

The Legal Context for HRM and Creating Safe and Healthy Workplaces

WHAT DO I NEED TO KNOW?

After reading this chapter, you should be able to:

- LO1** Explain the overall context and legal framework for human resource management in Canada.
- LO2** Discuss major areas of employment legislation including their relevance and implications for human resource management.
- LO3** Identify the requirements and implications of workplace health and safety.
- LO4** Discuss the ways employers promote worker health and safety.



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Public Services and Procurement Canada (PSPC) serves federal departments and agencies in a variety of capacities including property management of iconic government buildings. PSPC was recently recognized as one of Canada's Best Diversity Employers.

PSPC Recognized as a Best Diversity Employer

Public Services and Procurement Canada (PSPC), which serves federal departments and agencies as “the central purchasing agent, real property manager, treasurer, accountant, pay and pension administrator, integrity adviser and linguistic authority,” was recently recognized as one of Canada’s Best Diversity Employers. The award is based upon a review of an organization’s diversity and inclusiveness initiatives.¹

With more than 11,000 employees in Canada, Public Services and Procurement Canada “participates in the Federal Internship for Newcomers Program, is piloting a program to eliminate language-related barriers to career advancement, offering second language scholarships to high-potential individuals, launched a Positive Space initiative, has formal guidelines for gender transition, is developing a strategy to address official languages, hosts an annual Indigenous Awareness Week, and maintains a procurement strategy to increase contracts with Aboriginal businesses.”² Employee resource groups at Public Services and Procurement Canada include persons with disabilities, visible minorities, Aboriginal peoples, LGBTQ2+, Managers Community Network, National Youth Network, and a pilot Cancer Support project. These resource groups receive funding to host awareness events and promote initiatives for their networks.³

Introduction

As we saw in Chapter 1, human resource management takes place in the context of the company’s goals and society’s expectations for how a company should operate. In Canada, the federal, provincial, and territorial governments have set some limits on how an organization can practise human resource management. Among these limits are requirements intended to foster fairness in hiring and employment practices and to protect the health and safety of workers while they are on the job. Questions about a company’s performance in these areas can result in employee turnover, human rights complaints, lawsuits, and negative publicity that will cause serious problems for a company’s success and survival. Conversely, a company can gain a competitive advantage over its competitors by going beyond just legal compliance to find ways of linking fair and respectful employment and worker safety to business goals such as building a workforce that is highly motivated and attuned to customers.

One point to make at the outset is that managers often want a list of dos and don’ts that will keep them out of legal trouble. Some managers rely on strict rules such as “Don’t ever ask a female applicant if she is married,” rather than learning the reasons behind those rules. Clearly, certain

practices are illegal or at least inadvisable, and this chapter will discuss these areas. However, managers who merely focus on how to avoid breaking the law are not thinking about how to be ethical or how to attract and engage people in the best way to carry out the company’s mission. The legal landscape for human resource management is complex, evolving, and differs among jurisdictions. This chapter introduces ways to think proactively about fair employment and workplace health and safety, and provides a starting point for exploring the requirements for where you live and work.

The Legal Context for HRM in Canada

Valuing Diversity and Inclusion

As discussed in Chapter 1, Canada is a diverse nation, and becoming more so. In addition, many Canadian companies have customers and operations in more than one country. Managers differ in how they approach the opportunities and challenges related to this diversity. Some define a diverse workforce as a competitive advantage that brings a wider pool of talent and greater insight into the needs and behaviours of their diverse customers. These organizations, including Public Services and Procurement Canada described in the chapter opening, have developed a reputation for valuing *diversity* and *inclusion*.

Despite an “overwhelming strategic focus on diversity, many Canadian organizations are still reporting that, while overt racism, sexism, and homophobia are not as prevalent as they were a decade ago, diversity in workplaces has not yet translated into true inclusiveness.”⁴

Diversity refers to having “people of different backgrounds and experiences represented in the workplace.”⁵ Diversity can be calculated, tracked, and reported—it’s about *differences*. However, **inclusion** is about *behaviour* i.e. the “*how*” that creates an environment where people experience “a sense of belonging, feeling respected, valued, and seen for who we are as individuals.”⁶ Viewed this way, inclusion is not only the right thing to do but also the essential means to achieve higher operational performance that leverages how the organization “develops strategy, sets goals, makes decisions, runs meetings, solves problems, and engages people, and how people interact.”⁷

diversity Having people of different backgrounds and experiences represented in the workplace.

inclusion A sense of belonging: feeling respected, valued, and seen for who we are as individuals.

See Table 2.1 for a sampling of diversity initiatives implemented by some of the organizations recently recognized as “Canada’s Best Diversity Employers.”

TABLE 2.1

Sampling of Diversity Initiatives at Some of Canada's Best Diversity Employers (2018)

Organization	Initiative
Accenture	LGBT Ally training program
Bell	Language diversity program to help employees improve their French or English
Canada Mortgage and Housing Corporation (CMHC)	Online diversity training materials on topics including mental health, unconscious bias, and second-language training
CIBC	Diversity toolkit for people managers
Government of Northwest Territories	Training on Aboriginal cultural awareness and mental health
Lafarge Canada Inc.	Hosts mock interviews and workshops on interview preparation and networking strategies in partnership with Immigrant Services Calgary
Manulife	Influencing skills for female leaders (3-day program)
Red River College	Conducted an inclusive company climate review; Aboriginal elders available for staff and students
SaskPower	Head office accessibility was reviewed in collaboration with Spinal Cord Injury SK
Shell Canada	"Lunch and Learns" on unconscious bias, disability, and Indigenous awareness
Sodexo Canada	Workshops on unconscious bias; training on inclusion and generations

Source: Richard Yerema and Kristina Leung, "Canada's Best Diversity Employers (2018)," *Mediacorp Inc.*, www.canadastop100/diversity, accessed July 4, 2018.

Culture of Workplace Health and Safety

The protection of employee health and safety is regulated by the government; however, the effective management of health and safety in the workplace includes more than legal compliance. NB Power takes a holistic approach to health and safety and makes it one of the eight integrated HR functions. The other seven functions are recruitment, compensation, diversity, leadership, relationship management, well-being, and labour relations.⁸

Increasingly, organizations are taking a strategic approach to occupational health and safety by adopting a values-based commitment to safe operations as a way to protect people. Additional benefits to business include cost savings by reducing worker injuries, fatalities, occupational disease, and property damage as well as improving employee relations, reliability, and productivity improvement.⁹ Employers and employees share responsibility for creating and maintaining safe and healthy work environments. Employer–employee partnerships are put in place to create a climate and culture of safety in the organization in addition to ensuring compliance.¹⁰ Ultimately, however, employers have a legal duty to provide their employees with a physically and psychologically safe work environment.

The Legal Framework for HRM

Federal, provincial, and territorial governments in Canada all play an important role in creating the legal environment for human resource management. Approximately 94 percent of Canadian employers and their employees are covered by provincial and territorial legislation. The remaining 6 percent are covered by federal legislation. Table 2.2 summarizes the types of organizations that fall under federal and provincial /territorial legislation.

Federal, provincial, and territorial employment-related laws tend to mirror one another; however, some differences exist. It is important for employers to be aware of and comply with all legal requirements. For organizations with workers in more than one province, territory, or industry it can be time consuming and challenging to maintain compliance with this web of legal requirements. As mentioned previously in the chapter, many proactive human resource departments and their organizations are moving beyond a mindset of compliance and are recognizing the strategic importance of valuing the various goals pursued through the legislation; for example, diversity, inclusion, privacy, and the health and safety of employees.

TABLE 2.2

What Types of Organizations Are Regulated by the Provinces and Territories versus the Federal Government?

Organizations Regulated by the Federal Government	Organizations Regulated by Provinces and Territories
Banks	All other businesses not listed. Examples include:
Marine shipping, ferry and port services	<ul style="list-style-type: none"> • Retail and hospitality businesses, such as a store, a restaurant, a hotel, etc.
Air transportation, including airports, aerodromes, and airlines	<ul style="list-style-type: none"> • Hospitals and health care providers
Railway and road transportation that involves crossing provincial or international borders	<ul style="list-style-type: none"> • Schools, colleges, and universities
Canals, pipelines, tunnels, and bridges (crossing provincial borders)	<ul style="list-style-type: none"> • Most manufacturers
Telephone, telegraph, and cable systems	
Radio and television broadcasting	
Grain elevators, feed and seed mills	
Uranium mining and processing	
Businesses dealing with the protection of fisheries	
Many First Nations activities	
Federal departments, agencies, and most federal Crown corporations	

Sources: “Federally Regulated Businesses and Industries,” <https://www.canada.ca/en/employment-social-development/programs/employment-equity/regulated-industries.html>, accessed July 5, 2018; “Canadian Human Rights Commission Overview,” www.chrc-ccdp.ca/discrimination/federally_regulated-en.asp, accessed April 13, 2008; Anti-Discrimination Casebook, p. 1, www.chrc-ccdp.ca/legis&poli, retrieved February 18, 2004; and Human Resource Management Laws and Regulations Government of Canada, <http://hrmanagement.gc.ca>, accessed February 18, 2004.

