

**Legislation Concerning the Hiring and  
Retention of People with Barriers to  
Employment:**

**A Guide for Employers**



March 26, 2008

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The logo for the Government of Canada, featuring the word "Canada" in a serif font with a small Canadian flag icon above the letter 'a'.

## Introduction

It's not easy being an employer in British Columbia's Capital Region these days. The labour market continues to provide challenges. Employers have difficulty finding enough workers and workers with the right skills. Recruiting new staff is time-consuming and expensive. And the coming demographic changes in Canada will add to these challenges. The aging workforce, a shrinking pool of new workers aged 15 to 24, stiff international competition for new immigrant workers, and a growing economy will have a strong impact on the nature of work and the composition of the labour market.

People who experience barriers to employment form a labour pool that some employers are beginning to tap into as a way to address labour market challenges. But hiring and retaining people who have barriers to employment often requires some special strategies, which in turn require creativity and an understanding of both the issues affecting people with barriers to employment and the supports that are available.

## 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.

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A list of websites is provided at the back of the guide, 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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## Hiring and Retention of People with Barriers to Employment:

### A Guide for Employers

#### “Human Rights Legislation”

The purpose of human rights legislation is to ensure that people have the ability to live and work in Canada without being hindered by discrimination. Human rights legislation provides protection, procedures and remedies for people who have experienced discrimination.

#### **Defining discrimination**

Discrimination can be defined as the denial of opportunity to a person or group of people based on a group characteristic such as race, colour, religious belief or sexual orientation.

Discrimination can take the form of harassment, unequal pay for the same or substantially similar work, discriminatory publications or hate propaganda, or, simply, differential treatment.

The legislation is enforced through federal and provincial human rights tribunals. Human rights complaints are filed directly to the appropriate tribunal. (The B.C. Human Rights Coalition and the Canadian Commission for Human Rights are organizations that help the public understand and abide by the legislation.)

B.C.’s Human Rights Code and the Canadian Human Rights Act are the most relevant legislation for efforts to increase the hiring and retention of people with barriers to employment. These laws provide a legal requirement for employers to accommodate a person’s needs if they are considered to be a “protected ground.”

Under B.C.'s Human Rights Code and the Canadian Human Rights Act, grounds protected in the area of employment are:

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- sexual orientation
- marital status and family status
- disability
- conviction for an offence for which a pardon has been granted (Canadian Human Rights Act)
- conviction for an unrelated offence or summary charge (Human Rights Code).

It is important to note that "disability" includes both mental and physical disabilities, which can be temporary or permanent, result from all major illnesses or diseases, and be visible or non-visible. In B.C., disability includes addictions and obesity.

## **Which legislation applies to you?**

Employers regulated by the federal government and governed by the Canadian Human Rights Act include:

- the federal government and all its agencies, such as the RCMP, the Employment Insurance Commission, or Canada Post
- telecommunications bodies regulated by the CRTC
- all inter-provincial transportation, such as Air Canada and Via Rail
- chartered banks (but not credit unions)
- unions attached to any of these.

B.C.'s Human Rights Code applies to employers, service providers and all other provincially regulated businesses and agencies, as well as to the purchase of property and rental accommodations. Provincially regulated areas include:

- all provincial, local and municipal government departments, services and programs
- schools and universities

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- hospitals and medical clinics
- all private businesses and services, such as stores, restaurants and movie theatres
- credit unions
- non-profit organizations and some of the services they provide
- rental accommodations, including hotels and rental property, and
- the purchase of either residential or commercial property.

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# 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.

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## Hiring and Retention of People with Barriers to Employment:

### A Guide for Employers

#### **“Asking questions on protected grounds”**

Although it is the employee’s responsibility to raise the need for accommodation in the interview and work stages, people do not always do so, out of fear of discrimination and stigma. If the employer notices something that could indicate a need for accommodation, the employer is required under the legislation to ask the employee if he or she requires an accommodation based on a protected ground. It is therefore important for employers to understand how to ask questions considered appropriate under the legislation.

Although employers are not prohibited from asking questions related to the protected grounds in B.C.’s Human Rights Code, this information *cannot* be used to make a hiring decision unless there is a bona fide occupational requirement. Questions that relate to protected grounds should be constructed to garner only the response necessary to ensure that the individual is able to perform the duties of the job. The employer is entitled only to enough information about the person’s protected ground to enable accommodation.



