

Protection Against Job Discrimination

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Being treated differently than others based on personal characteristics is called discrimination. The law protects you from discrimination at work. Learn your rights and options if someone discriminates against you.

Understand your legal rights

You are protected against discrimination in your job

If you're treated differently than others based on personal characteristics such as the colour of your skin or your sex, it's called **discrimination**. Discrimination can take many forms. Harassment (conduct a reasonable person would consider objectionable or unwelcome), negative differential treatment, or getting unequal pay for similar work are all examples of discrimination.

There are federal and provincial human rights laws that protect workers from discrimination in the workplace. Most employers in BC are covered by the province's *Human Rights Code* ^[2]. But BC employers in certain industries that are federally regulated, such as banks and airlines, are covered by the *Canadian Human Rights Act* ^[3]. This law applies throughout the country. The federal law also applies to employers in the federal public service.

The guidance below focuses on your rights under BC's law. However, many of the same rules apply to workers covered by the federal law.

Tip If your situation involves federal law, contact the Canadian Human Rights Commission ^[4] at 1-888-214-1090. If you don't know whether federal or provincial law applies, you can contact the Commission or the BC Human Rights Tribunal, which deals with complaints under the BC *Human Rights Code*. Either agency can tell you which one can handle your complaint.

Employers must not discriminate based on protected grounds

Under the BC *Human Rights Code* ^[5], an employer must not discriminate against a worker based on these personal characteristics:

- their race, colour, ancestry, or place of origin
- their age (as long as they are age 19 or older)
- their sex (including pregnancy), sexual orientation, or gender identity or expression
- their marital or family status (including family obligations of one person to another, not just parent–child)
- their political belief or religion
- any physical disability (including HIV and AIDS) or mental disability
- any criminal convictions that are unrelated to the job

These are called **protected grounds**. You can not be treated differently than others in the workplace based on a protected ground.

This protection applies in all aspects of employment

The protection against discrimination applies in hiring, firing, wages, benefits, hours, and other terms and conditions of work. This means an employer cannot factor a protected ground into:

- not hiring you,
- not promoting you,
- firing you, or
- discriminating in some other way against you in your job.

The protected ground does not need to be the only or main reason for a decision or action by an employer. It is discrimination if the ground is a factor in the decision or action. For example, if you weren't hired in part because of your religion or sex, that's discrimination.

The protection includes the workplace environment. Employers must provide a discrimination-free workplace. They may be liable for discrimination, including harassment, by their workers in the workplace.

Examples of job discrimination

Examples of job discrimination include an employer:

- turning down a woman for a job featuring physical labour, believing only men are qualified for that type of work
- changing a term of the job to interfere with a worker's parental or family duty
- changing a term of the job to interfere with a worker's religious beliefs
- harassing (or letting other workers harass) a worker over their race, religion, sex or other protected ground
- requiring a worker with a drug addiction to undergo drug testing (unless the employer can justify the testing)
- failing to take reasonable steps to accommodate a deaf employee
- firing a worker because of a mental or physical disability

The employer's duty to accommodate

Employers must also **accommodate** workers to ensure they are treated fairly. Employers must take all reasonable steps to avoid a negative effect on a worker based on a protected characteristic. For example, a job requirement to work on a certain day may hurt someone whose religion prevents them from working on that day. Or, a person with a disability may not be able to perform a certain part of their job because of their disability. In these cases, the employer must make adjustments to accommodate these differences. They must take reasonable steps to remove the harm and support the worker to do the job.

To the point of undue hardship

The employer's duty to accommodate isn't limitless. It extends only to the point where the accommodation starts causing the employer "**undue hardship**".

Many human rights cases involve complaints that an employer has not accommodated a worker's disability. The *Human Rights Code* does not define disability. Cases have said a disability is involuntary, is somewhat permanent, and impairs a person's ability to carry out the normal functions of life. Accommodation requires an employer and a worker (and a worker's union, if they are in one) to find a practical solution to accommodate the worker's disability but not create an undue hardship on the employer. An employer may have to accept some hardship. That hardship might involve expense, inconvenience, or disruption — as long as it does not unduly interfere with the business.

An exception for a “bona fide occupational requirement”

An employer may be able to make a decision (such as refusing to hire or promote you) that appears to be discriminatory if they can show the decision was based on a **bona fide occupational requirement**. Such a requirement is a legitimate job-related qualification where the employer cannot accommodate the protected ground without facing undue hardship. For example, a women's health club could probably limit work cleaning a women's locker room while women are present to a female cleaner, but if the job involved cleaning after hours, it probably could not limit the job to women.

The protection extends to union membership, employment agencies, and job ads

A **trade union, employers' organization or occupational association** can't discriminate against you. For example, a union can't use any of the protected grounds in the *Human Rights Code* ^[6] to stop you from joining the union, to expel or suspend you, or otherwise discriminate against you.

An **employment agency** can't refuse to refer you for employment based on a protected ground.

As well, under the Code ^[7], the protection extends to **job ads**. Employers cannot advertise in connection with a job a limitation, specification, or preference based on a protected ground. The exception is if the limitation, specification, or preference is based on a bona fide job requirement. Job ads should describe the job and the necessary skills and training, not a certain type of person.

If someone discriminates against you

If someone discriminates against you in the workplace, you have options.