2.02 Employment-related Legislation

This section will cover human rights, employment equity, privacy, employment/labour standards, and pay equity. Subsequent sections will cover employee health and safety. It is important to note that these topic areas are intertwined. For example, treating people with dignity and respect and providing a harassment-free workplace promotes psychological well-being, and the recent legalization of cannabis for recreational purposes (discussed in the health and safety section) has implications for employees’ human rights and privacy at work.

Protecting Human Rights at Work

All the jurisdictions have human rights legislation, which has implications beyond employment situations; however, the focus in this chapter will be directed toward application within the workplace. The purpose of human rights

legislation is to remove discrimination. **Discrimination** means “treating someone differently, negatively, or adversely because of their race, age, religion, sex, or other prohibited ground.”¹¹

Direct discrimination involves policies or practices that clearly make a distinction on the basis of a prohibited ground (see Figure 2.1). **Indirect discrimination** involves policies or practices that appear to be neutral but have an *adverse effect* on the basis of a prohibited ground. For example, a company that has a policy of not employing any part-time employees appears to have a policy that can be equally applied to all applicants and existing employees. However, the effect of this policy is not neutral—someone who

discrimination

Treating someone differently, negatively, or adversely because of their race, age, religion, sex, or other prohibited ground.

direct discrimination

Policies or practices that clearly make a distinction on the basis of a prohibited ground.

indirect discrimination

Policies or practices that appear to be neutral but have an adverse effect on the basis of a prohibited ground.

FIGURE 2.1

Prohibited Grounds of Discrimination in Employment

Prohibited Ground	Federal	BC	AB	SK	MB	ON	QC	NB	NS	PEI	NL	NWT	YT	NU
Race	*	*	*	*	*	*	*	*	*	*	*	*	*	*
National or ethnic origin (place of origin)	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Colour	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Religion or creed	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Age	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Sex (gender; pregnancy; gender identity or expression)	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Sexual orientation	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Marital status	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Family status	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Disability (physical or mental)	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Pardoned conviction (record of offences)	*	*				*				*	*	*	*	*
Political belief (activity or association)		*			*		*	*	*	*	*	*	*	*
Source of income (social condition) e.g., receipt of public assistance		*	*	*	*	*	*		*	*	*		*	*

Note: This chart is for quick reference purposes. To ensure currency and for interpretation and/or application of specific details, refer to the relevant Human Rights Commission(s).

Sources: From "Prohibited Grounds of Discrimination in Canada," pp. 1–3, Canadian Human Rights Commission, 1998. URL: www.chrc-ccdp.ca/discrimination/grounds-en.asp, retrieved December 6, 2004. Updates: "Overview of Human Rights Code by Province and Territory in Canada," *Canadian Centre for Diversity and Inclusion*, January, 2018, <https://ccdi.ca>, pp. 1–35, accessed July 5, 2018; "What is Discrimination?" www.chrc-ccdp.gc.ca/eng/content/what-discrimination, retrieved March 23, 2015; "Mandatory Retirement in Canada," www.hrsdc.gc.ca/en/lp/spila/clli/eslc/19mandatory_retirement.shtml, retrieved April 13, 2008; and "Retiring Mandatory Retirement," February 21, 2008, www.cbc.ca/newsbackground/retirement/mandatory/retirement.html, retrieved April 19, 2009.

has family responsibilities would be denied employment or denied the opportunity to reduce their work hours.

In summary, all individuals have a right to an equal chance to be hired, keep a job, get a promotion, or receive other work benefit regardless of personal characteristics; for example, race, colour, national or ethnic origin, religion, sexual orientation, age, marital status, sex, family status, and physical or mental disability.

How Would You Know?

How would you know if you had been discriminated against at work? Decisions about human resources are so

complex that discrimination is often difficult to identify and prove. However, legal scholars and court rulings have arrived at some ways to show evidence of discrimination.

Differential Treatment

One sign of discrimination is **differential treatment**—differing treatment of individuals, where the differences are based on a prohibited ground such as the individuals' race, colour, religion, sex, national origin, age, or disability. For example, differential treatment would include

differential treatment
Differing treatment of individuals where the differences are based on a prohibited ground.

hiring or promoting one person over an equally qualified person because of the individual's race. Suppose a company fails to hire women with school-age children (claiming the women will be frequently absent) but hires men with school-age children. In that situation, the women are victims of differential treatment, because they are being treated differently on the basis of their sex.

To avoid complaints of differential treatment, companies can evaluate the questions and investigations they use in making employment decisions. These should be applied consistently. For example, if the company investigates conviction records of job applicants, it should investigate them for all applicants, not just for some applicants. Companies may want to avoid some types of questions altogether. For example, questions about marital status can cause problems, because interviewers may unfairly make different assumptions about men and women. A common stereotype about women has been that a married woman is less flexible or more likely to get pregnant than a single woman, in contrast to the assumption that a married man is more stable and committed to his work.

Is differential treatment ever legal? The courts have held that in some situations, a factor such as sex or religion may be a **bona fide occupational requirement (BFOR)**, that is, a necessary (not merely preferred) qualification for performing a job. In some cases, a core function of the job may be related to a prohibited (protected) ground. For example, a reference from a Parish Priest is required to submit an application for a teaching position in the Catholic School system in Regina, Saskatchewan.¹² However, it is very difficult to think of many jobs where criteria such as sex and religion are BFORs. Although employers should seek ways to perform the job so that these restrictions are not needed, for example, a job may require a specified level of visual capability to be performed effectively and safely, thereby eliminating someone who does not meet this requirement.

It is the employer's responsibility to prove the existence of a BFOR if any complaint of discrimination should arise. In the widely publicized *Meiorin* case, Tawny Meiorin, a female forest firefighter, lost her job when she failed to meet a required aerobic fitness standard that had been established by the British Columbia Public Service Employee Relations Commission. This standard had been put in place as a minimum requirement for all firefighters. She lost her job after failing *one* aspect of a minimum fitness standard—taking 49.4 seconds too long to complete a 2.5 kilometre run.¹³ She filed a complaint stating that the fitness standard discriminated against women because women usually have less aerobic capability than men. Although the employer argued the standard was a bona fide occupational requirement of the job, the Supreme Court of Canada ultimately ruled the standard was *not* a

**bona fide
occupational
requirement
(BFOR)**

A necessary (not merely preferred) requirement for performing a job.

BFOR—the fitness standard was not reasonably necessary to fulfill a legitimate work-related purpose.¹⁴ Ms. Meiorin was reinstated to her job and received compensation for lost wages and benefits.

Mandatory Retirement

The practice of forcing an employee to retire for the reason of age is a human rights issue and falls under the protection of human rights legislation. All jurisdictions in Canada have legislation that makes mandatory retirement discriminatory unless there is a bona fide occupational requirement due to a specific employment requirement.¹⁵

What Is the Employer's Duty to Accommodate?

An employer has a duty to consider how an employee's characteristic such as disability, religion, or other protected ground can be accommodated and to take action so that the employee can perform the job. See Figure 2.2. This duty is referred to as the **duty to accommodate**.

Accommodation may even require that the employee perform another job within their capabilities. Employers' duty to accommodate

extends to the point of *undue hardship*—"undue" meaning only if it is so high that the very survival of the organization or business would be threatened or essentially changed.¹⁶

In the context of religion, this principle recognizes that for some individuals, religious observations and practices may present a conflict with work duties, dress codes, or company practices. For example, some religions require head coverings, or to be able to pray at a particular time, or individuals might need time off to observe the Sabbath or other holy days, when the company might have them scheduled to work. When the employee has a legitimate religious belief requiring accommodation, the employee should communicate this need to the employer. Assuming that it would not present an undue hardship, employers are required to accommodate such religious practices. They may have to adjust schedules so that employees do not have to work on days when their religion forbids it, or they may have to alter dress or grooming requirements.

For employees with disabilities, accommodations also vary according to the individuals' needs—increasingly, however, the emphasis is placed on *abilities* and capabilities rather than focusing on disabilities. For example, Sodexo has a "disABILITY" strategy that advances the inclusion of adults with disabilities. The organization states, "We find people with disabilities are absolutely fantastic at the jobs we put them in. They want to be part of the organization, they stay in the organization,

**duty to
accommodate**

An employer's duty to consider how an employee's characteristic such as disability, religion, or sex can be accommodated and to take action so the employee can perform the job.



