Employment

Know Your Rights Alberta – Legal Information Handbook

November 2024

CNIB

Disclaimer

This content is provided as general information and is not legal advice. If you need advice about a specific legal issue, contact a lawyer.

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To learn more about the Know Your Rights project, please visit **cnib.ca/KnowYourRights**

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My Legal Rights

Q: What legal rights do I have when it comes to employment in Alberta?

A: Under Alberta laws, people with disabilities have important legal rights when it comes to employment:

- You have the right to be treated equally in the workplace without discrimination because of your disability. This right includes the following:
    - The right to be treated without discrimination when your employer is determining your wages and benefits.
    - The right to be treated without discrimination when your employer is deciding on promotions.
    - The right to be treated without discrimination in the day-to-day operations of the workplace.
    - The right to be treated without discrimination if a decision is being made to terminate your employment.

- You have the right to receive accommodations for your disability from your employer, prospective employer, or employment agency, up to the point of undue hardship.
    - Your employer must accommodate you in a way that respects your dignity, meets your individual needs, and promotes your integration and full participation in the workplace, to the point of undue hardship.
    - Accommodations in the workplace include things like providing you with special equipment, modifying tasks, or creating new policies that enable you to succeed at your job, such as:
        - Technological supports
        - Modifications to the work environment
        - Customized work duties
        - Additional training

- You have the right to challenge employment practices that you believe are based on unlawful discrimination.
- You have the right to work in a healthy and safe work environment.

Duty to Accommodate & Undue Hardship

An employer's "**duty to accommodate**" means that they are legally required to provide you with the supports you need to succeed in the workplace. This will look different in every situation.

The duty to accommodate is limited. This limit is called "**undue hardship**". It is accepted that some hardship to the employer will occur. Hardship will only be considered **undue hardship** in the following circumstances:

- The employee has been accommodated but is still unable to perform the job.
- The accommodation would threaten the proper operation of the business. An accommodation may be found to threaten the proper operation of a business if it:
    - is so expensive that the financial cost is unbearable
    - causes health and safety risks
    - causes considerable disruption to business, or
    - interferes with the rights of others.

It is important to note that it is not enough for an employer to **simply claim** undue hardship. An employer **must show clear evidence** of undue hardship.

Alongside the right to reasonable accommodation, employees also have responsibilities. These include:

- telling an employer when accommodations are required
- working with your employer in putting accommodation in place
- not turning down a reasonable proposal for accommodation
- providing medical or other information that justifies the request for accommodation

Bona Fide Occupational Requirement

There is an important exception to an employer's legal duty to accommodate you. Employers do not have a legal duty to accommodate you if you are unable to meet a ***bona fide*** **("in good faith") occupational requirement** of a job because of your disability. This means that if a discriminatory policy, standard, or rule is essential to performing the requirements of a job, then it may be permitted.

Here's an example of a bona fide occupational requirement:

For the job of an airplane pilot, a certain degree of sight is an essential requirement to perform the work safely. If someone can't meet this requirement because of their disability, an employer does not have a legal duty to reasonably accommodate them.

If you are uncertain as to whether a job qualification is *bona fide*, you should consider consulting with a lawyer who practices employment or human rights law to see what options may be available to you.

Q: Do I have these legal rights even when I'm looking for work or when I'm leaving a job?

A: Yes. You have the legal rights explained above through all stages of employment, whether you are:

- looking for work – for example, responding to job advertisements, attending interviews, using employment agencies, or completing an application form;
- at work – for example, interacting with colleagues, clients, or customers; o
- leaving work – for example, changing jobs or being laid off.

Q: Where do my legal rights come from?

