



The Duty to Accommodate

A look at Canada's human rights legislation and employers obligations

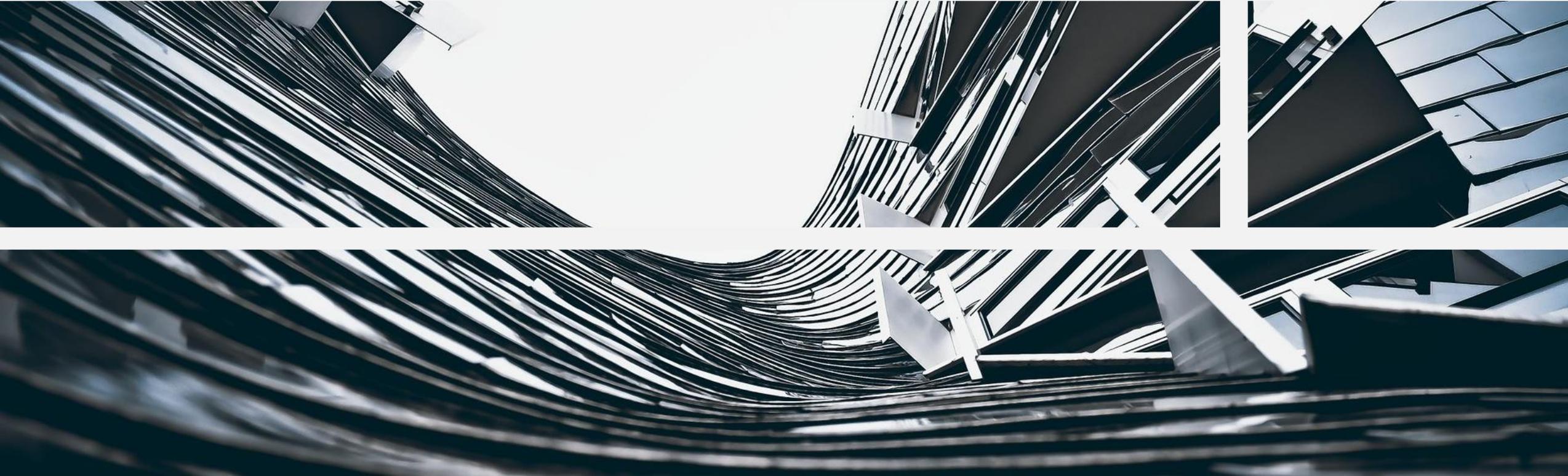


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Laws Governing Employment in Canada

Workplace Labour Laws

In British Columbia, there are numerous employment laws that apply to the workplace.

Unionized employees are governed by a **Collective Agreement**, and the **B.C. Labour Relations Code (LRC)**.

Non-unionized workplaces are generally governed by the **BC Employment Standards Act (ESA)** or the **Canada Labour Code (CLC)**. They may also be governed by an **Employment Contract** between the employee and the employer.

As an advocate, a manager or an employer, it is important to understand all these **Regulations** and how they apply to the business and the employment relationship.

Employment Standards Act

Each Canadian province sets the minimum employment standards applicable to all employees within their jurisdiction. These minimum statutory employment standards include:

- The minimum wage for hours worked
- The maximum number of hours worked in a day and week
- The minimum time required off work
- Notice and severance entitlements in the event of termination of the employment relationship

Employment standards legislation prescribes a minimum standard that employees cannot waive by contract. Higher standards are often customary in many industries in Canada, and lower standards are unenforceable.

Not every workplace or type of work is covered by B.C. employment standards

Several types of workplaces, workers and professions set their own standards or are [federally-regulated](#).

Unionized workplaces

Unions have collective agreements that set workplace standards for their members.

Independent contractors

Self-employed workers are responsible for setting their own workplace standards.

Professionals

Some members of professional associations aren't covered by B.C. employment standards.

Specific regulations

Some sectors, industries or types of workers have specific regulations that only apply to them.