Adrian Wylid/TCPI/The Canadian Press

Steven Fletcher, Canada's first quadriplegic MP and Member of Cabinet was a two-time Manitoba kayaking champion and had recently graduated from geological engineering studies when in 1996, at the age of 23, his car collided with a moose while driving to work. Steven was paralyzed from the neck down; nevertheless, within one year of the accident, he was accepted into the University of Manitoba's MBA program. Two years later (1999), he was the president of the University of Manitoba Students Union; after serving for two years was elected president of the Progressive Conservative Party of Manitoba. In 2004, Steven won his competitive Winnipeg riding and became a federal member of parliament. He subsequently won the riding three more times.¹⁷

they grow within the organization, so it works very well for us and for those employees.”¹⁸

Some of the accommodations employers provide include restructuring jobs, making facilities in the workplace more accessible, and modifying equipment. Innovation, Science and Economic Development Canada recently announced a new *Accessible Technology Program* to fund innovative projects that will support Canadians with disabilities to participate more fully in the digital economy. For example, the Neil Squire Society recently received \$3 million in funding for “LipSync”—a project to develop and distribute mouth-operated systems that will make digital technologies like laptops and mobile devices more accessible.¹⁹ In some situations, an individual may provide their own accommodation, which the employer permits, as in the case of an employee with vision loss who brings a service dog to work.

Protection from Harassment

Human rights legislation also prohibits all forms of **harassment**. Harassment is “a form of discrimination. It involves any unwanted physical or verbal behaviour that offends or humiliates you.”²⁰ Research from the Queen's School of Business at Queen's University in Kingston, Ontario, found that

harassment A form of discrimination that involves any unwanted physical or verbal behaviour that offends or humiliates you.

31 percent of female and 22 percent of male respondents “had experienced or were currently experiencing workplace harassment.” These numbers had decreased slightly since 2012. Dr. Jane Raver, the study's lead, theorizes that an increased public interest in the topic evidenced from media coverage to government legislation has likely led to the decline; however, workplace harassment remains a problem in Canada. She recommends employers establish clear policies supported by education. “Actually outline a code of conduct. Do some training. Let people understand what this looks like and where people cross the line.”²¹

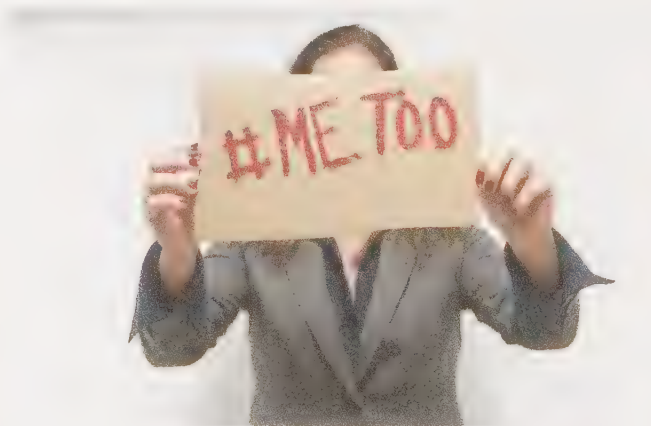
For example, following is Seneca College's Discrimination and Harassment Policy Statement:

It is the Policy of Seneca College that all employees and students have a right to work and study in an environment that asserts the personal worth and dignity of each individual. In order to achieve this objective, Seneca College will not tolerate any form of discrimination and/or harassment in its employment, educational, accommodation or business dealings. Every member of the College community has the right to file a complaint of discrimination/harassment.²²

Figure 2.2 discusses each of the prohibited grounds of discrimination and provides an example of an allegation of discrimination or harassment made in a work-related situation along with the settlement that the complainant received.

Sexual Harassment

The media spotlight on sexual harassment and the resulting social media hashtag #MeToo has sparked social change and provided a catalyst for leaders and HR professionals to re-examine their own organization's culture and practices. According to Suzanne Hiron, senior communications adviser at the Canadian Human Rights Commission in Ottawa, “Despite all that's been done to reduce



Martin de Jong/Shutterstock.com

“The [#MeToo] movement has given women confidence to speak up regarding inappropriate acts they may have experienced,” said Shelley Martin, CEO of Nestlé Canada.²³

FIGURE 2.2

Human Rights Allegations and Settlements (Federal Prohibited Grounds)

Prohibited Ground	Description	Allegation	Settlement
Race, colour, and national or ethnic origin	These three grounds are related, and it is often difficult to draw clear distinctions between them. They are intended to get at the societal problem referred to as “racism.”	The complainant alleged that a disgruntled customer used a distasteful tone and made racial slurs. She alleged that the respondent (employer) asked her to deal with the situation by hiding whenever the customer entered her area. Her employment was subsequently terminated for poor performance.	<ul style="list-style-type: none"> • Letter of reference • Financial compensation for general damages • Financial compensation for pain and suffering • Reimbursement of legal fees • Assistance with job search
Religion or creed	Discrimination has occurred because of knowledge of one’s religion or a perception of that religion. <i>Note:</i> When an individual alleges adverse effect discrimination from some policy or decision, the following three questions must be answered “yes”: <ul style="list-style-type: none"> • Is the belief sincerely held? • Is it religious? • Is it the cause of the objection being made? 	The complainant cannot work on Saturdays because of her religious beliefs. She alleged that, because of this, her supervisor required her to work every Saturday. Eventually, her employment was terminated.	<ul style="list-style-type: none"> • Financial compensation for general damages • Letter of regret
Age	The ground can refer to: <ul style="list-style-type: none"> • An individual’s actual age. • Membership in a specific age group, e.g., over 55. • A generalized characterization of his age, e.g., too old or too young. 	The complainant, who is 47 years old, alleged that he was denied education assistance normally provided to younger employees. The complainant also alleged that remarks about his age were made and written comments included in his employee file.	<ul style="list-style-type: none"> • Removal from the complainant’s file of all reference to his age or to the number of years he could remain as an employee • Assurance that having filed a complaint will not negatively affect his employment • Financial compensation for future tuition and books • Reimbursement for tuition and books for past courses
Sex (including pregnancy, gender identity, or gender expression)	Refers to the condition of being, identifying, or expressing one’s sex or gender identity.	The complainant handed in her resignation at one point because of an excessive workload, but her employer refused to accept it and she continued working. After she announced that she was pregnant two months later, she alleged that her employer suddenly decided to accept her resignation.	<ul style="list-style-type: none"> • Financial compensation for lost wages and general damages • Letter of recommendation

(continued on next page)

FIGURE 2.2

Human Rights Allegations and Settlements (Federal Prohibited Grounds) (continued)

Prohibited Ground	Description	Allegation	Settlement
Sexual orientation	Typically refers to: <ul style="list-style-type: none"> • heterosexuality • homosexuality • bisexuality 	The complainant alleged that, during a job interview, he was asked inappropriate questions about his sexual orientation. In the end, the complainant got the job.	<ul style="list-style-type: none"> • Letter of regret • Training for all interviewers on the Canadian Human Rights Act
Marital status	Condition of being: <ul style="list-style-type: none"> • single • legally married • common-law spouses (opposite-sex or same-sex) • widowed • divorced 	The complainant and his partner filed separate complaints alleging that the respondent did not take action against a co-worker who made defamatory and harassing remarks about their personal relationship. They allege that the respondent did not provide a harassment-free work environment. Note: This allegation included two grounds: marital status and sex.	<ul style="list-style-type: none"> • Development of protocol for future instances of sexual harassment • Joint management and union anti-harassment and human rights training • Posting of the respondent's human rights and employment equity policy, and relevant provisions of the collective agreement • Financial compensation for pain and suffering
Family status	Refers to the interrelationship that arises as a result of marriage, legal adoption, ancestral relationship, as well as the relationships between spouses, siblings, uncles or aunts, cousins, etc.	The complainant alleged that her employer denied her several career-enhancing opportunities when she returned to work from maternity leave, and that it ultimately terminated her employment on the pretext that it was downsizing and that her job no longer existed. Note: This allegation included two grounds: family status and sex.	<ul style="list-style-type: none"> • Expression of regret to the complainant • Financial compensation for general damages
Physical or mental disability	Disability is defined as being either: <ul style="list-style-type: none"> • Physical or mental • Previous or existing • Including dependence on alcohol or a drug Note: A disability can be either permanent or temporary (e.g., a temporary impairment as a result of an accident, or a treatable illness).	The complainant, who has multiple sclerosis, alleged that her employer, by refusing her a work schedule recommended by her doctor, failed to accommodate her disability.	<ul style="list-style-type: none"> • Adjustment of the complainant's work schedule to reflect the doctor's recommendations • Briefing session for employees on multiple sclerosis and non-visible disabilities • Occupational training, with half of the training program to be determined by one of the two parties • Reinstatement of leave • Letter of regret • Withdrawal of related grievances

Prohibited Ground	Description	Allegation	Settlement
Pardoned criminal conviction	A conviction for which a pardon has been granted by any authority under law.	The complainant is a truck driver who was required to travel to the United States. Although he had been granted a pardon for a conviction in Canada, he was nevertheless denied entry in the United States. Consequently, his employer laid him off on the ground that he could not fulfill all the requirements of the job.	<ul style="list-style-type: none"> Financial compensation

Sources: From "Prohibited Grounds of Discrimination in Canada," pp. 1–3, Canadian Human Rights Commission, 1998. Settlement Examples, www.chrc-ccdp.ca/disputeresolution_reglementdifferends/settlements_ententes-eng.aspx; Discrimination and Harassment, www.chrc-ccdp.ca/discrimination/act_actes-eng.aspx. Canadian Human Rights Commission.

incidents of sexual harassment in the workplace, it continues to rear its ugly head."²⁴

The Canada Labour Code defines sexual harassment as "any conduct, comment, gesture, or contact of a sexual nature that is likely to cause offence or humiliation to any employee; or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion."²⁵

Insights West recently polled 451 working women in Canada and provided the following results:²⁶

- More than half of working women (54 percent) say they have "experienced conduct, comments, gestures or contact of a sexual nature that caused them offence or humiliation."
- Thirty percent say they have "experienced conduct, comments, gestures or contact of a sexual nature that they perceived as placing a condition of a sexual nature on their employment (*quid pro quo sexual harassment*) or on any opportunity they might have for training or promotion."