A: Your legal rights come from a variety of different laws, including:

- The **Alberta Human Rights Act**, which prohibits discrimination based on disability in most areas of public life, including in the workplace.
- Alberta's **Employment Standards Code**, which establishes the minimum standards that most employers must comply with. See also the **Employment Standards Regulation** for more specific rules and exceptions.
- Alberta's **Occupational Health and Safety Act**, which creates safety standards within the workplace. See also the **Occupational Health and Safety Regulation** and the **Occupational Health and Safety Code** for more specific rules.
- Alberta's **Labour Relations Code**, which creates the rules about unions and collective bargaining.
- Alberta's **Workers' Compensation Act**, which creates the Workers' Compensation Board to deal with workplace injuries.
- The **Canadian Human Rights Act**, which protects Canadians from discrimination when they are employed by or receive services from the federal government, First Nations governments, and private companies regulated by federal authorities, such as banks, inter-provincial transport companies, broadcasters, and telecommunications companies.

Q: Who must comply with Alberta's employment and human rights laws?

A: The **Alberta Human Rights Act** and other Alberta employment laws apply to all employees and employers in Alberta, except those companies and employees falling under federal jurisdiction. **Read the list of federally regulated industries and workplaces**.

Employees and employers operating businesses that are under provincial jurisdiction must comply with Alberta's human rights and employment laws. This includes:

- Employees
- Employers, including prospective employers, and employment agencies, both for-profit and not-for-profit
- Independent contractors, unions, trade unions, self-governing professions, and other occupational associations
- The Alberta government and its boards and agencies

Your legal rights protect you in most situations, such as when you are dealing with:

- clients and customers
- employers, prospective employers, or employment agencies
- trade unions, occupational associations, or self-governing professions

Q: I work in a federally regulated industry. Do Alberta employment and human rights laws apply to me?

A: If you work in a federally regulated industry, federal employment and human rights laws usually apply instead of Alberta laws. Examples of federally regulated industries include banks, airlines and federal Crown corporations. **Read the list of federally regulated industries and workplaces**.

There are federal laws that provide protections for workers in federally regulated industries including:

- The **Canada Labour Code**, which establishes the minimum standards that most employers must comply with, creates safety standards, and provides rules about unions and collective bargaining.
- The **Canadian Human Rights Act**, which prohibits discrimination on the grounds of disability in employment.

Q: What can I do to enforce my legal rights?

A: If you have experienced discrimination while looking for work or while working, there are things you can do to challenge the discrimination.

In general, you should first try to resolve your concerns by speaking with the people who are directly involved in an informal and collaborative way.

Did you know…

If you need individual advocacy support, CNIB may be able to help. CNIB advocacy support services are available to give you the tools and resources you need to take action and confidently advocate for yourself. Submit a request for one-to-one advocacy support **here**.

For additional resources on self-advocacy, review the **Self-Advocacy & Essential Legal Information Handbook** on the Know Your Rights website.

If your concerns can't be addressed through collaborative discussions, you should consider consulting with a lawyer who specializes in human rights or employment law to determine if any of the following options are appropriate:

- **Making a complaint** to the **Alberta Human Rights Commission.**
- **Making a complaint** to the Government of Alberta's **Employment Standards office**.
- **Making a complaint** to the Government of Alberta's **Occupational Health and Safety office.**

Common Scenarios

Even though there are laws to protect you from discrimination, people with disabilities still face barriers to accessing employment opportunities and fulfilling their potential in the workplace.

This section describes barriers that are commonly experienced and suggests practical next steps. Keep in mind that, in most situations, you should first try to resolve your concerns by speaking with the people who are directly involved in an informal and collaborative way.

Applying for Jobs

Q: When should I disclose my sight loss?

A: You are not required to disclose your disability to your employer, but it may be a good idea to do so, depending on the situation.

There's no single "right answer" about whether you should disclose your disability to an employer and when you should do so. You need to consider the pros and cons depending on what you know about the job, the employer, the industry, and your own feelings.

That being said, it can be a good idea to disclose your disability before an interview to ensure that appropriate accommodations are provided to you during the interview. This is especially important if a written test or other type of formal evaluation is part of the interview process.

Other reasons to disclose your disability in advance of an interview may include:

- Ensuring you can frame your disability in a positive way that highlights your achievements
- Ensuring that the employer is not surprised
- Demonstrating that you are pro-active in finding solutions

There are also potential cons to disclosing your disability before an interview. For example, you may be worried that the employer could form misconceptions about you based on false stereotypes before you are able to meet them in-person.

