

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

“The duty to Accommodate”

If an employee or prospective employee has a barrier to employment related to one of the protected grounds in human rights legislation, the employer is responsible for meeting the requirements of the legislation.

If the employee has a condition that will affect his or her ability to do the job, it is his or her responsibility to inform the employer of the need for accommodation, and to suggest the type of accommodation that would be appropriate. This is told in the pre-hiring stage and/or as an employee as unexpected barriers could arise once employed.

The employer is required (under the federal legislation and as a result of Supreme Court decisions applying to all provincially regulated employers) to attempt to make the accommodation, up to the point of **undue hardship**, to ensure that the person is able to start or continue a job he or she is capable of performing.

The employer *is not obligated* to accommodate when the accommodation would cause undue hardship. However, employers and service providers are expected to exhaust all reasonable possibilities for accommodation before they can claim undue hardship.

In addition, the employer does not have a duty to accommodate if the position contains a **bonafide occupational requirement** that an individual is unable to perform as a result of his or her condition. However, the employer should consider whether any alternative is possible that would make the workplace more inclusive.

The duty to accommodate and undue hardship depend on the size of the employer. Larger employers must accommodate more because of their greater resources in the areas of positions and capital available.

Note: The duty to accommodate includes supporting and allowing time for an employee to attend appointments in relation to their need.

Definitions

duty to accommodate: to identify and change the rules or practices in order to incorporate alternative arrangements that eliminate discriminatory barriers.

bona fide occupational requirement: a standard or rule that is integral to carrying out the functions of a specific position. To be classified as a bona fide occupational requirement the standard or rule must have been established through a rational connection, through good faith and through reasonable necessity. An employer must establish that any changes to this rule would create undue hardship.

undue hardship: the limit beyond which employers are not expected to accommodate. Undue hardship usually occurs when an employer or service provider cannot sustain the costs of the accommodation. The courts have determined this threshold by looking at financial costs, the size and flexibility of the workplace, and health and safety risks.

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), in case you need more information about the legislation or the agencies associated with it.


Legislation	Jurisdiction	Purpose	Compliance
Human Rights Code	Provincial	Protection from discrimination	B.C. Human Rights Tribunal
Canadian Human Rights Act	Federal	Protection from discrimination	Canadian Human Rights Tribunal
Employment Standards Act	Provincial	Establishes minimum working standards	Employment Standards Branch
Canadian Labour Code	Federal	Establishes minimum working standards	HRSDC Labour Program
Employment Equity Act	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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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.