However, as illustrated in Figure 2.3, only 28 percent of the surveyed working women in Canada who experienced behaviour that placed a condition on their employment or future career reported it to a "superior" and/or to the HR department. And only 22 percent filed a complaint after being offended or humiliated by another person's behaviour (*hostile or poisoned work environment sexual harassment*).

Illustrative example of behaviours referred to as hostile or poisoned work environment sexual harassment include:²⁷

- derogatory language and/or comments toward women (or men, depending on the circumstances);
- sex-specific derogatory names;

- leering or inappropriate staring;
- displaying or circulating pornography, sexual pictures or cartoons, or other sexual images (including online);
- sexual jokes, including circulating written sexual jokes (e.g., by email);
- unnecessary physical contact, including unwanted touching;
- rough and vulgar humour or language related to gender;
- spreading sexual rumours (including online);
- suggestive or offensive remarks or innuendo about members of a specific gender;
- bragging about sexual prowess;
- questions or discussions about sexual activities;
- paternalistic behaviour based on gender that a person feels undermines their status or position of responsibility.

As noted above, paternalistic behaviour based on gender, which a person feels undermines their status or position of responsibility, may also be determined to be sexual harassment. For example, a "tribunal found an employer's repeated use of terms including "sweetheart," "little lady," "hun," "sweetie," and "dear" to be "terms of diminishment," and that, within the broader context of his other sexualized overtures, the use of these terms created a poisoned work environment."²⁸ Although a large majority of sexual harassment complaints involve women being harassed by men, sexual harassment can affect anyone.

To ensure a workplace free from harassment, organizations can follow some important steps. In some jurisdictions employers are required to develop an anti-harassment policy making it very clear that harassment will not be tolerated in the workplace. Second, all employees need to

FIGURE 2.3

Who Reported Sexual Harassment to a “Superior and/or HR Department?” —Insights West Survey Results



Note: Responses reflect survey respondents who answered “yes” to the question: “When you had these experiences in the workplace, did you ever report what happened to a superior and/or human resources department?”

Source: “Half of Working Women in Canada Have Endured Sexual Harassment,” *Insights West*, December 6, 2017, <https://insightswest.com/news/half-of-working-women-in-canada-have-endured-sexual-harassment/>, accessed July 7, 2018.

be made aware of the policy and receive training. In addition, the organization can develop a mechanism for reporting harassment in a way that encourages people to speak out. Finally, management can prepare to act promptly to discipline those who engage in harassment, as well as to protect the victims of harassment. Rare is the business owner or manager who wants to wait for the government to identify that the organization has failed to meet its legal requirements to treat employees fairly. Instead, out of motives ranging from concern for employee well-being to the desire to avoid costly lawsuits and negative publicity, most companies recognize the importance of complying with these laws and creating safe and respectful workplaces. For example, attention was once again focused on the RCMP when the commissioner offered an apology and \$100 million in compensation to settle class-action lawsuits that included 500 female RCMP officers and civilians for allegations that included a range of inappropriate behaviours including harassment, unwanted sexual touching, sexist comments, and rape.²⁹

Often, management depends on the expertise of human resources professionals to help to ensure

employees are not exposed to behaviours that could be psychologically harmful. Keeping the workplace psychologically safe and healthy will be discussed in more detail later in this chapter.

Employment Equity

Canada’s federal employment equity policy was inspired by a report written in 1984 by Justice Rosalie Abella. Employment equity legislation focuses on eliminating employment barriers to the four designated groups who are viewed to have been historically disadvantaged in their employment relationships. The four designated groups are:

- *Women.*
- *Aboriginal peoples* (“An Aboriginal person is a North American Indian or a member of a First Nation, Métis, or Inuit. North American Indians or members of a First Nation include treaty, status, or registered Indians, as well as non-status and non-registered Indians.”)³⁰

- *Members of visible minorities* (“A person in a visible minority group is someone, other than an Aboriginal person as defined above, who is non-white in colour/race, regardless of place of birth.”)³¹
- *Persons with disabilities* (“A person with a disability has a long-term or recurring physical, mental, sensory, psychiatric, or learning impairment.”)³²

Employment equity promotes equitable workforce representation for each of the designated groups. Reporting progress examines *representation*—the share of designated groups in a given labour market (e.g., the entire federally regulated private sector workforce, a specific industry, or a specific organization), relative to *labour market availability* (LMA)—the share of designated group members in the workforce from which the employer(s) could hire. Figure 2.4 provides the progress in representation over time of the four designated employment equity groups in the federally regulated private sector. Members of visible minorities have seen the most progress with their representation, which increased from 11.7 percent in 2001 to 22.2 percent in 2016, surpassing the group’s LMA of 17.8 percent. This is the only designated group in the federally regulated private sector whose overall representation surpasses its LMA. The application of employment equity to workforce planning will be discussed in Chapter 4.

Protection of Privacy

Employees expect to have privacy at work; however, most people recognize that when they work for someone, the employer requires certain information about them so to ensure they receive pay and benefits and to ensure their work is being performed in a way that meets the employer’s requirements. All of the jurisdictions—provinces, territories, and federal—are subject to privacy laws that regulate how personal information (e.g., personal health information and personal financial information) is handled. The following section will discuss privacy requirements that connect most directly to the employer–employee relationship.

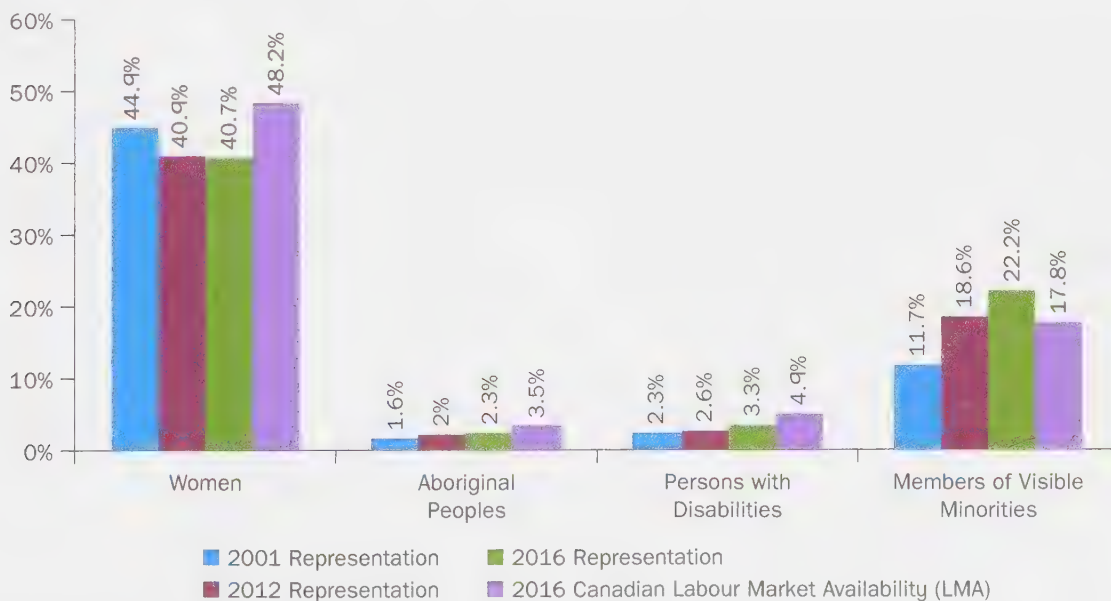
The **Personal Information Protection and Electronic Documents Act (PIPEDA)** “sets the ground rules for how private-sector organizations collect, use, and disclose personal information in the course of for-profit commercial activities in Canada. It also applies to the personal information of employees of federally-regulated businesses

Personal Information Protection and Electronic Documents Act (PIPEDA)

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FIGURE 2.4

Change in Representation over Time in the Federally Regulated Private Sector (Banking, Communication, Transportation, and Other)



Sources: “Employment Equity Act: Annual Report 2017, Table 1: Designated Group Representation and Attainment: Role of Canadian LMA for the Federally Regulated Private Sector 2015 and 2016 (%)” *Employment and Social Development Canada*, (2018), p. 4 and “Employment Equity Act: Annual Report 2013, Chart 1: Progress in Representation Over Time in the Federally Regulated Private Sector,” *Employment and Social Development Canada*, December 11, 2014, p. 3.

employees of federally regulated businesses.” Personal information includes information about your:³³

- race;
- national or ethnic origin;
- religion
- age;
- marital status;
- medical, education, or employment history;
- financial information;
- DNA;
- identifying numbers such as your social insurance number or driver’s licence;
- views or opinions about you as an employee.