Q: Who should I disclose my disability to in the workplace?

A: It depends on the size of the employer and other types of organizations involved (for example, a union or a temporary placement agency). In a large company, you may want to speak with the human resources department, a workplace accessibility advisory committee, or a union representative. In smaller workplaces, you may want to speak directly with your employer or supervisor.

Q: I'm looking for a volunteer position. Am I entitled to receive accommodations as a volunteer?

A: In general, yes. The **Alberta Human Rights Act** applies to people who perform duties within a "work context", which includes volunteers. Most organizations that accept volunteers have a legal duty to provide them with reasonable accommodations for their disability, but not beyond the point of undue hardship.

Q: There's a requirement in a job advertisement that I cannot meet because of my sight loss. For example, the requirement for a driver's license. Should I still consider applying for the job?

A: Sometimes job advertisements include "requirements" that are not essential to doing the job in a safe or effective way. If you can't meet a requirement in a job advertisement because of your disability, and you believe that requirement is **not essential** to doing the job, then you should still consider applying for the job. When a job advertisement includes a "requirement" that is **not essential** to doing the job safely or effectively, the employer is **not allowed to reject** your application on the basis that you could not meet that requirement.

Here's an example:

Mary is looking for work. She is trained as an accountant, and she has sight loss which prevents her from driving. Mary sees a job advertisement for an accountant position that is based in one office and does not require travel to other locations. The job advertisement includes a requirement that "all applicants must have a driver's licence".

In this example, the requirement that applicants must have a driver's licence is not essential because it does not affect whether someone can do the job in a safe or effective way. If Mary chooses to apply for this job, the employer is not allowed to reject her application on the basis that she doesn't have a driver's licence.

How can you tell which job requirements are "essential" and which are not? It is not always easy to know because the law on this topic can be complex. Whenever you are in doubt, it's important to get help from a lawyer who can apply the law to your specific situation.

Here's an example of when it's not 100% clear if a job requirement is essential:

Fara is looking for work. She is an experienced salesperson, and she has sight loss that prevents her from driving.

Fara sees a job advertisement for a sales associate position that will require frequent travel to different client locations. The job advertisement includes a requirement that "all applicants must have a driver's licence".

If most clients are located nearby, then Fara could take a taxi to meet clients. The cost of a local taxi will probably not cause undue hardship to the employer. In this case, the requirement that applicants must have a driver's licence is probably not essential to the job.

However, if most clients are located far away, the cost of travelling by taxi to remote locations might create an undue hardship for the employer. In this case, the requirement that applicants must have a driver's licence could be essential to the job.

Fara should consider getting help from a lawyer who can apply the law to her specific situation.

Q: The online application is not available in an accessible format and is incompatible with my assistive technology. What can I do?

A: If you find a job posting in Alberta that's not in an accessible format, you have the right to request the job posting be provided in an accessible format from the employer, as an accommodation for your disability.

By disclosing your disability and making a request for accommodation, you trigger the employer's legal duty to accommodate you up to the point of undue hardship.

If you don't want to disclose your disability to the employer before you apply for the job, you can ask a friend to make the request for you. You can also get help from a local community organization or CNIB.

Interviewing

Q: I had the qualifications and performed well during the interview, but I didn't get the job. I feel that I have been discriminated against because of my sight loss. What can I do?

A: Sometimes there are clear signs that you have been discriminated against during an interview process. For example:

- The employer asks intrusive and inappropriate questions.
- The employer makes statements that are offensive or based on false stereotypes.
- The employer says that they cannot hire you because of your sight loss.

There are some questions that employers are prohibited from asking in an interview, such as questions about the nature or severity of your disability.

Employers **can** ask if you have a disability that would interfere with your ability to do the job. If you say yes to this question, they may ask about what duties you would have difficulty performing and the accommodations you would need.

When the signs of discrimination are not as clear, it can be harder to prove that you were discriminated against.

