



**Northwest Territories
Human Rights Commission**

Employer's Guide to Human Rights

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This guide provides general information about the *Human Rights Act* as it applies to all aspects of employment.

The Commission also publishes:

- **Duty to Accommodate: A Guide for Employers**
- **Alcohol and Drug Testing: A Guide for Employers**

To obtain a copy of Commission publications, please contact the Commission. The Commission contact information is at the back of this Guide. All publications are also on the website at: www.nwthumanrights.ca

The Vision of the NWT Human Rights Commission

We envision a North at peace with its diversity where everyone is safe, confident, and respected on their journey.

Our Mission

The NWT Human Rights Commission will:

- promote human rights through education and advocacy;
- strive for understanding and acceptance of human rights by all through leadership and partnerships; and,
- provide a complaint process that is accessible, timely and fair.

Introduction

The fundamental right to equality is protected in all areas of employment. This means equal access to employment opportunities and equitable treatment in the workplace. Everyone, including employers, benefits when discrimination is prohibited because only job-related considerations such as ability, merit and responsibility are used to evaluate applicants and employees. When these criteria are used in evaluation, employers get the best person for the job.

The *Human Rights Act* prohibits discrimination on the basis of:

- race, colour, ancestry, place of origin, ethnic origin, nationality
- sex, sexual orientation, gender identity
- family or marital status, family affiliation
- social condition
- religion, creed
- political belief or association
- pardoned criminal conviction
- disability
- age

The *Human Rights Act* embodies the principle that all persons should be assessed on individual merit and not on characteristics unrelated to job performance.

Section 7 of the *Act* prohibits employers and employment agencies from discriminating with respect to hiring, dismissals, lay-offs, promotions and transfers, or any other term or condition of employment.

Section 8 of the *Act* prohibits employers and employment agencies from asking questions that indicate discrimination.

Section 14 prohibits harassment in the workplace based on any of the grounds listed above.

The *Act* also applies to trade unions, employers' associations and occupational associations.

These guidelines identify key areas of concern for employers. However, it is not comprehensive, nor is it a legal document. For further information please refer to the *Human Rights Act* or contact the Commission. Contact and website information is listed at the end of this document.

Employer's Rights

The *Act* enforces the merit principle in all aspects of employment.

Employers have the right to hire, dismiss, promote and establish conditions of employment that best serve their corporate goals.

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
- set employment terms and conditions
- establish salary and wage scales either independently or through negotiations
- expect a full and impartial investigation of any complaint filed against them under the *NWT Human Rights Act* (the “*Act*”.)

Employee's Rights

The *Act* protects employees and job applicants by ensuring that employment decisions are based on job-related criteria and not discriminatory factors. All employees have a right to work for an employer who complies with the provisions of the *Act* and who deals promptly to address human rights problems in the workplace.

Employees have the right to:

- work in an environment that is free from discrimination and harassment
- file a complaint without fear of reprisals

Employees should:

- be considered for jobs on the basis of an individual assessment
- be given a clear statement of the skills, experience and education required for the job
- be informed of duties, and performance expectations
- be advised of shortcomings and permitted an opportunity to improve job performance
- inform the employer of their needs for accommodation for things such as disability, pregnancy, or religion.

Helen worked at a full service gas station and convenience store. When she became pregnant, the smell of the gas fumes triggered her morning sickness. Her Doctor told her that she should not work closely around gas fumes during her pregnancy. Helen gave a note to her employer. She asked her employer if she could work exclusively in the convenience store and doing all the paperwork. Her employer agreed. After Helen returned from maternity leave, she went back to her previous duties.

Recruitment

Recruitment procedures that are free from bias will attract the widest selection of applicants.

If recruitment appears to exclude a particular group or class, qualified candidates may be discouraged from applying. An effective recruitment is one where all qualified candidates are encouraged to apply.

Everyone benefits when discrimination is prohibited, including employers. Everyone benefits when only job-related considerations are used to assess applicants and employees. When these criteria are used in assessment, employers have a better chance to get the best person for the job.