This law also gives individuals the right to access and request correction of the personal information these organizations may have collected about them.”³⁴

PIPEDA generally applies to personal information of employees who work in private-sector organizations that conduct business in Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Saskatchewan, and Yukon and always applies to federally regulated organizations that conduct business in Canada (e.g., banking, communications, transportation). PIPEDA does not apply to organizations that operate entirely within Alberta, British Columbia, or Quebec because they have privacy laws recognized as “substantially similar” to PIPEDA. In these provinces the relevant Personal Information Privacy Act (PIPA) applies, e.g., PIPA Alberta and PIPA BC. In addition, provinces and territories in Canada have their own laws that apply to government agencies.³⁵

The HR How-To box illustrates responsibilities HR departments have in protecting employees’ personal information.

HR How-To



Protecting Employees’ Personal Information

PIPEDA’s principles serve as a guide to organizations and HR professionals to maintain legal compliance when collecting and using employee information needed for administration and decision making. HR professionals need to consider the following principles when collecting and using employee personal information in the course of all HR activities:

1. **Accountability.** The employer is responsible for personal information it controls. Start by appointing a privacy officer(s).
2. **Identifying purpose.** Before collecting information, the organization needs to identify why it is collecting the information and how it will be used. Conduct a “privacy audit” to determine what information is collected and why it is collected.
3. **Consent.** The organization is responsible for ensuring that employees know and consent to the collection, use, and/or disclosure of personal information. Consider what type of consent is needed for each type of information on the basis of criteria such as the sensitivity of the information.
4. **Limiting collection.** Care must be taken to make sure that the collection of personal information is limited to what is needed for the stated purpose. Use a “reasonable person” test to determine what is considered appropriate.
5. **Limiting use, disclosure, and retention.** Personal information cannot be used or disclosed to others without consent and information can be retained only to meet the stated purpose(s) for which it was collected. Additional care must be taken when HR functions are outsourced. Create minimum and maximum retention times for information collected.
6. **Accuracy.** Information of employees must be current and correct. Keep information accurate and introduce a process to correct errors in a timely way.
7. **Safeguards.** Security protection needs to be put in place. Implement both technical and physical security measures to safeguard employee information.
8. **Openness.** Communicate privacy policies and practices. Consider developing training materials, brochures, or other means of communication about the organization’s approach to privacy protection.
9. **Individual access.** Be responsive to employees when they request access to information the organization holds about them. Have a method in place to deal with employee concerns about the accuracy and completeness of information.
10. **Compliance challenges.** Individuals have the power to challenge what the organization does to comply with the principles just described. Be open to employee concerns and be willing to adapt policies and practices to ensure compliance with all aspects.

Sources: “Application of the *Personal Information Protection and Electronic Documents Act* to Employee Records, Office of the Privacy Commissioner of Canada, www.priv.ac.ca/resource/fs-fi/02_05_d_18_e.asp, retrieved March 25, 2015; Dianne Rinehart, “The ABC’s of the New Privacy Legislation,” *Small Business Canada Magazine* 6, no. 2 (Spring 2004), p. 7; and “The 10 Principles of the Federal Privacy Law,” *Canadian HR Reporter*, March 6, 2004, p. G7.

Privacy legislation principles establish standards for privacy practices and have implications for organizations and their responsibilities to safeguard employee privacy. Decisions made by the Office of the Privacy Commissioner of Canada have confirmed that although employers can collect information on employees about performance, attendance, and potential for advancement, there is little an employer can keep from an employee. For example, an employee of the federal public service demanded to see all the information obtained about her during an assessment review. The employee wanted to see the notes made by the contractor hired to conduct the assessment. These notes contained feedback and comments from other employees. The Office of the Privacy Commissioner of Canada ruled the employee was entitled to this information and that employees cannot be promised confidentiality when they make statements about another person.³⁶

Employment/Labour Standards

Federal, provincial, and territorial laws are in place in each jurisdiction to provide minimum standards for employees. Some of the areas covered typically include:

- minimum wage
- overtime pay
- hours of work and work scheduling
- general holidays
- annual vacations
- benefits for part-time workers
- parental leave
- layoff procedures
- terminations and severance pay

A variety of far-reaching and complex changes to employment/labour standards laws have recently been made in some jurisdictions. For example, Ontario's Bill 148, "The Fair Workplaces, Better Jobs Act," provided amendments including increases to minimum wage; increased vacation; providing employees the right to refuse being on call or taking a shift unless four days notice has been provided; enhanced family medical leaves, and new provisions for access to domestic or sexual violence leave. However, some of the provisions have been amended or scrapped by Ontario's Progressive Conservative government. For example, a provision of Bill 148 requiring employers to provide the same pay scale for all employees who perform a particular job; i.e., a part-time, temporary, or casual employee must be paid similarly to those performing the job on a full-time basis

(subject to differences due to seniority, merit, and other objective criteria), has been withdrawn.³⁷

Alberta's "The Fair and Family-Friendly Workplaces Act," provided a variety of changes to its Employment Standards Code including increased minimum wage (became \$15 per hour in October 2018); three-hour minimum shift payments, expanded parental and compassionate care leave; job-protected sick leave; and domestic violence leave.³⁸

Controversies

A ongoing controversy with respect to employment/labour standards relates to the use of unpaid interns. In a variety of industries including politics, technology, fashion, and journalism, several years of unpaid labour have sometimes been needed to finally achieve "paid status." These young and inexperienced interns may be particularly vulnerable to being exploited because they are unlikely to complain due to fear of jeopardizing future employment or securing a good reference.³⁹ The HR Oops! feature further explores the scrutiny the federal government and other employers face over unpaid interns.

Another area of employment/labour standards controversy emerged in the form of class-action lawsuits over unpaid overtime. For example, CIBC, Scotiabank, and KPMG dealt with class-action lawsuits on behalf of employees over allegations of unpaid overtime. CIBC faced a potential \$600 million lawsuit involving as many as 31,000 current and former front-line employees from across Canada. The suit alleged that front-line employees such as tellers, account executives, and commercial and personal bankers were given workloads too heavy to be handled in regular working hours and claimed that CIBC failed to pay for overtime work that was required or at least permitted, in contravention to the Canada Labour Code. Both KPMG and Scotiabank reached settlements with their current and former employees to compensate for unpaid overtime worked; however, CIBC maintained it has a "clearly defined" overtime policy that "exceeds legislative requirements," and has continued its legal battle.⁴⁰

Another ongoing class-action lawsuit involves current and some former hockey players in the OHL, WHL, and QMJHL seeking compensation for "back-wages, overtime pay, holiday pay and vacation pay which should have been paid to them while they played in one or more of the leagues." The statement of claim alleges the players are actually employees who sign standard form league contracts and are paid only a weekly fee of between \$35 and \$120 per week for spending 35–40 hours of time each week on team business. "If the court decides that the players are employees, then the fee violates minimum wage legislation in every province where the teams play hockey."⁴¹

HR Oops!



Are Unpaid Internships a Violation of Minimum Employment Standards?

The federal government has confronted “uncomfortable questions” about extensive use of unpaid interns. A reported 961 interns have been used in federal departments between 2008 and 2014; however only 22 were actually hired after their internship terms ended. “It’s shocking, it’s disappointing but unfortunately it means that these opportunities aren’t actually benefiting the interns,” says Canadian politician, Laurin Liu. Liu estimates there are 300,000 unpaid interns in Canada. “But there is no official data from StatsCan to prove this. So if we want to deal with the issue of unpaid interns in Canada ... we need to measure the problem.”

