

# ALBERTA HUMAN RIGHTS COMMISSION

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# What is the Alberta Human Rights Commission?

The Alberta Human Rights Commission is set up to protect Albertans against discrimination

The WRC can only help with discrimination in the workplace

- \* If there is discrimination in other aspects of your life, please contact the WRC and we will refer you to an organization that may be able to help you

# Protected Grounds

No one in Alberta can do or say anything bad to you based on your:

- \* Race
- \* Marital status
- \* Religious belief
- \* Colour
- \* Family status
- \* Gender (this includes pregnancies as well)
- \* Gender identity
- \* Gender expression
- \* Sexual orientation
- \* Place of origin
- \* Ancestry
- \* Age (only over the age of 18 years old)
- \* Physical disability (temporary or permanent)
- \* Mental disability
- \* Source of income

# Accommodations

Accommodation means making changes to certain rules, standards, policies, workplace cultures and physical environments to ensure that they do not have a negative effect on a person because of a protected ground

The goal of accommodate is to enable equitable participation in any of the areas protected by the Alberta Human Rights Act

# Accommodations

The Alberta Human Rights Act also protects Albertans in the area of equal pay

Accommodation is a way to balance the diverse needs of individuals and groups with the needs to the organization or business

It may cause a degree of inconvenience, disruption and expense to an employer. However, accommodation to the point of undue hardship is required by law

# Duty to Accommodate

Employers have a legal duty to take reasonable steps, in policies or conditions of work, to accommodate an employees individual needs

This duty applies to all grounds of discrimination covered under the Alberta Human Rights Act

This legal duty does not apply if the only way to resolve the problem will cause the employer an undue hardship

# Who can Request an Accommodation?

Anyone who needs an accommodation to overcome a disadvantage caused by the application of a rule or a practice may request an accommodation

The reason for the accommodation must be based on a need related to one or more the protected grounds

# Rights & Responsibilities of the Person Seeking an Accommodation

1. Ensure that the concern falls under any of the areas and protected grounds of the Alberta Human Rights Act
2. Inform the employer about the need for accommodation
3. Bring the situation to the attention of the employer, preferable in writing. Include:
  - \* Explain why an accommodation is required
  - \* Support the request for the accommodation with evidence or documentation
  - \* Provide medical information that explains the employee's functional limitations and necessary accommodations (if necessary) – i.e. a doctor's note
  - \* Suggest appropriate accommodation measures
  - \* Indicate how long the accommodation is required (if known)



# Rights & Responsibilities of the Person Seeking an Accommodation

4. Allow a reasonable amount of time for the employer to reply to the request for accommodation
5. Listen to and consider any reasonable accommodation options that the employer proposes. A person seeking an accommodation has a duty to accept a reasonable accommodation, even if it is not one that the person suggested or prefers
6. Consult an expert such as a human resources consultant, union representative or lawyer if it is difficult to determine if the proposed options are reasonable

# Rights & Responsibilities of the Person Seeking an Accommodation

7. Request details of the cost or other factors creating undue hardship, if the employer indicates that an accommodation would pose an undue hardship. Provide more details about your needs if such information is helpful
8. When an accommodation is provided, make a formal written agreement with the employer
9. Cooperate to make the agreement work

# Rights & Responsibilities of the Person Seeking an Accommodation

10. Advise the employer when/if accommodation needs have changed. Provide medical documentation to support these changes, if required, to assist the employer in the process of modifying the accommodation
11. Be willing to review and modify the accommodation agreement if circumstances or needs change and the agreement is no longer working
12. Tell the employer if the need for the accommodation ends

# Rights & Responsibilities of the Employer of Someone Seeking an Accommodation

1. Determine if the request falls under any of the areas and protected grounds of the Alberta Human Rights Act
2. Be aware that, once a request is received, the onus to accommodate is on the employer
3. Respect the dignity of the person requesting the accommodation

# Rights & Responsibilities of the Employer of Someone Seeking an Accommodation

4. Respect the privacy of the person requesting the accommodation.
  - \* Medical information is considered personal information and employers must abide by applicable privacy legislations when they collect, use or disclose an employee's medical information
5. Listen to and consider the needs of the person seeking the accommodation and their suggestions for the accommodation
6. Review medical or other information that the person seeking the accommodation provides to support the accommodation request

# Rights & Responsibilities of the Employer of Someone Seeking an Accommodation

7. Be willing to take substantial and meaningful measures to accommodate the needs of the person seeking the accommodation
8. Consult an expert such as a human resources officer or lawyer if more information is needed to assess the request
9. Be flexible and creative when considering and developing options
10. Discuss options with the person who needs the accommodation

# Rights & Responsibilities of the Employer of Someone Seeking an Accommodation

11. Take reasonable steps to accommodate the person seeing the accommodation to the point of undue hardship.
  - \* If accommodation is not possible without undue hardship, try to suggest options that may partially meet the needs of the person seeking the accommodation
12. Reply to the request for accommodation within a reasonable period of time
13. Make a formal written agreement with the person being accommodated and ensure that the accommodation is given a fair opportunity to work

