Human Rights Policy (British Columbia)



1. **EMPLOYER RIGHTS PROTECTED**

The Code does not interfere with employers' right to hire, promote, or dismiss employees or to establish conditions of employment. Employers have the right to: define specific employment needs according to business priorities; require job-related qualifications and/or experience; hire, promote, and assign the most qualified person for a position; establish standards for evaluating job performance; require adherence to clearly defined job descriptions and performance criteria; discipline, demote, or dismiss incompetent, negligent, or insubordinate employees; and set employment terms and conditions.

2. **WHAT IS DISCRIMINATION?**

Discrimination occurs when someone is treated differently and poorly because of a personal characteristic, such as their race, religion, physical disability, or sex. For example, it is discriminatory for an employer to: fire a woman because she is pregnant; refuse to hire someone because they have a physical disability; pay a woman a lower wage than a man who is doing the same job; or force an employee to retire because of age.

In B.C., it is illegal to discriminate against or harass a person because of their:

- Race;
- Colour
- Ancestry;
- Place of origin;
- Religion;
- Marital status;
- Family status;
- Physical or mental disability;
- Sex (includes pregnancy, breastfeeding, and sexual harassment);
- Sexual orientation;
- Age (19 and over);
- Criminal conviction (in employment only);
- Political belief (in employment only);
- Lawful source of income (in tenancy only).

Where?

The Human Rights Code applies to all businesses, agencies, and services in B.C., except those regulated by the federal government. It protects people **from** discrimination in public situations, which include schools, workplaces, universities, hospitals, medical clinics, stores, restaurants, provincial and local government offices, and transit services. It also protects people against discrimination in printed publications and in areas such as employment, tenancy, and the purchase of property.

3. **EMPLOYER DUTY TO NOT DISCRIMINATE**

The Code protects job applicants and employees by ensuring that employment decisions are based on job related criteria and not discriminatory considerations.

Employees (and job applicants) have the right to:

- Be considered for jobs and promotions on the basis of merit;
- Work in an environment that is free of discrimination and harassment;
- Be given a clear statement of the skills, experience, and education needed for a job;
- Be informed of duties and performance expectations; and
- Be advised of shortcomings and given an opportunity to improve performance.

4. **DUTY TO ACCOMMODATE**

The Code requires employers to accommodate people who may require modifications to the usual ways work is done. Unless accommodating their needs would result in undue hardship for the employer, failure to reasonably accommodate the special needs of a disabled person or nursing mother, for example, is a form of discrimination. Whether accommodating a person’s needs would result in undue hardship is based on several factors, including:

- The overall cost of the accommodation;
- The size and flexibility of the employer’s workforce;
- The impact of accommodation on a collective agreement; and
- The impact of accommodation on the health and safety of employees.

5. **EQUAL PAY**

The Code requires employers to pay men and women the same pay for doing the same, or substantially similar, work. To determine whether work is substantially similar, it is necessary to compare the skill, effort, and responsibility of the male- and female-dominated jobs, instead of simply relying on the job descriptions. An employer must not reduce the wages of an employee to comply with the equal pay requirement.

6. **RECRUITMENT AND SELECTION**

The Code makes it illegal for employers to make decisions based on a person’s race, colour, ancestry, place of origin, religion, marital status, family status, sex, sexual orientation, and, with a few exceptions, physical or mental disability, age, criminal conviction, or political belief. Unless questions that relate to these

characteristics are directly related to occupational requirements, they should not be included in a job application or asked in an interview. Asking inappropriate questions leaves the employer open to complaints of discrimination from unsuccessful candidates who believe they were denied an opportunity because of their disability, race, sex, or another ground protected under the Code.

7. **PRE-EMPLOYMENT AND POST-HIRING INQUIRIES**

There is a difference between questions asked before and after hiring an employee. Questions that could be considered discriminatory before hiring may be asked later if there is a legitimate need for the information.

The general rule is: Ask only what is needed to make a hiring selection on the basis of merit.