Under the Ontario Employment Standards Act, the Ontario Ministry of Labour has been cracking down on unpaid internships by establishing six

criteria for an unpaid internship to be legal. If all of the criteria are not met, the intern is determined to be an employee and must be paid at least minimum wage. Magazines including *Toronto Life* and the *Walrus* have stopped “employing” unpaid interns after they were informed their practice of bringing in aspiring journalists and designers, and others, was in violation of Ontario’s Employment Standards Act, and Bell Mobility scrapped its unpaid intern program in the wake of “a growing public outcry.” However, other federally regulated organizations have continued to use unpaid interns.

Although promises had been made with the 2017 budget, federal government officials pushed the date back for releasing new rules on unpaid internships to Fall 2019, which would likely delay implementation until 2020.

Sources: Jordan Press, “Liberals promise to set strict rules for unpaid interns pushed to 2019,” *The Canadian Press*, July 12, 2018, <https://m.hrmonline.ca>, accessed July 12, 2018; Liz Bernier, “Feds Facing Scrutiny Over Unpaid Interns,” *Canadian HR Reporter*, February 9, 2015, pp. 1, 7; Lee-Ann Goodman, “Federal Officials to Discuss Unpaid Interns With Youth Work Advocates,” *The Globe and Mail*, January 26, 2015, www.theglobeandmail.com, accessed March 26, 2015; Simon Houpt, “End to Unpaid Internships Shakes Up Magazine Industry,” *The Globe and Mail*, March 27, 2014, www.theglobeandmail.com, accessed March 26, 2015; and Zane Schwartz, “Unpaid Internships Are Just Wrong,” *The Globe and Mail*, May 3, 2013, www.theglobeandmail.com, accessed March 26, 2015.

Pay Equity

Pay equity legislation requires that employers are responsible to provide *equal pay for work of equal value*.

Pay equity is a principle of nondiscrimination in wages that requires men and women doing work of equal value to the employer to be paid the same. In addition to the Federal Government of Canada, the provinces of Manitoba, Ontario, New Brunswick, Prince Edward Island, Nova Scotia and Quebec have pay equity legislation. Saskatchewan, Newfoundland, and British Columbia have implemented pay equity frameworks applicable to public-sector employees.⁴²

Australia, Scandinavian countries, and many U.S. states have laws to ensure women and men working in female-dominated jobs (e.g., nursing, clerical, and retail sales) are paid fairly. The four criteria usually applied are *skill, effort, responsibility, and working conditions*. Chapter 8 includes a discussion of job evaluation, which applies these criteria to measure the relative value of jobs

pay equity The concept of “equal pay for work of equal value.”

in the effort to ensure that jobs are paid fairly relative to one another within an organization.

Pay equity legislation is intended to address the *pay gap*—the difference between the earnings of women working full-time versus the earnings of men working full-time. Although some Canadians believe that the gender income gap has been successfully dealt with, the Conference Board of Canada reports the gap in income between men and women in Canada is 19 percent. This ties Canada with the United States at 11th in its peer countries (earning a “C” grade). The gender income gap ranges from a low of 8 percent (Norway) to a high of 29 percent (Japan).⁴³

The federal government recently announced the intent to introduce new pay equity legislation intended to narrow the gap in the federally regulated private sector (e.g., banking, telecommunications) to 90.7 cents.⁴⁴ The irony is that men and women tend to begin their career on an approximately equal footing; however, women fall behind later—often after time away from paid employment to have children. As a result, men end up with more experience. Also, men tend to work longer hours, have more education, and are less likely than women to work part-time.⁴⁵

Cumulatively, however, these factors do not explain the entire wage gap or earnings gap between men and women.

For example, Statistics Canada reported the results of a study of 29 universities related to the salaries of male and female professors. The study revealed that “male university professors earned on average up to \$17,300 more than female colleagues.”⁴⁶ According to the Canadian Association of University Teachers (CAUT), one reason for the wage gap is that women are underrepresented in the highest-paying position of full professor.⁴⁷ The University of Guelph recently provided a raise of \$2,050 to more than 300 full-time faculty members who identify as female or non-male, after a “salary review found they were being paid less than their male colleagues.” The salary review provided a “robust statistical analysis taking into account a wide variety of factors including gender, age, experience, hiring date, and some performance data.” This follows raises provided to all female faculty at the University of Waterloo in 2016 (\$2,905); McMaster University in 2015 (\$3,515), and the University of British Columbia in 2013 (2 percent).⁴⁸

Enforcement of Employment Legislation

At a minimum, employers must comply with the legal requirements of their jurisdiction. Education and consultation is available to employers and employees. Although employers have a duty to comply with all of the relevant requirements, and a collaborative discussion approach is encouraged, employee complaint processes are provided as part of the enforcement process. Typically, the recommended approach is for employees to discuss any questions or concerns directly with their employer; for example, supervisor/manager and/or HR department (and/or union representative) before filing a formal complaint.

Human Rights Commissions

The federal government, provinces, and territories have Human Rights Commissions. For example, the Canadian Human Rights Commission (CHRC) provides individuals under federal jurisdiction a means to resolve complaints of discrimination. The CHRC has the power to receive and address allegations of discrimination or harassment complaints based on the prohibited grounds outlined in the Canadian Human Rights Act. The CHRC tries to resolve complaints using mediation and conciliation; however, some complaints are resolved only by using a tribunal. Cases may also be ultimately appealed all the way to the Supreme Court of Canada for final resolution. The Canadian Human Rights Commission is also responsible for auditing federally regulated employers to ensure compliance with the federal Employment Equity Act. In addition, the CHRC enforces pay equity requirements.⁴⁹

Privacy Commissioners

The Office of the Privacy Commissioner of Canada is responsible for ensuring compliance with federal privacy legislation including the Personal Information Protection and Electronic Documents Act (PIPEDA) and the Privacy Act. The Office of the Privacy Commissioner of Canada has the power to investigate complaints and recommend solutions to employers. To ensure compliance, the Commissioner can publicly identify organizations violating individuals’ privacy rights and take the complaint to the Federal Court of Canada. If unable to resolve the complaint, the Court can order the organization to take specific actions and can also award damages.⁵⁰ Other jurisdictions also have Privacy Commissioners responsible for ensuring compliance with their respective relevant provincial legislation.

One area of interest and concern for both individuals and organizations is the growing use of social media and specifically the growing practice of HR professionals conducting social media background checks on both current and prospective employees. For example, the Office of the Information Privacy Commissioner of Alberta published “Guidelines for Social Media Background Checks” (see Table 2.3).

Employment/Labour Standards Offices

Employment/Labour Standards Offices are in place within each jurisdiction to ensure that employees are paid fairly and that other non-monetary requirements of the legislation are provided properly (e.g., work scheduling and

TABLE 2.3

Guidelines for Social Media Background Checks

1. Determine what the business purpose is for performing a social media background check. Do you reasonably require personal information that cannot be obtained through traditional means such as interviews or reference checks?
2. Recognize that any information that is collected about an individual is personal information or personal employee information and is subject to privacy laws.
3. Consider the risks of using social media to perform a background check. Conduct a privacy impact assessment to assess the risks.

Source: “Guidelines for Social Media Background Checks,” Office of the Information and Privacy Commissioner of Alberta, December 2011, www.oipc.ab.ca/downloads/documentloader.ashx?id=3539, accessed July 9, 2018.

employee leaves). Officers hear complaints, conduct investigations, and make actionable rulings. Tools and resources are increasingly provided online to support both employees and employers. For example, Employment Standards—Government of British Columbia, provides an online “Self Help Kit” intended as a first step for employees and employers.⁵¹

Workplace Health and Safety

At the beginning of this chapter we briefly introduced the importance of taking a strategic approach to health and safety. The protection of employee health and safety is regulated by the government. Many elements are similar in all jurisdictions across Canada; however, the details of the relevant Occupational Health and Safety (OH&S) legislation and the ways the laws are enforced vary (e.g., “mandatory” vs. “discretionary”).⁵² The effective management of health and safety in the workplace includes more than legal compliance. Increasingly, organizations are approaching health and safety with a values-based commitment to safe operations as a way to protect people: “All workers have the right to return home each day safe and sound.”⁵³



© LifesizeImages/StockPhoto

All workers have a right to work safely each day.

Internal Responsibility System

In Canada, safety in the workplace is based on the foundation of an **internal responsibility system**. The internal responsibility system is a philosophy of occupational health and safety in which employers and employees share responsibility for creating and maintaining safe and healthy work environments. Employer–employee partnerships are put in place to ensure compliance and create a culture of safety in the organization.⁵⁴

internal responsibility system

Philosophy of occupational health and safety whereby employers and employees share responsibility for creating and maintaining safe and healthy work environments.

Health and Safety Committees

Health and safety committees, a key feature of the internal responsibility system, are jointly appointed by the employer and employees at large (or union) to address health and safety issues in a workplace. For example, under federal regulations, a workplace health and safety committee is required for every workplace that has 20 or more employees.

health and safety committees

A committee jointly appointed by the employer and employees at large (or union) to address health and safety issues in a workplace.

