

## **Legislation Concerning the Hiring and Retention of People with Barriers to Employment: A Guide for Employers**

### **“Asking the Right Questions”**

If a potential or current employee's condition or circumstance related to a protected ground does not affect his or her ability to perform the job, the person is not required to disclose it.

If a potential employee requires an accommodation, he or she should mention it at the interview stage and offer solutions that will enable him or her to perform the job safely and efficiently. Employers are then expected to consider accommodations that are possible without incurring undue hardship.

However, it can be very difficult for potential employees to ask for accommodation – out of fear of not getting or losing the job, or because of the stigma attached to barriers. It can also be hard for a person to know whether a barrier that is considered a protected ground might influence the ability to do a job until the person is actually in the job.

If you notice something that could indicate a need for accommodation, you are required under the legislation to ask the potential or current employee if he or she requires an accommodation based on a protected ground.

Questions should be phrased to acquire only information required directly for the job the applicant is applying for or is currently employed to perform. A general question that you can ask in any interview to open up the discussion about accommodations that may be required – either for protected grounds or for barriers that are not protected – is:

*Is there anything you would require to be able to do this job, or to help you in this job?*

The following table includes the types of questions that you can and cannot ask, before and during employment, for each of the grounds protected in the legislation.

| Protected ground                               | Before employment   | During employment   |
|--|---|---|
| <b>Age</b>                                     | <p>You can ask:<br/><i>Have you reached B.C.'s legal working age?</i></p> <p>You can ask additional age-related questions before hiring <i>only</i> if the position requires a minimum working age (e.g., serving alcohol).</p>   | <p>You can ask questions about an employee's age <i>once hired</i> for the purposes of enrolment in pension and benefit plans.</p>  |
| <b>Race, colour, ancestry, place of origin</b> | <p>You can ask:<br/><i>Are you legally entitled to work in Canada?</i><br/><i>What languages do you read and speak fluently?</i> (if this is related to the job the person is applying for)</p> <p>Do not ask questions that seek to reveal anything more about a potential employee's race, colour or ancestry, such as where he or she was born or whether he or she is a Canadian citizen.</p> | <p>Do not ask questions that seek to reveal anything more about a current employee's race, colour or ancestry, such as where he or she was born or whether he or she is a Canadian citizen.</p> <p>Once you have offered a person a job, you can request documentation such as a birth certificate for enrolment in a benefit plan or a photograph for a security pass.</p> |
| <b>Marital and family status</b>               | <p>You can ask:<br/><i>Are you able to work the shifts and schedules required of the position?</i><br/><i>Are you able to travel if traveling is a requirement of the position?</i><br/><i>Are you willing to relocate if relocation is a requirement?</i></p> <p>Do not ask whether a person is single, married, divorced, engaged, separated, widowed or living common law.</p>                 | <p>You can ask a person to disclose information about his or her spouse and/or partner, child and/or dependents required for tax purposes, benefit and pension plans, or for other reasons, such as notifying next of kin in case of emergencies.</p>   |

| Protected ground                            | Before employment  | During employment  |
|---|--|--|
| <p><b>Mental or physical disability</b></p> | <p>You can ask:</p> <p><i>Are you able to fulfill the job requirements (with accommodation if necessary)?</i></p> <p><i>Do you have a disability that will affect your ability to perform this job?</i></p> <p>Or a question more specific to the job – for example: <i>This job requires heavy lifting, are you able to fulfill this requirement?</i></p> <p>If the response is <i>yes</i>, you can ask:</p> <p><i>What parts of the job are you unable to fulfill and what accommodations could be made that would allow you to do the work?</i></p> <p>Do not ask about the specific nature of the disability; ask only for information that pertains to the employee's ability to perform the tasks of the job.</p> <p>Do not ask specific questions about present or previous health problems, WCB claims, or any absence due to stress or mental illness.</p> <p>You may ask for a pre-employment medical, but you should ask to do so only after you decided that the applicant otherwise meets the job requirements. In addition, the medical should be imposed on all applicants.</p> | <p>Same as above.</p> <p>Employers are required to ask an employee if they require accommodation if they notice a need.</p> <p>Due to the recurring nature of many physical or mental disabilities, it is important for employers to keep an open environment so reoccurring conditions or injuries are able to be brought forward for accommodation</p> |