Do not ask questions about race, ancestry, religion, sexual orientation, or other similar characteristics that are not related to the job and do not help you decide who is the most qualified applicant. For example, you may ask an applicant for proof they have a university degree, even though the information may disclose the person's place of origin, provided you are asking for the purpose of deciding who is the best candidate.

8. **EMPLOYMENT ADVERTISING**

The Code prohibits employment advertisements that express a limitation, specification, or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age, unless the limitation, specification, or preference is based on a legitimate occupational requirement.

9. **WHAT TO ASK AND WHAT NOT TO ASK**

Race, Colour, Ancestry, Place of Origin:

You may ask whether an applicant is legally entitled to work in Canada, but you should not ask about the person's race, birthplace, citizenship, or nationality. After hiring, you may ask for documents which may disclose this information.

For example, for enrolment in a benefits plan, you may ask for a birth certificate.

Political Belief:

You should not ask about an applicant's political beliefs. An exception is where an applicant's political belief is a legitimate requirement for the job, as it often is for employment with a political party.

Religion:

You should not ask an applicant about their religious beliefs, including which church they attend or which holidays or customs they observe. If an applicant or an employee indicates a need for an adjustment to their work schedule for religious purposes, as an employer, you have a duty to consider whether it is possible to accommodate their needs without undue hardship.

Marital Status and Family Status:

You may ask whether the applicant is able to work the shifts required of the position, or is able to travel for work, or is willing to relocate, but you should not ask about an applicant's marital or family status. (If the answer to such questions is no, as an employer, you are obliged to consider whether it is still possible to accommodate the applicant.) After hiring, you may ask for information that discloses a person's marital or family status if the information is required for a legitimate reason. For example, you may ask questions that disclose an employee's family status for income tax purposes or enrolment in a benefits or pension plan.

Physical or Mental Disability:

You may ask applicants whether they have any physical or mental disabilities that might affect their ability to do the job for which they are applying or that they want you to consider when determining job placement. You should not ask applicants for information about the general state of their physical or mental health. If an applicant discloses a disability, you may ask for details about how the disability affects their ability to do the job. Bear in mind that, as an employer, you have a duty to accommodate the needs of people with disabilities, up to the point of undue hardship.

You should not ask applicants whether they have, or are receiving, Workers' Compensation benefits, because their answers may reveal a physical or mental disability that is not relevant to the job.

Sex:

You should not ask about an applicant's gender or questions about pregnancy, childcare arrangements, or future plans to have children.

Sexual Orientation:

You should not ask about an applicant's sexual orientation. Age You may ask whether the applicant has reached legal working age, but should not ask anything that could reveal the person's age. After hiring, this information may be legitimately required for certain purposes, such as enrolment in a pension or benefits plan.

Criminal or Summary Conviction:

You may ask whether an applicant has a previous conviction (or has been arrested) if there is a legitimate reason to know. For example, such questions are acceptable if the job requires employees to be bonded or involves working with children. You should not ask whether the applicant has a criminal or arrest record unless there is a legitimate requirement to know.

10. **EMPLOYMENT AGENCIES**

Employment agencies must not refuse to refer a person for employment on the basis of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age. An employment agency cannot refuse to refer a candidate because of a disability that may require accommodation. This information sheet is intended for general information purposes only. It is not intended to provide or replace legal advice.

11. **HELP WITH COMPLAINTS**

A complaint must normally be filed within six months after the alleged discrimination or harassment occurs. Filing a complaint initiates a legal process that is similar to a court proceeding. Assistance is available when either filing or responding to a complaint. A publicly funded legal clinic provides assistance, including legal representation, to eligible persons everywhere in B.C., free of charge.

Note to employers: As of Jan. 1, 2008, amendments to the Human Rights Code extend protection against age discrimination to all employees 19 years of age and over, not just those between 19 and 65. The amendments ban mandatory retirement in B.C. (with some exceptions). Employers can offer early retirement benefits to all employees as an incentive to retire, but employees cannot be forced to retire because of their age.