Discriminatory Business Practices

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Section 1. Definitions

**Discrimination** is usually described as the result (impact) of treating a person unequally by imposing unequal burdens or denying benefits, rather than treating the person fairly on the basis of individual merit.

**Discrimination** in employment is defined as treating people differently, negatively or adversely, in the course of their employment, because of a protected ground under human rights law. Human rights law states that disability is a protected ground. HIV/AIDS is defined as a disability.

**Discrimination** can affect employees and employers and has very real consequences in the workplace. It is usually based upon personal prejudices and stereotypical assumptions related to at least one of the protected grounds set out in human rights law. It is important from a human rights perspective to address both *acts of discrimination* and also *attitudes that exist in society*.

Section 2. Human Rights

Human Rights law states that 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: race, ancestry, national or ethnic origin, colour, citizenship, religion, age, sex (including pregnancy and childbirth), sexual orientation, marital or family status, disability or perceived disability or conviction for which a pardon has been granted.

The right to "equal treatment with respect to employment" covers every aspect of the workplace environment and employment relationship including but not limited to:

- Job application forms
- The process of applying for a job
- Recruitment and hiring
- Training
- Transfers
- Promotions
- Terms of apprenticeship
- Dismissal and layoffs
- Compensation
- Leave
- Benefits
- Discipline
- Performance evaluation, and/or
- Other terms and conditions of employment as may be applicable in each individual circumstance
Some examples of discriminatory business practices include:

- Directly or indirectly refusing to employ someone based on a protected ground (in this case, disability)
- Asking someone's HIV status on a job application form
- Terminating someone's employment based on a protected ground
- An employer pressuring an employee to resign after learning about a disability
- An employer that lays-off an employee without a valid, non-discriminatory reason
- An employer refuses to consider a medically supported request for accommodation
- Requesting an employee to disclose their medical status as part of the accommodation process
- The employer or others in the workplace harassing an employee based on a real or perceived disability
- An employer suddenly and/or unexpectedly reducing the number of work hours
- Requesting medical information, HIV status, information about other disabilities or health problems and/or medications that are being taken
- Verbal or physical harassment
- Unauthorized disclosure of confidential/private health related information
- Establishing or following any policy or practice which deprives persons of career opportunities based on the protected grounds, and
- Making adverse distinctions between employees based on the protected grounds

Towards the Individual:

- Loss of dignity and self-respect
- Lack of privacy and/or confidentiality of personal health information
- Harmful health impacts
- Fear and/or rejection
- Depression and/or isolation
- Increased stress levels
- Increased number of days away from the job
- Job performance challenges and issues
- Irreparable damage to inter-personal relationships with colleagues and/or manager
- Potential job loss
- Lack of income security resulting in poverty or financial distress, and
- Missed opportunities to fully participate in Canadian society

Towards the Organization:

- Wrongful termination that may result in legal action against the organization
- Human Rights violation that may result in complaint/investigation (against the organization and/or its managers)
- Monetary compensation that may be required to be paid by the organization
- Inconsistent treatment of employees
- Lack of trust from other employees
- Individuals not coming forward to discuss their requirements
- Lost productivity and/or wasted time
- Potential loss of reputation, and
- Inability to attract and retain qualified employees

The employer can set the standard for responding to discrimination in the workplace by ensuring an effective complaint resolution process.
It is important to note that internal complaint resolution procedures will vary from employer to employer and will depend on whether it is a unionized or non-unionized workplace. That said, all procedures should ensure that the following obligations are met:

- The complaint must be taken seriously
- It must be acted on promptly when it is received
- Appropriate resources must be applied to resolve the complaint
- A viable complaint mechanism must be in place
- The procedure must ensure that a healthy work environment is created and maintained for the complainant, and
- Decisions/actions taken by the employer must be communicated to the complainant

Section 6. Checklist for Developing an Anti-Discrimination Workplace Policy

The following is a checklist for some recommended practices when developing a policy to address discrimination in the workplace. For an example template of an anti-discrimination workplace policy, please consult your local human rights web-site.

- A statement setting out the employer's commitment to a fair and equitable workplace free of discrimination and harassment and that discrimination will not be tolerated by the employer/organization
- A statement of rights and obligations
- A statement indicating that no reprisals are permitted or will be taken against an individual making a complaint
- A list of the prohibited grounds of discrimination listed in human rights law
- Definitions
- Description/examples of unacceptable behaviour
- How internal complaints will be handled, including to whom is the complaint made; confidentiality; documentation procedures and length of time for complaint to be investigated
- Disciplinary measures that will be applied if a claim of discrimination is proven
- Options and/or corrective actions that will be available if a claim of discrimination is proven, such as: verbal or written apology from the person responsible and the organization; recovery of lost wages, benefits, job or promotion that was denied; and/or compensation for injury to dignity
- A statement reinforcing the right of employees to go to the Human Rights Commission/Office at any time during the internal process, as well as an explanation of any time requirements that are listed in the provincial/territorial human rights law
- Education is an important part of preventing discrimination in the workplace. Training for all staff members ensures that everyone knows the rules and how they will be applied. A human rights tribunal will often look at an employer's education programs to determine the level to which the employer has met its obligations under the Code. Having an effective education/training program could help resolve the matter should a complaint be filed.

Conclusion

Discrimination affects us all. Employers and employees can work together to do the following:

- Develop a workplace policy
- Measure the effectiveness of policies and procedures and make any necessary changes
- Provide and attend training and education workshops for managers and staff
- Take the steps necessary to create a diverse workplace where respect and dignity are practiced and maintained

For further information please consult your local human rights office or an employment lawyer in your province or territory. Further resource material can be obtained from HIV/AIDS and the Workplace at: www.icad-cisd.com.

Note: Some grounds may differ between provinces and territories. Please consult your local Human Rights office for further details.