Before deciding what to do, it's important to understand how the law applies to your specific situation. You can read more about the **duty to accommodate at work** or **complete a self-assessment**, on the Alberta Human Rights Commission's website. You should also consider consulting with a lawyer who specializes in human rights or employment issues to see if a complaint to the **Alberta Human Rights Commission** is appropriate.

Accommodations at Work

Q: My sight loss is affecting my ability to do my job. What can I do?

A: Eventually, you will need to tell your employer how your disability is affecting your ability to perform job-related tasks. When you choose to disclose your disability to your employer, you will trigger their legal duty to accommodate you up to the point of undue hardship.

Before deciding what to do, it's important to understand how the law applies to your specific situation. You can read more about the **duty to accommodate at work** on the Alberta Human Rights Commission's website. You should also consider consulting with a lawyer who specializes in human rights or employment issues.

You may also contact **CNIB** to get information about how to develop a proposal for accommodation and receive support through the process. You may also wish to contact **Vision Loss Rehabilitation Canada** to obtain support on how to continue living independently and safely as your sight changes.

Consulting with a lawyer, together with services through **CNIB** and **Vision Loss Rehabilitation Canada**, can ensure that you have a well-developed advocacy strategy when speaking with your employer.

Q: My employer requested that I provide them with my medical diagnosis. Am I required to disclose this information to obtain accommodations at work?

A: Employees are often required to provide documentation from medical professionals for both physical and medical disabilities when they require accommodation at work. However, you are not required to disclose your specific medical diagnosis to your employer, unless it is necessary to assess the need for accommodation. For more information on providing your employer with medical information, visit the **Alberta Human Rights Commission's website.**

Q: My employer has provided me with accommodations, but they aren't working. What can I do?

A: Eventually, you will need to tell your employer how your current accommodations are not providing you with the support you need to succeed in your job.

Your employer has a legal duty to accommodate you up to the point of undue hardship. It's important to remember that selecting an appropriate accommodation is a collaborative process. As an employee requesting an accommodation, you have a legal duty to collaborate with the employer to help them select an appropriate accommodation.

Your employer has the right to get enough information from you about your disability to select an appropriate accommodation. If the employer asks for medical documentation about your disability, you should only provide the information that is necessary to explain your need for accommodations.

Before deciding what to do, it's important to understand how the law applies to your specific situation. You can read more about the **duty to accommodate at work** on the Alberta Human Rights Commission's website. You should also consider consulting with a lawyer who specializes in human rights or employment issues.

You may also contact **CNIB** to obtain information about how to develop a proposal for additional accommodation and receive support through the process. Consulting with a lawyer, together with services through **CNIB**, can ensure that you have a well-developed advocacy strategy when speaking with your employer.

Q: My employer assumes that all employees with sight loss require the same accommodations. Is this true or am I entitled to customized accommodations that are specific to my needs?

A: You are entitled to accommodations that are specific to **your** needs, as everyone's experience with vision loss is different. Employers must take reasonable steps to accommodate your needs to the point of undue hardship. When requesting accommodations from your employer, it is important that you and your employer work together to make sure they fully understand your needs and what type of accommodation you need.

Check out **CNIB** for some suggestions of simple accommodations that can be implemented in the workplace to meet your specific needs.

Q: Do I have to pay for my employment-related accommodations?

A: Your employer cannot make you pay for accommodations related to your disability. It is your employer's duty to accommodate you to the point of undue hardship and your employer is responsible for paying the costs of these accommodations.

Q: How soon must my employer provide me with accommodations once I have submitted my request and all required documentation?

A: The accommodation process requires collaboration between you and your employer. While your employer is required to provide reasonable accommodation to the point of undue hardship, they are not required to provide you with the exact accommodation you requested. Once an agreement has been made on the type of accommodations that are going to be implemented, your employer should provide them as soon as possible.

However, depending on the accommodation it may take some time to put in place. When discussing accommodation options, inquire about the next steps and establish a realistic timeline together with your employer. For more information on requesting accommodations in the workplace, read the **Requesting Accommodations in the Workplace guide** on the Alberta Human Rights Commission's website.

