

# Avoiding Discrimination Claims: The Employer's Guide To Compliant Hiring And Terminations



Hiring and terminating employees are two of the most critical decisions an employer can make. These moments define workplace culture, shape legal risk, and directly affect an organization's reputation. Unfortunately, they are also common sources of human rights complaints under the Ontario *Human Rights Code*. Whether due to a lack of awareness or rushed processes, employers often make avoidable mistakes that can lead to costly disputes. A proactive approach rooted in fairness and compliance can go a long way toward reducing liability.

## **Hiring: Questions You Should Never Ask**

The hiring process must be free from discrimination based on any of the *Code's* protected grounds, which include age, race, religion, sex, disability, family status, gender identity, and others. Even well-intentioned questions can lead to legal exposure.

### **Avoid questions like:**

- Do you have children? (family status)
- Where are you from originally? (place of origin, race)
- Are you planning to retire soon? (age)
- Do you have any health conditions we should know about? (disability)

Instead, ask questions that relate directly to job duties. For example, it is appropriate to ask, "Are you able to meet the travel requirements of this position?" It is not appropriate to ask, "Do you have reliable childcare arrangements?"

Increasingly, employers are using automated tools and AI to help with candidate screening. These tools can inadvertently reinforce biases if not properly designed and monitored. Employers are ultimately responsible for ensuring that all aspects of their hiring process are free from systemic discrimination.

## **Duty to Accommodate During the Hiring Process**

If a candidate requests an accommodation for a disability or a need related to another protected ground, the employer has a legal duty to accommodate up to the

point of undue hardship. This could include providing accessible interview locations, allowing additional time for assessments, or adjusting interview formats.

Employers should document any accommodations provided and ensure their hiring teams know how to respond appropriately and respectfully to requests.

## **Terminations: Human Rights Still Apply**

Human rights obligations do not end once an employee is hired. They continue throughout the employment relationship, including at the point of termination. Employers must ensure that no discriminatory factors influence the decision to terminate.

For example, terminating an employee shortly after they request a medical leave could give rise to a claim of disability discrimination. Similarly, ending someone's employment soon after they announce a pregnancy may be perceived as sex or family status discrimination.

Even if the termination is unrelated to the protected ground, the timing and a lack of documentation can create an impression of discrimination. Employers should maintain clear records that demonstrate legitimate business reasons for all terminations.

## **Best Practices for Employers**

To reduce legal risk and uphold fair practices:

- Train all staff involved in hiring or firing decisions on human rights obligations
- Standardize interview and termination procedures
- Carefully document all employment decisions
- Consult legal counsel for complex or high-risk cases

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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