Interview Guidelines

The following guidelines will help employers establish recruitment and selection policies and practices. It suggests questions that employers can ask to gather information that relates to ability to do the job. Questions to avoid asking are also noted. The *Act* prohibits asking any questions related to prohibited grounds of discrimination, unless the questions relate to an occupational requirement.

These guidelines are not all-inclusive. For further information, please contact the NWT Human Rights Commission.

Age

Questions employers may ask

- "Have you reached NWT's legal working age?"
- After hiring, an applicant's age may be asked for benefit and insurance plans.

Questions to avoid

- Asking about age in general, or about birth certificates

Race, Colour, Ancestry, Place of Origin

Questions employers may ask

- "Are you legally entitled to work in Canada?"
- All those legally entitled to work in Canada must be given equal employment opportunity unless there is a legal restriction stating otherwise.

Questions to avoid

- Asking about birthplace or nationality, including nationality of relatives or spouse.

Pardoned Criminal Conviction

Questions employers may ask

- Consent to conduct a security check. Only unpardoned records will be made available.
- If bonding is required, ask applicants if they are eligible to be bonded.

Questions to avoid

- Asking generally about past criminal records, regardless of whether they've been pardoned.

Mental or Physical Disability

Questions employers may ask

- Applicants may be asked job-related questions concerning ability to do the essential components of the job.
- An applicant's disability is relevant to the job only if it prevents that person from effectively carrying out the essential components of the job.

Questions to avoid

- Asking for a general statement of disabilities, limitations or health problems.

Political Belief or Association

Questions to avoid

- Asking for statements of political beliefs and philosophy
- Asking about political party affiliations

Sex, Sexual Orientation, Marital/Family Status

Questions employers may ask

- If job mobility is required, ask the applicants if they are willing to travel or be transferred.
- Information regarding spouse, children and/or dependents required for benefit and pension plans can be obtained after hiring.

Questions to avoid

- Asking about an applicant's sex or sexual orientation.
- Asking for information regarding pregnancy, childcare arrangements, or childbearing plans.
- Asking whether the applicant is single, married, divorced, engaged, separated, widowed or living common-law.

An employer can ask questions that relate to a prohibited ground of discrimination when there is a “bona fide occupational requirement”, for example:

- “Furniture-moving requires walking while carrying heavy objects for up to 5 hours per shift. Can you provide medical confirmation that you can meet this requirement?”

To find out how to determine if a job standard meets the legal standard of “bona fide occupational requirement” read the Commission’s publication, “**Duty to Accommodate Guidelines for Employers.**”

Religion or Creed

Questions employers may ask

- Applicants may be asked job-related questions such as whether they are available for the required work time.
- Employers must be reasonable in accommodating the religious needs of employees.

Questions to avoid

- Asking for statements concerning religious affiliation, religious belief and church membership.

Pre-Employment and Post-Hiring Inquiries

If an employer asks questions that are not directly related to occupational requirements, and relate to the prohibited grounds listed in the *Act*, then the employer is open to complaints of discrimination by unsuccessful candidates.

A distinction can be drawn between pre-employment and post-hiring inquiries. Questions that could be considered discriminatory before hiring may be asked afterwards if there is a legitimate need for the information. For example, a candidate's marital status should not be asked before hiring, but may be asked afterwards for taxation purposes or employee benefits.

Employment Agencies

An employment agency cannot refuse to refer a person for employment on the basis of the grounds listed earlier in this Guide. Section 8 of the *Act* specifically prohibits employment advertisements that express a limitation, specification or preference based on a prohibited ground. The exception to this rule is when the limitation, specification or preference is based on an occupational requirement.

Advertising that contains accurate, job-related specifications will save time and energy for employers and applicants and prevents complaints of discrimination.