## **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 B.C. 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.



# 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
<p><b>Age</b></p>	<p>You can ask:</p> <ul style="list-style-type: none"> <li>• <i>Have you reached B.C.'s legal working age?</i></li> </ul> <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>
<p><b>Race, colour, ancestry, place of origin</b></p>	<p>You can ask:</p> <ul style="list-style-type: none"> <li>• <i>Are you legally entitled to work in Canada?</i></li> <li>• <i>What languages do you read and speak fluently?</i> (if this is related to the job the person is applying for)</li> </ul> <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>
<p><b>Marital and family status</b></p>	<p>You can ask:</p> <ul style="list-style-type: none"> <li>• <i>Are you able to work the shifts and schedules required of the position?</i></li> <li>• <i>Are you able to travel if traveling is a requirement of the position?</i></li> <li>• <i>Are you willing to relocate if relocation is a requirement?</i></li> </ul> <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> <ul style="list-style-type: none"> <li>• <i>Are you able to fulfill the job requirements (with accommodation if necessary)?</i></li> <li>• <i>Do you have a disability that will affect your ability to perform this job?</i></li> <li>• Or a question more specific to the job – <i>for example: This job requires heavy lifting, are you able to fulfill this requirement?</i></li> </ul> <p>If the response is <i>yes</i>, you can ask:</p> <ul style="list-style-type: none"> <li>• <i>What parts of the job are you unable to fulfill and what accommodations could be made that would allow you do to the work?</i></li> </ul> <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> <ul style="list-style-type: none"> <li>• <i>Are you able to work the shifts or hours required of a particular job?</i></li> <li>• <i>Are you able to work nights or shifts on Saturdays or Sundays?</i></li> </ul> <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>	<ul style="list-style-type: none"> <li>• same</li> </ul>
<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> <ul style="list-style-type: none"> <li>• <i>If the job requires bonding, employers can ask: Are you eligible to be bonded?</i></li> <li>• <i>If the job involves working with children, employers can ask: Can you be approved to work with children?</i></li> <li>• <i>If the job involves working with cash, 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></li> </ul>	

## 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.

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# Hiring and Retention of People with Barriers to Employment:

## A Guide for Employers

### “Employment Standards Legislation”

The provincial and federal employment standards legislation provides minimum working standards for employees, providing a basic protection against exploitation, and preventing vulnerable people from being taken advantage of by employers.

The purpose of the provincial Employment Standards Act is to:

- ensure that employees in B.C. receive at least a basic standard of compensation and conditions of employment
- provide fair and efficient procedures for dispute resolution over the application or interpretation of the legislation
- assist employees in meeting work and family responsibilities
- promote the fair treatment of employees and employers
- encourage open communication between employees and employers, and
- foster the development of a productive and efficient labour force.

The Canadian Labour Code covers people employed by or in connection with the federal government, federally regulated businesses, and businesses that operate across provinces or internationally. The provincial Employment Standards Act generally covers businesses that are not under federal jurisdiction, although a variety of employees, occupations and professions that are fully or partially exempt from the legislation. (You can find a more detailed list of who is covered by the provincial and federal legislation, and who is exempted, in Appendix A.)

The Employment Standards Act is enforced by the Employment Standards Branch. The branch website provides employees who have a complaint with a self-help kit to help them confront their employer themselves. If this is unsuccessful, the branch will review the complaint to determine whether it will become involved in mediation between the parties.

The Canadian Labour Code is enforced by Human Resources and Social Development Canada's Labour Program. The Labour Program promotes

voluntary compliance, providing individuals who file a complaint with advice aimed at reaching a solution. If this is unsuccessful, the program will conduct an inspection, which can lead to an order to ensure compliance, or in the case of serious violations, prosecution. The program can also help negotiate settlements for complaints related to unjust dismissal or appoint an adjudicator to decide on a case.

## Does the legislation apply to you?

### The Canadian labour Code

The Canadian Labour Code covers people employed by or in connection with the federal government, federally regulated businesses, and businesses that operate across provinces or internationally. These include:

- the armed forces
- the government of Canada
- banks
- broadcasting and telecommunications firms
- inter-provincial and international transportation firms
- firms doing inter-provincial pipeline, canal, bridge and tunnel work
- federal Crown corporations (e.g., Canada Post)
- sea ports
- airports
- railways (except BC Rail)
- nuclear facilities
- grain elevators, seed and feed mills
- many First Nations activities
- business dealing with protection of fisheries as a natural resource.

### The Employment Standards Act

The provincial Employment Standards Act generally covers businesses that are not under federal jurisdiction.

However, the Employment Standards Regulation lists a variety of employees, occupations and professions that are fully or partially *excluded* from the legislation (Part 7, section 31). Many professionals whose professions are regulated by other provincial legislation are not covered, and other types of employees may be excluded under certain conditions. Fully or partially excluded employees, occupations and exemptions include:

- architects

- accountants
- lawyers
- chiropractors
- dentists
- professional engineers
- insurance agents
- land surveyors
- doctors
- podiatrists
- real estate agents
- persons registered under section 35 of the Securities Act
- veterinarians
- professional foresters
- students employed to work in a secondary school they are enrolled in
- students enrolled in a co-op program
- sitters
- persons receiving benefits as a result of working on a job creation project
- persons participating in Youth Community Action
- newspaper carriers who are enrolled in or on vacation from a primary or secondary school who work less than 15 hours/week for one employer
- persons providing foster care.

