate this worker by providing the alternate work.

Keep in mind that the employee requesting accommodation has obligations also. He must cooperate with the employer in the search for alternate work by providing them with the necessary information about his restrictions, and by accepting a reasonable job offer.

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The Union has an obligation also in this scenario to facilitate the accommodation process, and cannot block proposed accommodations (for example, just because some of the other employees might complain that Employee A is getting “special treatment”). However, if there would be legitimate health and safety risks to other workers as a result of a proposed accommodation, the Union should raise them.

Human rights complaints to the commission

Individuals or groups of individuals may file a complaint with the Canadian Human Rights Commission in regards to discriminatory practices. Complaints must normally be submitted within a year of the discriminatory act having been committed. The Commission will then perform an initial assessment and seek more information. If the complaint is accepted, the Commission will then give notice to the employer and request a response. Further investigation is done and a conciliator may be appointed to try to resolve the complaint. If the complaint is not resolved, and the Commission determines that there is merit to the complaint, it may be referred to the Canadian Human Rights Tribunal for a hearing.

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If a complaint to the Tribunal is ultimately successful, the Tribunal has the power to order remedies that are appropriate in the circumstances, which can include:

- ordering the employer to cease a discriminatory practice
- ordering the employer to provide a right, opportunity or privilege that was denied to the complainant as a result of the discriminatory practice
- ordering the employer to provide compensation for any lost wages, or other expenses or costs incurred by the complainant that resulted from the discriminatory practice
- in more extreme cases, the Tribunal can order the employer to pay damages for pain and suffering or special damages where the employer has engaged in the discrimination willfully or recklessly (the Act sets out maximum limits for these types of damages)

Grievances and other complaints regarding discrimination

In the federal public service, as well as in other jurisdictions, grievances can also be filed regarding human rights violations, including a failure to accommodate. Your collective agreement's "No Discrimination" clause may be cited.

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With the coming into force of the *Public Service Modernization Act*, the Federal Public Sector Labour Relations and Employment Board may hear complaints and grievances dealing with human rights issues. If an employee in the federal public service files a grievance raising a human rights issue, the union must notify the Canadian Human Rights Commission at the same time as the grievance is submitted. A grievance and a complaint to the Canadian Human Rights Commission can both be filed at the same time.

What is the role of the union?

As indicated earlier, unions must not interfere with proposed accommodations (unless they would cause undue hardship) and should facilitate or assist when it is appropriate and where employees have asked for their assistance. Unions also have an obligation to ensure that the collective agreement does not contain any discriminatory clauses or clauses with a discriminatory effect.

The Union has a general role to serve as a watchdog respecting the duty to accommodate and to ensure that the employer is maintaining a work environment that is free from discrimination. A work environment where employees are not included or are isolated, bullied or harassed, based on racism or prejudice is an unhealthy workplace for everyone.

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What should institute members do?

PIPSC members who believe they are victims of discrimination and/or who feel they may have a human rights complaint or grievance should contact their steward to seek advice and representation if needed.

If you are a person with a disability seeking accommodation from the employer and you have been denied accommodation, speak to your steward.

What should stewards do?

Stewards should assist members with accommodation requests and return-to work requests. Stewards can work with the employer and the individual member to find accommodation and ensure monitoring and implementation of accommodation measures. The steward can express support by accompanying the member at meetings with management and Human Resources.

Where members have been discriminated against or have been the victim of harassment based on a prohibited ground, stewards should encourage the member to file a grievance or human rights complaint. The wording of a human rights complaint or grievance is important.

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As a first step, contact your PIPSC regional office to seek advice, assistance and representation from an Employment Relations Officer to discuss the case and the wording of the grievance or complaint before it is filed.

Human Rights training is available for stewards through the Institute. For more information, please contact the National Office or consult the Web site for upcoming courses.

Advancing human rights In the workplace

The Institute is actively involved in promoting human rights in the workplace and in Canadian society as a whole. Human rights issues are addressed by the PIPSC Committee on Human Rights in the Workplace (CHRW), which is a sub-committee of the Board of Directors. The mandate of the CHRW is to monitor issues in the field of human rights, coordinate and distribute information on human rights and provide an ongoing forum where human rights issues can be discussed and studied.

Over the years, the Institute has trained hundreds of stewards on human rights and employment equity issues. A network of human rights and employment equity activists is currently being developed.



For more information on how to get involved, consult the PIPSC Web site (click on “Human Rights”) or contact your PIPSC regional office.



Notes

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