The committee must consist of at least two persons and is required to meet at least nine times a year, at regular intervals, during normal working hours.⁵⁵ The premise is that it is the people employed in a particular workplace who know the most about hazards and unhealthy conditions. Table 2.4 outlines the role of a health and safety committee.

TABLE 2.4

Role of a Health and Safety Committee

The Role of a Health and Safety Committee Includes:

- Act as an advisory body
- Identify hazards and obtain information about them
- Recommend corrective actions
- Assist in resolving work refusal cases
- Participate in accident investigations and workplace inspections
- Make recommendations to the management regarding actions required to resolve health and safety concerns

Source: “OH&S Legislation in Canada—Basic Responsibilities,” Canadian Centre for Occupational Health and Safety, www.ccohs.ca/oshanswers/legisl/responsi.html, accessed March 29, 2015.

Did You KNOW?



Top Seven Dangers for Young Workers (in BC)

Young workers are at significant risk of injury in a number of industries as a result of lifting objects; at risk of falls when working at elevated levels; and working with knives, food slicers, and hot

substances or objects when employed as cooks, waiters, and food preparers in the hospitality and services industry.



Source: From WorkSafeBC “Top 7 Dangers for Young Workers,” www2.worksafebc.com/Topics/YoungWorker/Top-Seven-Dangers.asp, retrieved March 23, 2015. © WorkSafeBC. Used with permission. WorkSafeBC.com.

What Are the Responsibilities of Employers, Managers, and Supervisors?

Employers need to assess and be alert to workplace hazards and safety issues. Employers, managers, and supervisors have a *duty* to provide a safe workplace. An employer must:

- establish and maintain a health and safety committee, or cause workers to select at least one health and safety representative;
- take every reasonable precaution to ensure the workplace is safe;
- train employees about any potential hazards and in how to safely use, handle, store, and dispose of hazardous substances and how to handle emergencies;
- supply personal protective equipment and ensure workers know how to use the equipment safely and properly;

- immediately report all critical injuries to the government department responsible for OH&S;
- appoint a competent supervisor who sets the standards for performance, and who ensures safe working conditions are always observed.⁵⁶

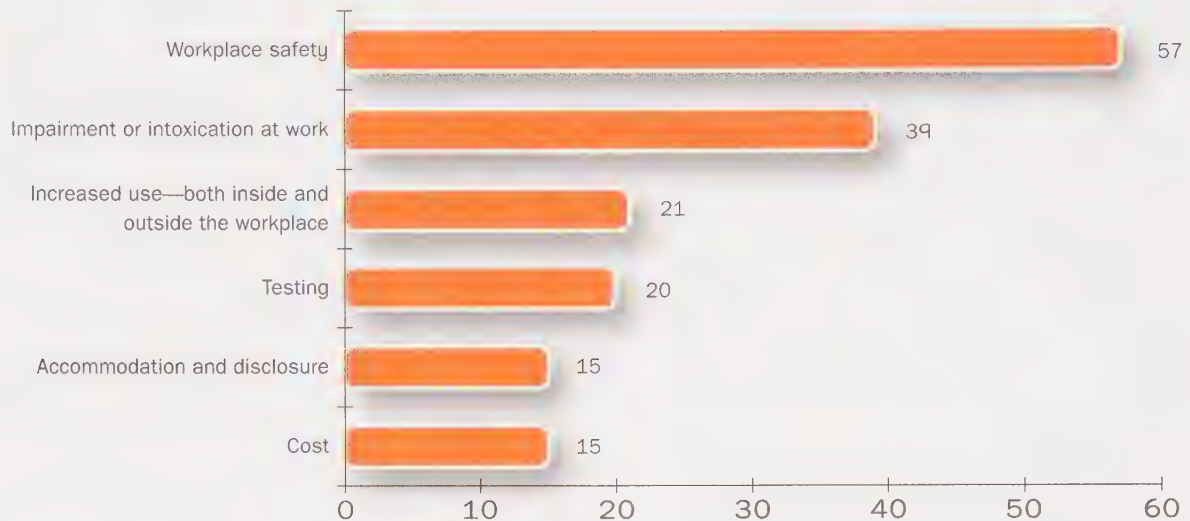
Some Contemporary Workplace Hazards and Safety Issues

Legalization of Cannabis for Recreational Use

Work safety, especially in safety-sensitive roles, is the top concern for employers when Canada became the first G7 country to legalize and regulate recreational cannabis on a national scale. The Conference Board of Canada, in its recent report, “Blazing the Trail: What the Legalization of Cannabis Means for Canadian Employers,” reports that 57 percent of surveyed organizations identified “workplace safety” as their top concern about the legalization of recreational cannabis. See Figure 2.5.

FIGURE 2.5

Top Organizational Concerns about the Legalization of Recreational Cannabis



Source: Monica Haberl, “Blazing the Trail: What the Legalization of Cannabis Means for Canadian Employers,” June 2018, *The Conference Board of Canada*, p. 8.

Although recreational cannabis has been legalized, employees need to understand that they must come to work unimpaired and work safely. Managers, supervisors, and HR professionals will require training and guidance in navigating the workplace impacts. For example, the report recommends that before implementing changes to alcohol or drug testing guidelines, legal partners should be consulted.⁵⁷

Use of Mobile Devices

A study published in the *British Medical Journal* found drivers talking on a cellphone are four times more likely to be involved in a serious crash. In another study, psychologists concluded that “using a hands-free cellphone while driving could impair drivers as much as having a blood-alcohol level of 0.08 percent.”⁵⁸ The Ontario Ministry of Labour also provides the cautionary finding that “when drivers take their eyes off the road for more than two seconds, their crash risk doubles.”⁵⁹ However, distractions and hazards associated with the use of devices is not limited just to driving. Kevin Hayes, corporate safety manager for the Canadian operations of Acciona Infrastructure, a global construction and engineering firm explains: “There are more cellular phone subscribers in the world today than landline phone subscribers. People are communicating in real-time and, unfortunately, with this need to communicate instantly, new hazards are being created.” Hayes discusses a workplace fatality he was tasked to investigate at one of his company’s construction

projects. A road worker had been hit and killed by a dump truck and it was concluded that cellphone use was a significant factor that resulted in the fatal accident. Hayes’s company has since enforced a mobile device use policy that prescribes acceptable and unacceptable use of devices while at work. In particular, Hayes said, workers are prohibited from using their devices while performing safety-sensitive tasks.⁶⁰

Worker Fatigue

Research findings have tended to focus on the association of workplace injuries with shift work and safety-sensitive occupations; however, Canadian researchers have also demonstrated a connection between difficulty sleeping and experiencing a workplace injury. One of the findings was that annual injury rates for workers who got less than 5 hours of sleep were almost 4 times higher than workers who got 7.0–7.9 hours of sleep. According to a recent Canadian report, organizations are encouraged to think about fatigue as a safety risk in their organizations. According to the report, 27 percent of employees report “being tired at work every day or most days during a typical week” and most employees “are affected by fatigue at least some of the time.”⁶¹

The Nova Scotia Health Authority’s Central Zone created a task force to design and implement a fatigue management program. Following an extensive literature review and engaging internal experts as well as front-line workers, guiding principles were established that

focused on the importance of having a culture of safety and sharing responsibility between employees and the organization.⁶²

Employee Rights and Responsibilities

All Canadian workers have three fundamental rights that are protected by occupational health and safety legislation:⁶³

- *The right to refuse* unsafe work.
- *The right to participate* in the workplace health and safety activities through a health and safety committee or as a worker health and safety representative.
- *The right to know*, or the right to be informed about, actual and potential dangers in the workplace.

Employees can refuse work if they believe that the situation is unsafe to either themselves or co-workers. When an employee believes that a work refusal should be made, the employee must report to the supervisor that they are refusing the work and state why the situation is unsafe. The resulting investigation will involve the employee, supervisor, and a health and safety committee member (or employee representative). Mutual agreement that the problem is solved is needed before the employee returns to this work. However, if the problem is not resolved, a government health and safety officer/inspector will be called in to investigate and provide a written decision.⁶⁴

Although employers and their managers and supervisors are responsible for protecting workers from health and safety hazards, employees have responsibilities as well. Employees' responsibilities include:⁶⁵

- working in compliance with OH&S acts and regulations
- using personal protective equipment and clothing as directed by the employer
- reporting workplace hazards and dangers
- working in a manner as required by the employer and using the prescribed safety equipment.