| Protected ground                      | Before employment   | During employment |
|---------------------------------------|---|-------------------|
| <b>Religious belief</b>               | <p>You can ask:</p> <p><i>Are you able to work the shifts or hours required of a particular job?</i></p> <p><i>Are you able to work nights or shifts on Saturdays or Sundays?</i></p> <p>Do not ask anything about religious beliefs, religious affiliation, or church membership, including questions about what religious holidays and customs a person observes.</p>   | same              |
| <b>Sex and sexual orientation</b>     | <p>Do not ask questions about a potential or current employee's sex or sexual orientation.</p> <p>Do not ask a potential or current employee for information about pregnancy, childcare arrangements or child-bearing plans.</p>  |                   |
| <b>Criminal or summary conviction</b> | <p>Employers can ask no general questions about criminal and/or arrest records unless there is a bona fide requirement to do so. For example:</p> <p>If the job requires bonding, <i>employers can ask: Are you eligible to be bonded?</i></p> <p>If the job involves working with children, employers can ask: <i>Can you be approved to work with children?</i></p> <p>If the job involves working with cash, <i>employers can ask: This job involves requires you to work with cash. Have you ever been convicted for a finance-related crime for which you haven't been pardoned?</i></p> |                   |

## **Exceptions and exemptions**

There are always exceptions to general guidelines. Where there is a genuine requirement, inquiries related to a characteristic are allowed and considered reasonable. For example:

Where a female actor is required to play a female role, an inquiry into sex would be reasonable.

Where a male is required to work as an attendant in a men's washroom, an inquiry into sex would be reasonable.

Where a minimum age is a requirement to serve alcohol, an inquiry such as "Are you 19?" would be reasonable.

## **Background: The Labour Market Dialogues**

The Labour Market Dialogues is a project of the Community Council, designed to explore ways in which employers in the Capital Region can be better supported in hiring and retaining people who are experiencing barriers to employment.

Phase 1 of the project, which took place in 2006, involved more than 110 interviews with employers, employees and potential employees and representatives from community service agencies. Participants identified more than 1,700 barriers to employment, 1,000 existing supports for people facing barriers, and 200 ideas for addressing the gaps.

The issues identified in Phase 1 were used to design Phase 2 of the project, which took place between March 2007 and February 2008. A group of 30 employers, service providers and other members of the community, including people with barriers to employment, chose two strategies for hiring and retaining people with barriers to employment that could most benefit both employers and employees: helping employers support people in transition to employment and offering flexible schedules. The Labour Market Dialogues

then undertook three outreach activities built around these two strategies, to engage employers.

Phase 3 builds on the work of Phases 1 and 2, identifying and communicating positive and innovative practices used by local employers in successfully hiring and retaining people who have transition and scheduling barriers to employment.

### **Defining *barriers to employment***

In the Labour Market Dialogues project, *barriers to employment* means issues that present people with obstacles to finding and keeping work. Barriers include (but are not limited to):

- being homeless
- having substance abuse issues
- having mental and physical health problems
- having a low level of life skills
- having a criminal record
- lacking work history
- being a sex worker
- having a history of violence and abuse
- being new to Canada
- not speaking English
- being a single parent
- discrimination
- illiteracy
- poverty.

Most people experiencing barriers in one of these areas also experience barriers in at least one other area.

### **About this guide**

Over the course of the Labour Market Dialogues, it has become clear that employers need information about the various provincial and federal laws that can affect their efforts to increase the hiring and retention of employees who face barriers to employment. The Community Council has produced *Legislation Affecting the Hiring and Retention of People with Barriers to Employment: A Guide for Employers* to help meet this need.

The guide provides basic information about five provincial and federal laws, whom they apply to, and their implications for more inclusive hiring and retention practices. The five laws are shown in the table below, along with their jurisdiction (federal or provincial), purpose, and the agency or program that is responsible for ensuring compliance. There is also a brief section on the role of unions.

A list of websites is provided at the back of the full version of this guide (see [www.communitycouncil.ca/activities.php#lmd](http://www.communitycouncil.ca/activities.php#lmd)), in case you need more information about the legislation or the agencies associated with it.


| <b>Legislation</b>               | <b>Jurisdiction</b> | <b>Purpose</b>   | <b>Compliance</b>   |
|----------------------------------|---------------------|--|---|
| <b>Human Rights Code</b>         | Provincial          | Protection from discrimination   | B.C. Human Rights Tribunal  |
| <b>Canadian Human Rights Act</b> | Federal             | Protection from discrimination   | Canadian Human Rights Tribunal  |
| <b>Employment Standards Act</b>  | Provincial          | Establishes minimum working standards  | Employment Standards Branch   |
| <b>Canadian Labour Code</b>      | Federal             | Establishes minimum working standards  | HRSDC Labour Program  |
| <b>Employment Equity Act</b>     | Federal             | Ensures employment equity through removal of barriers and numerical representation for designated groups | Legislated Employment Equity Program (LEEP) and Federal Contractors Program (FCP) |

### **How to Contact Us**

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