Q: I have been denied access to training programs within my workplace because of my sight loss. This has prevented me from accessing promotions and other opportunities. What can I do?

A: The **Alberta Human Rights Act** protects employees from discrimination in all stages of employment. This includes providing equal access to training programs and opportunities for career advancement.

Employers have a duty to develop non-discriminatory policies and procedures and accommodate employees to the point of undue hardship. If you are able to meet the bona fide occupational requirements of the program or advanced position, your employer should provide reasonable accommodations. Discuss potential accommodations with your employer to enable your participation in training programs.

If your employer refuses to make accommodations that could be made without undue hardship, you should consider consulting with a lawyer who specializes in human rights or employment issues, as you may wish to file a complaint with the **Alberta Human Rights Commission.**

Q: My employer has advised that due to another employee's allergies, I cannot have my guide dog in the workplace. What can I do?

A: Employees who are guide dog handlers have the right to access and fully participate in employment. Employers have a duty to accommodate employees with service animals up to the point of undue hardship.

Relationships in employment contexts often endure for extended periods of time. Individuals requiring accommodation of a guide dog in an employment context may, as a result, be required to produce a training certificate for their guide dog to confirm the specialized nature of their service animal.

Regarding whether the employee's allergies amount to undue hardship, the presence of the guide dog must present an **unreasonable risk** to the employee. Minor irritation, limited financial costs, or unsupported fears of property damage **do not** represent undue hardship.

In this scenario, an accommodation could include the following:

- Rearranging the physical workspace so the employee with allergies is far enough away from the guide dog to avoid an allergic reaction.
- Implementing enhanced cleaning protocol to remove potential allergens, such as dog hair.

Whether the accommodations would cause undue hardship depends on the particular case. If your employer refuses to make accommodations that could be made without undue hardship, you should consider consulting with a lawyer who specializes in human rights or employment issues, as you may wish to file a complaint with the **Alberta Human Rights Commission.**

Leaving Work

Q: I had to leave my job because my sight loss prevented me from performing my duties. What now?

A: If you believe you lost your job due to your sight loss, this may form the basis of a human rights complaint, and you may wish to contact the **Alberta Human Rights Commission**. If, however, your termination of employment is not linked to your disability and you do not think your employer met the minimum standards for termination, you may wish to file a complaint with the Government of Alberta's **Employment Standards office**.

You should consider consulting with a lawyer who specializes in human rights or employment issues to determine how the law applies to the unique circumstances of your case.

Constructive Dismissal and Toxic Work Environment

Q: What is constructive dismissal?

A: Constructive dismissal occurs when an employer significantly changes the terms of employment without their employee's consent or creates a toxic work environment, resulting in the employee feeling like they have no choice but to resign. Unilateral changes to an employment contract that may constitute a constructive dismissal include:

- Significant reduction in wages or salary
- Unreasonable changes in job responsibilities
- Failure to provide safe working conditions
- Failure to accommodate an employee's disability
- Harassment or toxic work environment

Constructive dismissal is a violation of an employee's rights. Several Alberta laws work together to protect employees. If you believe that you have been constructively dismissed, you should consider consulting with a lawyer who specializes in human rights or employment issues.

Q: What is a toxic work environment?

A: A toxic work environment is one in which the workplace culture and atmosphere are negative, unhealthy, and detrimental to the well-being of employees. The following are some of the signs of a toxic work environment:

- Bullying or harassment
- Degrading comments
- Discriminatory practices
- Lack of support for employees
- Unhealthy work boundaries

The ongoing stress of working in a toxic environment can have profound impacts on the health and well-being of employees. Individuals often feel as though they have no choice but to resign when faced with an ongoing toxic work environment. A toxic work environment may lead to a constructive dismissal.

If you believe your workplace is a toxic work environment, you should consider contacting the **Alberta Human Rights Commission** to see if you have a human rights complaint, or consulting with a lawyer who specializes in human rights or employment issues.

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