# Rights & Responsibilities of the Employer of Someone Seeking an Accommodation

14. Follow up to ensure that the accommodation meets the needs of the person seeking the accommodation
15. Provide details that justify a refusal to accommodate, if accommodation is not possible because it poses an undue hardship or because of a bona fide occupational requirement
16. Be willing to review and modify the accommodation agreement if circumstances or needs change and the agreement is no longer working



# Bona Fide Occupational Requirement

In certain circumstances, a limitation on individual rights may be reasonable and justifiable

Discrimination or exclusion may be allowed if an employer can show that a discriminatory standard, policy or exclusion is a necessary requirement of a job (a bona fide occupational requirement)

- \* i.e. in order to perform their job duties safely, people employed as drivers require acceptable vision and an appropriate driver's license

# Bona Fide Occupational Requirement

Based on the Meiorin decision (1999), there is a three part test in which the employer must prove, on a balance of probabilities, the standard:

- \* Was adopted for a purpose that is rationally connected to the job performance
- \* Was adopted in an honest and good faith belief that the standard is necessary for the fulfillment of that legitimate purpose
- \* Is reasonably necessary to accomplish that legitimate purpose – this requires the employer to demonstrate that it is impossible to accommodate the employee without the employer suffering undue hardship

This test is applied on an individual or case-by-case basis

# Undue Hardship

Employers have a legal duty to take reasonable steps to accommodate individual needs to the point of undue hardship

To substantiate a claim of undue hardship, an employer must show that they would have experienced more than a minor inconvenience

In many cases, accommodation measures are simple and affordable and to not create undue hardships

# Undue Hardship

Undue hardship occurs if an accommodation would create onerous conditions for an employer

An employer must make considerable effort to find an appropriate accommodation for an employee

Some hardship may be necessary in making an accommodation; only when there is an undue hardship can the employer claim they have tried all the accommodations available

# Undue Hardship

To determine if an undue hardship would occur, an employer should review factors such as:

- \* Financial costs
- \* Size and resources of the employer
- \* Disruption of operations
- \* Morale problems of other employees brought about by the accommodation
- \* Substantial interference with the rights of other individuals or groups
- \* Interchangeability of work force and facilities
- \* Health and safety concerns

# IMPORTANT!!!!

The person filing the complaint has 1 year for the date of the incident to file a Human Rights complaint

- \* If the deadline is miss by one day because of the mail or the complainant forgot, Human Rights may not accept the claim

Also, document everything about the discrimination

- \* Who said or did what?
- \* When did it happen?
- \* What time did it happen?
- \* Where were you?
- \* Who was around to witness the discrimination

# Why do I have a year to file a complaint?

The person filing the complaint needs to have some sort of reasonable evident that the discrimination happened – it needs to be more than you said it happened and they say it didn't happen

- \* Text, email, voicemail, note in your locker, witness to the conversation etc.

Some people may want to wait until they no longer work for the company before they file their Human Rights complaint – so this gives them time to find another job

The person who witnessed the discrimination may be scared to help the person while they are still working at the company so this gives them time to find another job first

# Will I get in trouble for filing a Human Rights complaint or helping someone else file a Human Rights complaint?

No – a person can not be disciplined, terminated or treated differently by their employer for filing a Human Rights complaint or being a witness for someone who files a Human Rights complaint

If the employer does do any of these things, please document everything because there may be the ability to file another complaint based on retaliation



# How long does a Human Rights complaint take to be finalized?

Human Rights is a long process and the person filing the complaint need to be patient with it

- \* The WRC has had Human Rights complaints take over 5 years from the day we filed it to be complete

# What to ask for with Human Rights complaints?

## An apology from the company

- \* This is the least the person deserves
- \* We have had companies before that are genuinely sorry to find out there was discrimination in their workplace

## A good reference letter

- \* Because maybe the person quit their job due to discrimination or they were terminated from their job due to discrimination

Supervisors and managers at the company to attend Human Rights training

Money for the person who was discriminated against

# What type of money can a person ask for when discrimination occurs?

## Lost wages

- \* Easy to determine
- \* The person was unable to work for a period of time due to the discrimination – how much money did they lose?
- \* This is taxable income

## General damages

- \* More complicated
- \* Based on the fact that it happened because discrimination can be very emotional, stressful, frustrating, traumatic
- \* Look at many things to see how much to ask for
  - \* Wage and the length of employment – if someone has been there longer then can ask for more in general damages
  - \* Who did the discrimination – co-worker, supervisor or manager, someone they were supervising or managing
  - \* Not necessary but If they spoke to someone at the company how did they respond?
    - \* Did the company address it in some way or did they just ignore it and pretend like it was not a big deal?
    - \* If they did speak with someone in the company please document this information as well
  - \* Precedent – past cases that are similar
- \* This is tax free so you get to keep all of this money

# What should I do if I need help with Human Rights?

If you need assistance with Human Rights or discrimination in the workplace, please contact

Workers' Resource Centre  
at 403-264-8100 or [info@helpwrc.org](mailto:info@helpwrc.org)  
to make an appointment with one  
of the WRC caseworkers