

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

### **“Discipline and firing of an employee who has been accommodated”**

An employee must be disciplined or fired from employment according to the organization’s rules – unless the situation requiring discipline or firing relates to a protected ground that requires or received an accommodation.

Under the legislation, firing of an employee due to their need for accommodation can take place only if:

- keeping the employee in the position is causing the employer undue hardship, or
- the position has a bona fide occupational requirement that the employee is unable to fulfill.

If there are problems regarding the employee’s ability to perform his or her tasks because of a condition or circumstances related to a protected ground, the employer must continue to find ways to accommodate with the help of the employee.

### **Limitations**

The impact of provincial and federal human rights legislation on the hiring and retention of people with barriers to employment is limited by these factors:

- There is no requirement under the provincial Human Rights Code or the Canadian Human Rights Act to report accommodation efforts, and therefore to identify progress.
- With the closure of the BC Human Rights Commission in 2003, there is a lack of education around the protected grounds and the duty to accommodate in the workplace, as well as the circulation of misinformation among members of the public. Currently there is a non-profit community based BC Human Rights Coalition is responsible for education and assistance but is very limited in staff and funding.
- Economic or social status is not a protected ground under the legislation.

## **Accommodating poverty**

People often experience multiple barriers to employment. And people with multiple barriers have a greater likelihood of experiencing poverty.

Poverty itself can be a major barrier to employment.

But economic or social status is not a protected ground under human rights legislation. Employers are legally able to discriminate on the basis of poverty-related circumstances, such as, a person's source of income, appearance, living situation (e.g., on the street, in a shelter or in subsidized housing) or lack of personal resources (e.g., a phone).

If accommodations aimed at ensuring a person's ability to do a job do not take his or her poverty-related life circumstances into account, the employee might not be successful in the position – even with legislated accommodation.

Failing to address poverty through accommodation, because employers are not legally obliged to do so, jeopardizes the success of other accommodations intended to increase hiring and retention of employees with barriers.

## **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.


Legislation	Jurisdiction	Purpose	Compliance
<b>Human Rights Code</b>	Provincial	Protection from discrimination	BC 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

Labour Market Dialogues  
 Tel: (250) 383-6166  
 email: [alvaro@communitycouncil.ca](mailto:alvaro@communitycouncil.ca)

Information and outcomes from this Community Council project contribute to the work of the Quality of Life CHALLENGE.

Vancity Credit Union contributed funds to the Labour Market Dialogues project.

 The Government of Canada contributed funding to this initiative. The opinions and interpretations in this report are those of the author and do not necessarily reflect those of the Government of Canada.