What Constitutes a “Disability” – Know the Laws of Your Province

Requirements governing respirator selection, use, maintenance and inspection across Canada

You must take measures to prevent workers from breathing in harmful mists, vapours, fumes, gases, dusts and other airborne contaminants. The best way to accomplish that objective is at the source by keeping contaminants out of the air in the first place, such as via elimination of hazardous products or mechanical ventilation. Regrettably, such solutions may not be reasonably practicable. In that situation, respiratory protection equipment becomes the critical line of defence. As safety coordinator, you must ensure that selection, use and maintenance of respiratory protective equipment meet the OHS requirements of your jurisdiction. Here’s a summary of the laws you need to be aware of to meet that challenge regardless of where in Canada you operate.

What’s a “Disability” Under Human Rights Laws?

FEDERAL

“Disability” means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug [*Can. Human Rights Code*, Sec. 25]

ALBERTA

“Mental disability” means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder [*Alberta Human Rights Act*, Sec. 44(1)(h)]

“Physical disability” means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, service dog, wheelchair or other remedial appliance or device [*Alberta Human Rights Act*, Sec. 44(1)(l)]

BRITISH COLUMBIA

No definition in *Human Rights Code* but BC Human Rights Commission guidance states that:

- **"Mental disability"** includes mental conditions that affect or are seen as affecting a person's abilities, including such conditions as a learning disorder, developmental disability or illness such as depression or bipolar disorder
- **"Physical disability"** includes physical conditions that affect or are seen as affecting a person's abilities, including conditions that impair a person's ability to carry out the normal functions of life, as well as addiction, amputation, asthma, acne, diabetes, cancer, epilepsy, high blood pressure, hypertension, obesity and impairments to mobility. It includes people who are deaf, hard of hearing or blind. It doesn't include short-lived conditions such as a cold.

MANITOBA

Code bans "physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device" but doesn't define "physical or mental disability" [*Human Rights Code*, Sec. 9.2(l)]

NEW BRUNSWICK

"Mental disability" includes (a) an intellectual or developmental disability, (b) a learning disability, or dysfunction in one or more of the mental processes involved in the comprehension or use of symbols or spoken language, and (c) a mental disorder [*Human Rights Act*, Sec. 2]

"Physical disability" means any degree of disability, infirmity, malformation or disfigurement of a physical nature resulting from bodily injury, illness or birth defect and includes, but is not limited to, a disability resulting from any degree of paralysis or from diabetes mellitus, epilepsy, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair, cane, crutch or other remedial device or appliance [*Human Rights Act*, Sec. 2]

NEWFOUNDLAND

"Disability" means one or more of the following conditions: (i) a degree of physical disability, (ii) a condition of mental impairment or a developmental disability, (iii) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or language, and (iv) a mental disorder [*Human Rights Act, 2010*, Sec. 2(c)]

Protection includes protection from discrimination on the basis that an individual (a) has or has had a disability; (b) is believed to have or have had a disability; or (c) has or is believed to have a predisposition to developing a disability [*Human Rights Act, 2010*, Sec. 9(3)]

NOVA SCOTIA

"Physical disability or mental disability" means an actual or perceived: (i) loss or abnormality of psychological, physiological or anatomical structure or function, (ii)

restriction or lack of ability to perform an activity, (iii) physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical co-ordination, deafness, hardness of hearing or hearing impediment, blindness or visual impediment, speech impairment or impediment or reliance on a service dog as defined in the *Service Dog Act*, a guide dog, a wheelchair or a remedial appliance or device, (iv) learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, (v) condition of being mentally impaired, (vi) mental disorder, or (vii) dependency on drugs or alcohol [*Human Rights Act*, Sec. 3(l)]

ONTARIO

"Disability" means: (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device, (b) a condition of mental impairment or developmental disability, (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, (d) a mental disorder, or (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act* [*Human Rights Code*, Sec. 10(1)]

The right to equal treatment without disability discrimination includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability [*Human Rights Code*, Sec. 10(3)]

PRINCE EDWARD ISLAND

"Disability" means a previous or existing disability, infirmity, malformation or disfigurement, whether of a physical, mental or intellectual nature, caused by injury, birth defect or illness, and includes but is not limited to epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual

impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on an assist animal, wheelchair or other remedial device [*Human Rights Act*, Sec. 1(c.1)]

QUÉBEC

Charter of Human Rights and Freedoms bans disability (handicap) discrimination but doesn't define disability; according to *Commission des droits de la personne et des droits de la jeunesse* guidance, "disability" includes a person's physical, mental or psychological limitations, as well as ways to reduce its effects, such as using a wheelchair or guide dog

SASKATCHEWAN

"Disability" means: (a) Any degree of physical disability, infirmity, malformation or disfigurement, including: (i) epilepsy; (ii) any degree of paralysis; (iii) amputation; (iv) lack of physical coordination; (v) blindness or visual impediment; (vi) deafness or hearing impediment; (vii) muteness or speech impediment; or (viii) physical reliance on a service animal, wheelchair or other remedial appliance or device; or (b) Any of the following disabilities: (i) an intellectual disability or

impairment; (ii) a learning disability, or a dysfunction in one or more of the processes involved in the comprehension or use of symbols or spoken language; (iii) a mental disorder [*Sask. Human Rights Code*, 2018, Sec. 2(1)]

NORTHWEST TERRITORIES

"Disability" means any of the following conditions: (a) Any degree of physical disability, infirmity, malformation or disfigurement that's that is caused by bodily injury, birth defect or illness; b) A condition of mental impairment or a developmental disability; (c) A learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or language; (d) A mental disorder [*Human Rights Act*, Sec. 1(1)]

Discrimination on the basis of disability includes discrimination on the basis that an individual: (a) Has or has had a disability; (b) Hs believed to have or have had a disability; or (c) Has or is believed to have a predisposition to developing a disability [*Human Rights Act*, Sec. 5(2.1)]

NUNAVUT

"Disability" means any previous or existing or perceived mental or physical disability and includes disfigurement and previous or existing dependency on alcohol or a drug [*Human Rights Act*, Sec. 1]

YUKON

"Mental disability" means any mental or psychological disorder such as organic brain syndrome, emotional or mental illness, or learning disability [*Human Rights Act*, Sec. 37]

"Physical disability" means any degree of physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect or illness and includes epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a service animal or on a wheelchair or other remedial appliance or device [*Human Rights Act*, Sec. 37]