



HIV/AIDS and the Workplace Information Sheets



1 Nicholas, Suite 726, Ottawa ON K1N 7B7
Telephone: (613) 233 7440 ? Fax: (613) 233 8361
E-mail: info@icad-cisd.com ? Web: www.icad-cisd.com

HIV/AIDS and Human Rights in the Workplace

What do you think of when you think of human rights? Perhaps you think about hiring practices and the questions that can be asked during an interview, or perhaps you think about accessibility for persons with disabilities. When we talk about human rights in the workplace, a number of questions can come to mind.

Human rights laws are in place to create a work environment that promotes respect for the dignity and worth of all Canadians, mutual respect and understanding, and equal opportunity to participate in and contribute to the community. But where do these rights come from? Whom do they protect and what are your legal obligations and responsibilities?

The following information sheet provides an introduction to human rights in Canada and basic details about human rights principles and concepts in the workplace.

The United Nations Universal Declaration of Human Rights - Preamble to the Declaration

"Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the universal declaration of human rights as proclaimed by the United Nations".

- The United Nations Universal Declaration of Human Rights was signed by member countries in 1948. Since then the Canadian government has been working towards making universal human rights a part of Canadian law.

- The Universal Declaration of Human Rights is important for Canadians because it has provided us with a framework of human rights goals and standards to which Canadian legislation, institutions, and society can aspire.
- It is the basis for many of our human rights protections in Canada and around the world.
- The Universal Declaration of Human Rights does not include a description of practical steps governments can take to ensure that human rights are protected. It provides guiding principles. It does not provide instructions on how each country should implement them.

Protecting and Upholding Human Rights in the Workplace

There are four key mechanisms to protect and uphold human rights in the Canadian workplace, they are:

The Canadian Charter of Rights and Freedoms:

- This is a binding legal document that protects the basic human rights of all Canadians. It describes the Government's responsibility in upholding those rights. It is often cited in legal cases pertaining to

This is one in a series of information sheets addressing HIV/AIDS as an episodic disability in the workplace.

1. Benchmarking Organizational Policy Development and Implementation
2. A Rights Based Approach to Workplace Policy Development

3. HIV/AIDS and Human Rights in the Workplace

4. Discriminatory Business Practices
5. Privacy Protection in the Workplace
6. Employment Standards in the Workplace
7. Case Study
8. Practical Steps for Implementing Policies and Procedures
9. HIV/AIDS and the Duty to Accommodate
10. Examples of Successful Job Accommodation
11. How to Use the Policy Template Package
12. Policy Template
13. Frequently Asked Questions

human rights issues and guarantees that our laws and the justice system operate in accordance with fundamental rights and freedoms.

The Canadian Human Rights Act and The Canadian Human Rights Commission:

- Applies to workplaces that are integral to a federal undertaking or the operation of which falls within federal legislative authority.
- Covers workplaces such as federal departments and agencies, crown corporations, the post office, airlines, buses and railways which travel between provinces, chartered banks, telephone companies, radio or television stations, places of business where labour issues are governed by the Canada Labour Code and other federally-regulated industries.

Provincial Human Rights Laws and Legislation:

- Each province has its own human rights law, usually called a Code or a Charter, that covers other types of organizations not included under federal legislation. Most not-for-profits are covered under provincial or territorial human rights legislation.

Human Rights Commissions, Tribunals and Offices:

- Oversee the application of provincial human rights law and are also responsible for investigating complaints, providing legal channels to hear the complaints, finding solutions and working to educate us about human rights and promoting equality for groups in society that are frequently the target of discrimination.

In addition, each province has Employment Standards that set out in law, certain minimum rights to which employees are entitled in the workplace covering many aspects of employment including, but not limited to: minimum wage, overtime, termination and severance pay, hours of work, public holidays and leave from work.

Note: The Employment Standards Act and Human Rights legislation may apply at the same time. These two laws are not mutually exclusive.

In Canada there are also federal and provincial labour laws that cover unionized workplaces, ensuring the right to organize, encourage collective bargaining, promote harmonious labour relations and provide for effective and fair dispute resolution.

Human Rights Principles and Concepts in the Workplace

Every person has a right to equal treatment with respect to employment without discrimination and every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of the following protected grounds (from the Ontario Human Rights Code): race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (includes pregnancy), sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, disability and/or perceived disability

Note: Protected grounds can vary between provinces or territories. Please consult the Human Rights Office in your location.

The right to "equal treatment with respect to employment" covers every aspect of the workplace environment and employment relationship including job applications, recruitment, training, transfers, promotion, terms of apprenticeship, dismissal and layoffs. It also covers rate of pay, overtime, hours of work, holidays, benefits, shift-work, discipline, performance evaluations and any other terms and conditions that may apply.

Who is Protected By Human Rights Legislation at Work?

The protection extends to employees, temporary, casual and contract staff, including sub-contractors, as well as other persons in a work context including but not limited to employees from employment agencies and persons hired as medical or personal attendants. The

Ontario Code does not refer specifically to volunteers but the Commission takes the position that the phrase "equal treatment with respect to employment" in section 5 can be interpreted to protect anyone in a work-like context including individuals who work without a salary to gain experience, such as those on a practicum or being mentored and persons providing volunteer services. While there have been no Ontario decisions on these issues, some British Columbia decisions found that the province's human rights law applied to discrimination against a volunteer, under the areas of employment and services.

If you are in doubt about the interpretation of "persons in a work context", or for further information please contact your local human rights office.

Who is Responsible for Upholding Human Rights in the Workplace?

Complaints can be filed against employers, contractors, unions, and directors or individuals such as other employees and supervisors. An employer's liability for harassment and/or discrimination committed by its employees and agents is not necessarily limited to the workplace or work hours.

Human rights law includes the notion of the "extended workplace". Liability could attach to behavior or actions that occur away from the physical workplace but that have implications or repercussions in the workplace. For example, staff may be held liable for discriminatory incidents taking place during business meetings or trips, company parties, or other company-related functions.

Disability is a Protected Ground

HIV/AIDS as well as other episodic disabilities is a protected ground. The Ontario Human Rights Code, section 10, defines disability to include:

- a) Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness
- b) A condition of mental impairment or developmental disability
- c) Learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language
- d) A mental disorder, or
- e) An injury or disability for which benefits were claimed or received under the Workplace Safety and Insurance Act

Comparable provincial and territorial human rights laws are in place across Canada. All define disability as a protected ground.

Human Rights and Disability

Accommodation is a means of removing barriers preventing persons with disabilities from full participation in the workplace in a way that is responsive to their individual circumstances.

People with a disability have the right to have their individual needs accommodated, up to the point of undue hardship, in order to allow them to perform the essential duties of their job.