

## ***EMPLOYERS GUIDE TO HUMAN RIGHTS***

This fact sheet identifies key areas of concern for employers. However, it is not comprehensive, nor is it a legal document. For further information, access <http://www.ag.gov.bc.ca/human-rights-protection/pdfs/EmployerInfo.pdf>, refer to the Human Rights Code or contact the nearest office of the BC Human Rights Commission.

### **EMPLOYERS' RIGHTS**

The Human Rights Code enforces the merit principle in personnel decision-making. 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 Code

### **EMPLOYEES' RIGHTS**

The Human Rights Code 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 Code and who acts promptly to remedy human rights problems arising 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

## RECRUITMENT

### Guidelines

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. The test of effective recruitment procedures is whether all qualified candidates are encouraged to apply.

Prohibiting discrimination benefits everyone, including employers, because 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.

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. Asking certain questions could lead to a complaint of discrimination if individuals protected by the legislation are denied employment opportunities.

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

<i>Subject</i>	<i>Questions employers may ask</i>	<i>Questions to avoid</i>
<i>Age</i>	<ul style="list-style-type: none"> <li>▪ Have you reached BC's legal working age?</li> <li>▪ After hiring, an applicant's age may be asked for pension, benefits and insurance plan purposes.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Asking about age in general, or about birth certificates.</li> </ul>
<i>Race, Colour, Ancestry, Place of Origin</i>	<ul style="list-style-type: none"> <li>▪ Are you legally entitled to work in Canada?</li> <li>▪ All those legally entitled to work in Canada must be given equal employment opportunity unless there is a legal restriction stating otherwise.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Asking about birthplace or nationality, including nationality of relatives or spouse.</li> </ul>
<i>Political Belief</i>	<ul style="list-style-type: none"> <li>▪</li> </ul>	<ul style="list-style-type: none"> <li>▪ Asking for statements of political beliefs and philosophy.</li> </ul>
<i>Sex, Sexual Orientation, Marital Status, Family Status</i>	<ul style="list-style-type: none"> <li>▪ If job mobility is required, ask the applicants if they are willing to travel or be transferred.</li> <li>▪ Information regarding spouse, children and/or dependents required for benefit and pension plans can be obtained after hiring.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Asking about an applicant's sex or sexual orientation.</li> <li>▪ Asking for information regarding pregnancy, childcare arrangements, or child bearing plans.</li> <li>▪ Asking whether the applicant is single, married, divorced, engaged, separated, widowed or living common-law.</li> </ul>
<i>Mental or Physical Disability</i>	<ul style="list-style-type: none"> <li>▪ Applicants may be asked job-related questions concerning ability to do the essential components of the job.</li> <li>▪ 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.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Asking for a general statement of disabilities, limitations or health problems.</li> </ul>
<i>Religious Belief</i>	<ul style="list-style-type: none"> <li>▪ Applicants may be asked job-related questions such as whether they are available for the required work time.</li> <li>▪ Employers must be reasonable in accommodating the religious needs of employees.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Asking for statements concerning religious affiliation, religious belief and church membership.</li> </ul>
<i>Education</i>	<ul style="list-style-type: none"> <li>▪ Any educational requirements should be related to job duties.</li> </ul>	<ul style="list-style-type: none"> <li>▪</li> </ul>
<i>Criminal or Summary Conviction</i>	<ul style="list-style-type: none"> <li>▪ Inquiries about criminal or summary convictions are discouraged unless directly related to job duties.</li> <li>▪ If bonding is required, ask applicants if they are eligible to be bonded.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Asking for statements of criminal and/or arrest record, unless job requires working with children.</li> </ul>

### ***Pre-Employment and Post-Hiring Inquiries***

If an employer asks questions that are not directly related to bona fide occupational requirements, and relate to the prohibited grounds listed in the Human Rights Code, 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 or employee benefits plan purposes.

### ***Special Programs***

The Human Rights Code encourages 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.

Under Section 37(2)(c) of the Code, the Tribunal can order an employer to implement an employment equity program or other special program if the evidence at the hearing indicated a pattern of discrimination.

Employers who wish to implement these programs can contact the Commission for advice and assistance. They can also apply to the Commission for approval of these programs under Section 42(3) of the Human Rights Code

*Source: Ministry of Attorney General, Human Rights in British Columbia*