

Legislation Concerning the 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.

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

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

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