Excluded jobs

Workers performing specific types of duties or receiving certain benefits aren't covered by B.C. employment standards.

Who is not covered by the ESA?

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Employees of *federally regulated employers*. The list of Federally Regulated Businesses and Industries includes:

- Banks;
- Marine shipping, ferry and port services;
- Air transportation, including airports, aerodromes and airlines;
- Railway and road transportation that involves crossing provincial or international borders;
- Canals, pipelines, tunnels, and bridges that cross provincial borders;
- Telephone, telegraph, and cable systems;
- Radio and television broadcasting;
- Grain elevators, feed, and seed mills;
- Businesses dealing with the protection of fisheries as a natural resource;
- Most federal Crown corporations;

And employees in certain exempt professions: example physicians, veterinarians, architects

And unionized employees, and.....

More Legislation

The Charter of Rights and Freedoms protects a Canadian's right to be treated equally under the law. The Charter guarantees broad equality rights and other fundamental rights such as the freedom of expression, freedom of religion, and the freedom of association.

Human Rights legislation prevents discrimination based on a number of factors such as gender and age. Every jurisdiction, including provincial and federal, has Human Rights legislation. These laws apply to all workplaces and affect all aspects of employee relations including hiring, compensation, promotions, discipline and training.

Protected Grounds under the Canadian Human Rights Act

Employers may not refuse employment or otherwise discriminate against a person on grounds protected by:

- Race
- National or ethnic origin
- Colour
- Religion
- Age
- Sex
- Sexual orientation
- Gender identity or expression
- Marital status
- Family status
- Genetic characteristics
- Disability
- Conviction- pardoned

The Duty to Accommodate

What is the “Duty to Accommodate” ?

Sometimes people need to be treated differently in order to be fair to them. Employers have an obligation to eliminate negative treatment of individuals, based on prohibited grounds of discrimination.

This is called the duty to accommodate, and it is a service providers / employers' obligation to accommodate a person when their needs are based on the grounds in the Canadian Human Rights Act. This may require that alternative arrangements be made to ensure full participation of a person.

The duty to accommodate has limits. Sometimes accommodation is not possible because it would cause an organization undue hardship.

Undue Hardship

Factors used by the courts to assess the threshold include:

- financial costs;
- health and safety risks;
- availability of positions;
- disruption of a collective agreement;
- problems of morale of other employees;
- size and flexibility of the workplace.

Accommodation
There is no one
solution.



Does the duty to accommodate apply to all grounds of discrimination?

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Yes, it does.

However, the duty to accommodate is most often applied in situations involving persons with disabilities.

What is the Process of Accommodation?

When approached with a request for accommodation, an employer or service provider is expected to do the following:

- determine what barriers might affect the person requesting accommodation,
- explore options for removing those barriers, and
- accommodate to the point of undue hardship.

Accommodation is a Two-Way Street

Employers have a duty to accommodate the needs of the employee, not to fulfill the employee's preferences, *and are* within their rights to choose accommodations that are cost effective and the least disruptive to the workplace.

Employees have a duty to participate in both the identification of requirements and, where possible, alternatives and solutions.



Medical Information

Some employers believe that if they have to accommodate, they also have the right to know the precise diagnosis of the employee's disability. This is not the case.

An employer is only entitled to receive the information necessary to enable it to accommodate the employee.

Addiction

Drug and alcohol addictions are disabilities under the Code.

There is often significant cross-over between addictions and mental health issues, with many people experiencing both.

People with addiction disabilities have the same right to be free from discrimination as other people under the Code.

Addiction

An accommodation based on addiction ***does not entitle an employee:***

- to be impaired at work
- to compromise their safety, or the safety of others
- to unexcused absences or late arrivals
- to smoke/vape (cannabis) in the workplace.

Anti-smoking laws apply to smoking cannabis in the same way they do to regular cigarettes

The employer is, however, required to attempt to find suitable, accommodated work for the employee, as would be required for any other disabled employee.

THANK YOU



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