Option 1. Make a human rights complaint

You can **make a complaint** to the BC Human Rights Tribunal. The tribunal deals with complaints under the *Human Rights Code* ^[2]. It operates like a court but is less formal. It has staff who help people resolve complaints without going to a hearing. If that's not possible, they hold a hearing to decide if there was discrimination.

You must file a complaint with the tribunal within **six months** of when the discrimination happened. You can get a complaint form from the tribunal's website at bchrt.bc.ca ^[8] or by calling 604-775-2000 in Vancouver or 1-888-440-8844 elsewhere in BC. Our information on human rights and discrimination protection (no. 236) explains the steps in making a human rights complaint. We explain what to expect from the process shortly.

Option 2. Complain to the Employment Standards Branch

If your employer didn't follow the Employment Standards Act ^[9], you can **make a complaint to the Employment Standards Branch**, the government office that administers that Act. It covers some situations that can also bring the Human Rights Code into play. For example, under the Employment Standards Act, an employer cannot fire you because you are pregnant. The Employment Standards Branch has different powers than does the Human Rights Tribunal. See our information on if you are fired (no. 241) for more details on making a complaint to the Branch.

Option 3. Sue for wrongful dismissal

If you lose your job because of discrimination, you may decide to sue in court for **wrongful dismissal**. You may be able to recover more in damages than in a human rights complaint. On the other hand, bringing a lawsuit is an involved and expensive process. See our information on if you are fired (no. 241) and starting a lawsuit (no. 165) for more details.

Option 4. If you belong to a union

If you belong to a union, one option is to ask the union to file a **grievance** about the discrimination.

Tip If you complain to the Human Rights Tribunal and also pursue another option (by filing a union grievance, making a complaint under the *Employment Standards Act*, or suing the employer for wrongful dismissal), the tribunal can wait until the other process is finished before dealing with your complaint. It is a good idea to seek **legal advice** on your options. See our information on free and low-cost legal help (no. 430).

If you make a human rights complaint

If you make a complaint to the BC Human Rights Tribunal, you must show that the employer's conduct (or the conduct of another person) had an **adverse impact** on you and that one of the protected grounds was at least a factor in the adverse impact.

If you show that, the employer can try to prove their conduct was **justified** (a bona fide occupational requirement).

The tribunal considers your complaint

If it finds the complaint may involve a violation of the *Human Rights Code*, the tribunal will ask the employer to reply to your complaint. The tribunal can try to help you and the employer settle the complaint. If that is not possible, the tribunal may hold a hearing.

Possible awards

If the tribunal decides your complaint is justified, it can order the employer or other person to stop discriminating and give you your job back. Or it can order them to give you the right to compete for a job.

The tribunal can also order the employer or other person to pay you money (**compensation**) for lost income (including wages and disability and other benefits) and expenses. The tribunal can also order the employer or other person to pay you compensation for injury to your dignity, feelings, and self-respect. In most cases, these damages are under \$10,000, but some damage awards have been much higher, up to \$75,000.

Tip Write down anything the employer says or does that may be discriminatory. Keep your written record — it may be useful evidence later.

Common questions

In a job interview, I was asked about my religious beliefs. Is that allowed?

In a job interview, you can be asked about "protected ground" characteristics as long as the questions aren't discriminatory. This will depend on the context. For example, you may be asked, as a casual icebreaker, where you're from. But this question can't be part of the formal interview.

Are men and women supposed to get the same pay for similar work?

Yes. Generally, employers must not pay a man more than a woman for similar, or substantially similar, work. The reverse of this is also true: employers must not pay a woman more than a man for similar or substantially similar work. Whether work is similar, or substantially similar, depends on many things, including the skill, effort, and

responsibility a job requires. Employers can pay different wages to different people based on seniority, merit, and productivity.

If there a mandatory retirement age in BC?

No. The *Human Rights Code* protects all people 19 and over from discrimination because of their age. Among other things, this means you cannot be forced to retire because of your age. The exception is where an employer can show that an age limit is a bona fide occupational requirement, because of the duties or needs of the work or because of safety issues or dangers.

Can an employer make me give up my rights under the *Human Rights Code*?

No. The Code does not let people agree to give up their rights. An employer cannot ask you to sign a contract that says the employer can discriminate against you.

Are there time limits for filing a human rights complaint or suing?

Yes, there are time limits in both cases. You have six months from when the discrimination occurs to file a complaint with the Human Rights Tribunal. If you wait longer than six months, your complaint may still be accepted if the tribunal believes it is in the public interest to accept it and no party will be prejudiced because of the delay. There are also time limits for suing in court — see our information on starting a lawsuit (no. 165) for details.

Get help

With a discrimination complaint

The **BC Human Rights Clinic** may be able to help you file a complaint with the Human Rights Tribunal and help you at a hearing. The clinic is operated by the Community Legal Assistance Society (CLAS).

Telephone: 604-622-1100 in Vancouver

Toll-free: 1-855-685-6222

Web: bchrc.net ^[10]

In the Greater Victoria area, the **University of Victoria Law Centre** provides help for eligible human rights complainants and respondents.

Telephone: 250-385-1221

Web: thelawcentre.ca ^[11]

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The above was last reviewed for legal accuracy by Bradley Martyniuk, Lindsay Kenney, and Katherine Hardie, BC Human Rights Tribunal.



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References

- [1] <http://dialalaw.peopleslawschool.ca>
- [2] <http://canlii.ca/t/843q>
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- [4] <http://www.chrc-ccdp.ca/>
- [5] https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-210/latest/rsbc-1996-c-210.html#sec13_smooth
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