In addition, some employees who have a collective agreement may be exempt from some sections of the Employment Standards Act.

## **Hiring and retaining people with barriers to employment**

Generally, employment standards legislation does not hinder and in some ways actually supports efforts to hire and retain people with barriers to employment.

### **Truthful representation**

For example, under the Employment Standards Act (Part 2, section 8), an employer cannot misrepresent the availability of the position, the type of work, the wages, or the conditions of employment. This legal requirement for truthful representation helps to promote inclusive workplaces by preventing discriminatory screening through misinformation.

The standards also support flexible scheduling, a key strategy for hiring and retaining people with barriers to employment. The standards establish the

basic requirements for work schedules, setting out how many hours can be worked consecutively over certain time periods, for example.

## Scheduling flexibility

Sections of the provincial legislation that offer scheduling flexibility include:

- Section 37 (Averaging Agreements) – Allows an employer and an employee to enter into a written agreement to average hours of work over a one-to-four-week period. The section includes eligibility and related calculations for overtime and rest periods.
- Part 9, Section 72 (Variances) – Enables variances in relation to paydays (section 17), special clothing (section 25), split shifts (section 33), minimum daily hours (section 34), maximum daily hours (section 35), hours free from work (section 36), overtime wages for those not under an averaging agreement (section 40), number of weeks covered by an agreement to average hours of work (section 37[1]), and notice and termination pay requirements for group termination (section 64). These sections can be altered for a class of employees, if they are deemed acceptable by the majority of employees affected and are consistent with the purposes of the act.
- Section 42 (Banking of overtime wages) – At the request of an employee, an employer can establish a time bank for the employee and credit the employee's overtime wages to the time bank instead of paying them to the employee. The employee can access the wages at any time and use them for time off with pay. **Note:** As neither the Employment Standards Act nor the Canadian Labour Code provide for paid leave, this option is useful for people with barriers who have to make regular payments but may not be able to work consistent hours for periods of time.

In the Canadian Labour Code, Division 1 (2) (Hours of Work, Averaging) states that where the nature of the work necessitates irregular distribution of the hours of work, the hours of work in a day and the hours of work in a week may be calculated as an average for a period of two or more weeks.

## Concerns

A number of changes to the Employment Standards Act made between 2002 and 2004 raise several areas of concern in terms of hiring people with barriers to employment:

- The legislation provides the bare minimum and therefore lacks many provisions that would support people with barriers to employment, such as scheduled morning and afternoon breaks and paid sick leave.
- Except in the case of averaging agreements, there is no consultation legislated between the employer and employee in establishing schedules.
- An overall reduction in compliance and enforcement prevents it from being used as intended. For example, optional sections that facilitate

flexibility for employees with barriers, such as overtime banks and averaging agreements, can be ignored by unwilling employers with minimal fear of repercussion.

- Section 37, on averaging agreements, is complex and confusing on issues such as sick leave or other absences from work, compensation for statutory holidays, and the effect on vacations.
- Section 31, which required employers to post shift changes at least 24 hours in advance, was removed from the act. This section ensured that people with less flexible schedules were given some notification in advance so they could make alternative arrangements for things like child care.
- Section 34, on minimum hours of work, was reduced from four hours to two hours. This can have a negative impact on people with barriers who have child care or minimum income requirements.
- Provincially regulated farm workers have very limited protection under the act. (Many of these workers are recent immigrants.)

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# Hiring and Retention of People with Barriers to Employment:

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### “The Employment Equity Act”

The federal Employment Equity Act is intended to achieve equality in the workplace, so that no one is denied employment for reasons unrelated to ability, and to thereby correct the disadvantages in employment experienced by women, aboriginal people, people with disabilities, and members of visible minorities. The act is based on the principle that employment equity means more than treating persons the same way; it also requires special measures and the accommodation of difference.

#### Definitions

**designated groups:** women, aboriginal people, people with disabilities, and members of visible minorities.

**persons with disabilities:** persons with long-term or reoccurring physical, mental, sensory, psychiatric or learning impairments who consider themselves to be disadvantaged in employment by reason of that impairment; persons who believe the employer is likely to consider them disadvantaged.