Wage Discrimination

Section 9 of the *Act* requires that employees doing similar or substantially similar work be paid the same wage. The exception is if the difference in wages is based on a seniority system, a merit system, different costs of living in different communities, or on some other factor not related to a ground of discrimination. All of the exceptions are listed in Section 9 of the *Act*. The obligation rests with employers to ensure that a prohibited ground of discrimination is not a factor in determining wages.

Disability

Disability often comes up as an area of alleged discrimination in employment. This protected ground deserves specific mention.

People with physical or mental disabilities are protected under the *Act*. Employers should evaluate all applicants and employees on their ability to carry out the essential components of the job by:

- concentrating on a person's capability, not disability
- assessing people as individuals, not as members of a group
- not making generalizations about disabilities
- defining specific employment needs according to business priorities
- clearly stating the essential components of the job
- establishing reasonable standards for evaluating job performance
- considering the variety of accommodations available to ensure that the employee can perform at full capacity while ensuring the business needs are met.

Vern worked for the city as a casual truck driver in the maintenance department. There were many different jobs for casuals in the department. Seniority was accumulated – and permanent positions awarded – based on the number of hours a casual employee worked. Vern has a disability preventing him from doing general outdoor labour. Vern worked as a casual for 3 years, but due to his disability he did not qualify for a permanent position because he did not accumulate seniority as quickly as other casuals. The City accommodated Vern by making him a permanent truck driver. This allowed Vern to have benefits and accumulate pension. The City earned a loyal long-term employee.

Employing people with disabilities may involve some modification to the job or existing facilities. The “duty to accommodate” requires employers to consider how a job or the work environment could be modified to ensure that a qualified person with a disability is not unfairly denied the opportunity to work. These reasonable accommodations may include:

- reassigning non-essential work duties
- flexible work schedules
- physical alterations of facilities
- training or technical aids

The key factors in accommodating people with disabilities are flexibility and an emphasis on individual needs.

An employer may refuse to hire anyone whose disability prevents him or her from carrying out the essential components of the job. If an employer denies a person employment due to a disability, the burden is on the employer to prove that the job requirements were reasonable and the decision was not founded upon assumptions or stereotypes regarding people with disabilities.

The duty to accommodate also applies to all grounds of discrimination, not just disability. For more information about the duty to accommodation, please contact the Commission and ask for a copy of the **“Duty to Accommodate: A Guide for Employers”**.

Harassment

Harassment in the workplace may be broadly defined as unwelcome conduct related to a prohibited ground of discrimination that detrimentally affects the work environment or leads to adverse job-related consequences for those experiencing harassment.

Harassment is a demeaning practice that constitutes a profound affront to the dignity of the employees forced to endure it. It requires an employee to contend with unwelcome and offensive behaviour. Harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

Harassment can take many forms:

- Material that is racist, sexist, ageist, sexually explicit, anti-gay or lesbian, or insulting based on a ground of discrimination that is displayed publicly, circulated, or put in someone's workspace or belongings, or on a computer or fax machine
- Verbal abuse or comments that put down or stereotype people generally, or an individual particularly, because of their sex, pregnancy, race, sexual orientation, disability, or other ground of discrimination
- Jokes based on gender, race, marital status, sexual orientation, disability, or other ground of discrimination
- Sexually or racially offensive gestures
- Ignoring, isolating or segregating a person or group because of their sex, race, sexual orientation, etc.
- Staring or leering in a sexual manner
- Physical contact of a sexual or aggressive nature
- Repeated behaviour that a person has objected to and, therefore, is known to offend.

Employers can be liable for:

- Harassment by supervisory personnel
- Co-worker harassment that creates a poisoned environment or which has a negative effect on the work environment
- Harassment of employees by clients, customers or others

Pardeep works in a retail store. Pardeep is of South Asian ancestry. A customer became angry when Pardeep explained that his order was late. He called her racist names and told her she should go back to where she came from. He stormed out of the store. Later that day, the customer called Pardeep and continued his verbal abuse over the phone. Pardeep responded by swearing at him and hanging up. Pardeep's manager overheard her swear and threatened to fire her for swearing at a customer. When Pardeep explained what happened, the Manager called the customer and told him that it was not acceptable to verbally abuse employees. Pardeep was not reprimanded.