The Employment Equity Act is applied through two parallel federal employment equity programs:

- The **Legislated Employment Equity Program (LEEP)** applies to all federally regulated employers (including the armed forces and the RCMP) with more than 100 employees. Every year, they must submit employment equity reports showing the representation of the designated groups within their workforce, the identification of barriers to employment opportunities in their business for these groups, and actions taken to increase representation where required.
- The **Federal Contractors Program (FCP)** applies to provincially regulated employers with 100 or more employees who have secured a federal goods or services contract of \$200,000 or more (not including

construction contracts or contracts for the purchase or lease of property). They are required to certify in writing their commitment to employment equity as a condition of bidding on large federal contracts.

## **Hiring and retaining people with barriers to employment**

The Employment Equity Act helps to ensure that employers under federal jurisdiction actively work to facilitate the hiring and retention of people with certain employment barriers. Like the human rights legislation, this act requires accommodation for people within the designated groups. An advantage of this legislation is the ability to monitor employers' actions and to determine what progress is being made through annual reports.

However, the impact of employment equity legislation on the hiring and retention of people with barriers to employment is limited by a number of factors:

- The range of designated groups is small (less than those under human rights legislation).
- Employers are not obligated to create new jobs. The LMD does not expect job creation but does promote the tip of creating a \$500 month job for people on disability assistance.
- Construction companies under federal contract are not under any employment equity obligation. This creates a large gap in Victoria, where construction is a fast-growing industry
- The numerical representation for employment equity is not based on the working age population of the designated groups but on the percentage of the designated groups' population with the education level required for employment opportunities or the number already existing within the specified employment sector. This results in a smaller numerical representation of designated groups required by organizations under the Act and prevents more long term and substantial efforts to increase opportunities amongst the designated groups populations.
- There is no provincial equivalent to the Employment Equity Act, resulting in a limited number of employers affected.

## Unions

Unions are obligated to uphold human rights legislation by representing the needs of employed individuals related to protected grounds and ensuring that employers fulfill their duty to accommodate.

However, the impact of unions on the hiring and retention of people with employment barriers is limited by a number of factors:

- Union representation is only available once an individual is hired as an employee. There is no direct assistance in the hiring process.
- The legislated responsibility of the union to uphold and defend these rights is limited to the protected grounds or designated groups identified in the legislation.
- The success of union representation in facilitating accommodation is dependent upon the knowledge and dedication of the union representatives in supporting union members. Unions that are more employer focused or that lack organizational or membership dedication reduce the likelihood of employees negotiating scheduling or job changes with the employer to help remove potential barriers.
- The extent of an employer's creativity and flexibility in accommodating the needs of employees with barriers that are not legislated is dependent on the contents of the particular union's constitution and the collective agreement with the employer. Collective agreements are based on the needs put forth by members of the union and therefore may not reflect the needs of people with barriers who were not represented at the time the agreement was drafted.

### How to Contact Us

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## Do You Need More Information?

Here are the websites for the legislation covered in this guide and the key agencies involved in enforcing the legislation or providing information about it.

<b>Human Rights Code</b>	<a href="http://www.qp.gov.bc.ca/statreg/stat/H/96210_01.htm">http://www.qp.gov.bc.ca/statreg/stat/H/96210_01.htm</a>
<b>B.C. Human Rights Tribunal</b>	<a href="http://www.bchrt.bc.ca">http://www.bchrt.bc.ca</a>
<b>B.C. Human Rights Coalition</b>	<a href="http://www.bchrcoalition.org">http://www.bchrcoalition.org</a>
<b>Canadian Human Rights Act</b>	<a href="http://laws.justice.gc.ca/en/H-6/index.html">http://laws.justice.gc.ca/en/H-6/index.html</a>
<b>Canadian Human Rights Tribunal</b>	<a href="http://www.chrt-tcdp.gc.ca">http://www.chrt-tcdp.gc.ca</a>
<b>Canadian Human Rights Commission</b>	<a href="http://www.chrc-ccdp.ca">http://www.chrc-ccdp.ca</a>
<b>Employment Standards Act</b>	<a href="http://www.qp.gov.bc.ca/statreg/stat/E/96113_01.htm">http://www.qp.gov.bc.ca/statreg/stat/E/96113_01.htm</a>
<b>Employment Standards Branch</b>	<a href="http://www.labour.gov.bc.ca/esb/">http://www.labour.gov.bc.ca/esb/</a>
<b>Canadian Labour Code</b>	<a href="http://laws.justice.gc.ca/en/L-2/">http://laws.justice.gc.ca/en/L-2/</a>
<b>HRSDC Labour Program</b>	<a href="http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/about.shtml">http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/about.shtml</a>
<b>Employment Equity Act</b>	<a href="http://laws.justice.gc.ca/en/E-5.401/index.html">http://laws.justice.gc.ca/en/E-5.401/index.html</a>

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