Special Programs

The *Act* allows employers to adopt employment equity and other special programs that are designed to ameliorate conditions of disadvantaged individuals and groups.

Employment equity programs remove barriers to employment faced by members of disadvantaged groups in order to create workplaces that are representative of the people they serve.

Complaint Process

An employer can take steps to prevent human rights complaints by adopting non-discriminatory policies and procedures. However, if a complaint is filed, the Director of Human Rights takes the following steps:

Filing the Complaint

A person can file a complaint when they provide information that indicates that they were discriminated against in employment on the basis of one of the prohibited grounds. A complaint must be filed within two years of the alleged discrimination.

Review by Director

The Director reviews the complaint to ensure that it falls under the *Act* and that it meets the requirements of the Commission. Under Section 44 of the *Act*, the Director can dismiss a complaint if:

- It is not within the jurisdiction of the *Act*
- The acts or omissions alleged in the complaint do not contravene the *Act*
- The complaint was filed for improper motives or made in bad faith
- The substance of the complaint has been appropriately dealt with in another proceeding, such as a labour arbitration or civil lawsuit.
- The contravention alleged in the complaint occurred more than two years before the complaint was filed unless the Director decides to extend the time limit in that particular case.

Investigation

Once a complaint is reviewed and accepted the employer receives a copy of the complaint and is given the opportunity to respond.

Depending upon the issues in the complaint, an investigation can include a brief request for additional information, or could be a more in-depth investigation where witnesses are interviewed and much more documentation is required to be analyzed.

A report of investigation is disclosed to the person who filed the complaint and the employer. Both parties have the chance to respond and the chance to review all the responses.

Decision After Investigation

The Director decides, based on the complaint, the investigation, and the responses to the investigation to either dismiss the complaint further to Section 44 of the *Act*, or to refer to for a public hearing, further to Section 46 of the *Act*. Section 44 of the *Act* is summarized above, under “Review by Director”. Section 46 authorizes the Director to refer a complaint if there is information that it should not be dismissed and if the parties are unable to settle the complaint through mediation.

Mediation

The *Act* requires the Director to assist the parties in reaching a settlement. Mediation and settlement can occur at any stage in the complaint process.

In mediation, an impartial third party appointed by the Director helps those involved in a human rights complaint reach a settlement. Mediation often avoids costly procedures and delays, benefiting everyone involved. Complainants and employers both appreciate dealing with complaints quickly and having some input into the final outcome of the complaint.

Hearing

Public hearings are conducted by the independent and separate NWT Human Rights Adjudication Panel. At the hearing each side presents their case to the Adjudicator.

Decision And Order

After the hearing, the Adjudicator makes a decision and gives reasons for this decision in writing. One of the purposes of the *Act* is to remedy individuals that have been treated contrary to the *Act*. The purpose of the *Act* is not punitive.

If the Adjudicator finds that discrimination has occurred, it makes a remedial order under Section 62 of the *Act*. Section 62 of the *Act* allows several remedies:

- a cease and desist order
- making available the right, opportunity or privilege that was denied
- compensation for any wages or salaries lost, or expenses incurred
- financial damages for injury to feelings and self respect
- any other award the Adjudicator feels is appropriate to make the complainant whole as if no discrimination occurred.

Marie and Hazel both work as assistants at XYZ Inc. Marie is 53 years old and has worked at XYZ for 10 years. Hazel is 38 and has worked for XYZ for 8 years. When the new position of Accounting Supervisor is created, the manager offers the position to Hazel on the assumption that Hazel will be around longer because she's further away from retirement. The manager does not want to invest in training someone that he feels won't be around long. Marie is upset, but continues to work for XYZ. Hazel works as Accounting Supervisor for 1 year, then quits to go back to school. When the manager offers the job to Marie, Marie thanks him, but explains that she is resigning for a better job at another company.



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