WHMIS

The Workplace Hazardous Materials Information System (WHMIS) is related to the worker's "right to know." "WHMIS is Canada's national hazard communication program consisting of symbols and warning labels for consumers and material-specific safety data sheets that guide the handling of dangerous substances in the workplace, as well as related worker education and training."⁶⁶ WHMIS is implemented through coordinated federal, provincial, and territorial laws to ensure that hazardous products are properly labelled, used, stored,

handled, and disposed of safely. In 2015, WHMIS was modified to incorporate the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) for workplace chemicals and is now referred to as *WHMIS 2015*. The transition to WHMIS 2015 was accomplished in a phased approach that was fully implemented in 2018.⁶⁷

Organizations must have **safety**

data sheets (SDSs) for hazardous products that employees are exposed to. An SDS form details the hazards associated with a chemical; the chemical's producer or importer is responsible for identifying these hazards and detailing them on the form. Employers must ensure that all containers of hazardous chemicals are labelled with information about the hazards, prepare workplace labels and SDSs (as necessary), educate and train employees in safe handling of the chemicals, and ensure appropriate control methods are in place to protect the health and safety of workers.

safety data sheets (SDSs) Detailed hazard information concerning a controlled (hazardous) product.

Enforcement of Occupational Health and Safety Regulations











Enforcement responsibilities exist within the federal, provincial, and territorial governments. Occupational health and safety officers/inspectors have the authority to inspect workplaces and issue orders to employers and workers. In some serious cases, charges may also be laid by law enforcement under a section of the Canada Criminal Code that was amended in 2004 to create additional legal duties

on employers to ensure the safety of workers and the public. This amendment, **Bill C-45 (Westray Bill)**, named after the Nova Scotia mining disaster in 1992 that killed 26 workers, makes organizations and anyone who directs the work of others criminally liable for safety offences. Maximum fines were increased to \$100,000 from \$25,000 for less serious offences and the Bill provides

Bill C-45 (Westray Bill) Amendment to the Criminal Code making organizations and anyone who directs the work of others criminally liable for safety offences.

an unlimited fine for more serious offences. Anyone who directs the work of others can also face serious charges—criminal conviction, a criminal record, and even life imprisonment for failing to provide for health and safety in the workplace.⁶⁸ Although there have been relatively few criminal convictions handed down, there have been some well-publicized cases including the case of Metron Construction Corporation, which was the first Ontario firm to be convicted under the Criminal Code after Metron's president was charged with "criminal negligence causing death" after four workers were killed and another seriously injured when a swing stage scaffold collapsed while they were repairing concrete balconies on an apartment building in Toronto.⁶⁹

WHMIS 2015: Pictograms of Hazard Classes & Categories

	Exploding bomb (for explosion or reactivity hazards)		Flame (for fire hazards)		Flame over circle (for oxidizing hazards)
	Gas cylinder (for gases under pressure)		Corrosion (for corrosive damage to metals, as well as skin, eyes)		Skull and Crossbones (can cause death or toxicity with short exposure to small amounts)
	Health hazard (may cause or suspected of causing serious health effects)		Exclamation mark (may cause less serious health effects or damage the ozone layer)		Environment (may cause damage to the aquatic environment)
	Biohazardous Infectious Materials (for organisms or toxins that can cause diseases in people or animals)				

Source: WHMIS 2015 - Pictograms, URL: https://www.ccohs.ca/oshanswers/chemicals/whmis_ghs/pictograms.html, Canadian Centre for Occupational Health and Safety (CCOHS), 2015. Reproduced with the permission of CCOHS, 2018

Psychological Safety

Ensuring a safe physical working environment for employees has long been recognized as an essential organizational responsibility; however, psychological safety has more recently become a significant focus. As discussed earlier in the chapter, human rights legislation prohibits behaviours such as harassment. Workplace violence is a broad problem, particularly for certain occupational groups. According to the Canadian Centre for Occupational Health and Safety, health care workers, correctional officers, social service employees, teachers, and retail employees are some of the occupational groups more at risk.⁷⁰ In addition to harassment, workplace violence includes:

- threatening behaviour, e.g., throwing objects, or destroying property;
- verbal or written threats, e.g., expressing intent to inflict harm;
- verbal abuse, e.g., swearing and insults;
- physical attacks, e.g., hitting, pushing, or kicking.⁷¹

More than two-thirds of 1,381 EMS workers surveyed in Ontario and Nova Scotia reported being subjected to on-the-job verbal, physical, or sexual abuse.⁷² Employees exposed to workplace violence, including harassment, may develop conditions considered occupational injuries (e.g., depression, anxiety, and burnout). Judges, arbitrators, and commissioners now identify that action needs to be taken under both human rights and occupational health and safety laws and regulations to protect the psychological well-being and safety of employees.⁷³ The case of a former British Columbia RCMP officer serves to illustrate the significant consequences. Ex-Mountie Nancy Sulz was awarded \$950,000 by the B.C. Supreme Court for

“damages, lost wages, and loss of future earnings” after finding her Staff Sgt. and two subordinate officers caused Sulz “serious psychological harm” related to incidents arising after the birth of a child.⁷⁴

Through a range of programs and policies, the County of Wellington, a municipal government in southwestern Ontario, shows its employees that preserving their mental health is just as important as physical safety. The County of Wellington was the winner of the first Canada’s Safest Employers Psychological Safety Award. Michele Richardson, health and safety co-ordinator, says the county puts a great deal of effort into education and communication on the importance of psychological safety. From the time they’re hired, employees are trained in policies regarding a respectful workplace, verbal de-escalation, and workplace violence. Training, including online programs, continue on a regular basis. The county provides a mental health tool kit as part of mandatory training for all staff. While workers learn to report unhealthy psychological situations to their managers, managers are trained to investigate issues and, if required, take corrective action. At quarterly meetings, managers often discuss a topic regarding psychological health and safety. Absenteeism reports, worker complaints, results of exit interviews, and employee and family assistance program (EFAP) quarterly reports are used to set objectives when the health and safety team develops its psychological health and safety management system.⁷⁵

Impact of Occupational Health and Safety Legislation

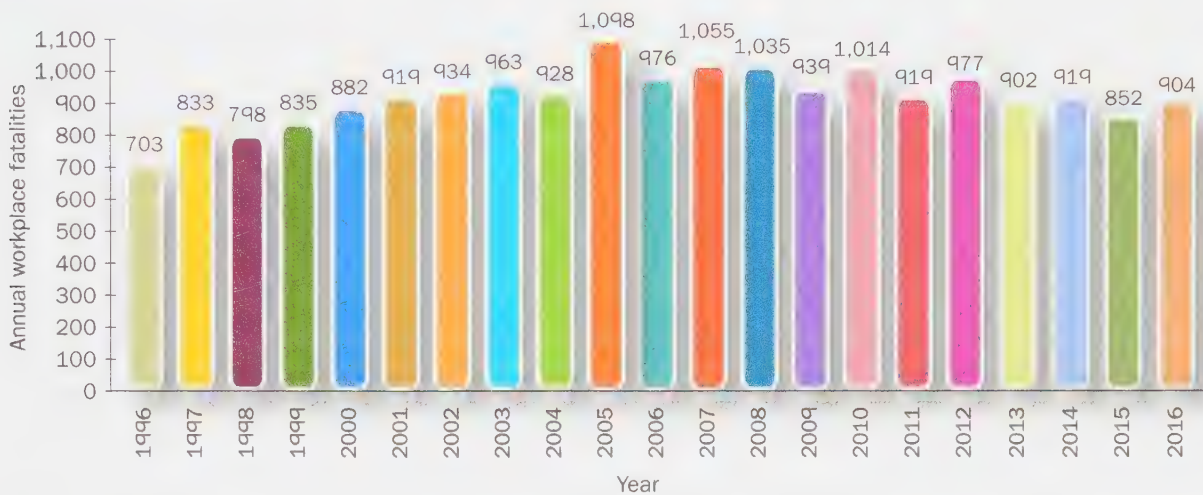
Legislation has succeeded in raising the level of awareness of occupational safety. The rate of workforce fatalities increased by more than 50 percent between 1996 and 2005; however, workplace fatalities have been reduced by

almost 18 percent between 2005 and 2016 (see Figure 2.6). Although on every second day in 2016, one *fewer* person lost their life due to work than in 2005, 904 lives were lost to workplace fatalities in Canada, a terrible and tragic loss of life. There has been a relatively significant reduction in time-loss injuries experienced in recent years relative to 1996–2008 levels (Figure 2.7).

Many workplace accidents are a product of unsafe behaviours, not unsafe working conditions. Because legislation does not directly regulate employee behaviour, little change can be expected unless employees are convinced of the standards' importance.⁷⁶ Because conforming to the law alone does not necessarily guarantee their employees will be safe, many employers go beyond the letter of

FIGURE 2.6

Number of Workplace Fatalities in Canada, 1996–2016



Source: "2014–2016 National Work Injury, Disease, and Fatality Statistics," *Association of Workers' Compensation Boards of Canada*, "Table 22: Number of Fatalities, by Jurisdiction 1993–2016," www.awcbc.org, accessed July 7, 2018.

FIGURE 2.7

Number of Accepted Lost-Time Claims in Canada, 1996–2016



Source: "2014–2016 National Work Injury, Disease, and Fatality Statistics," *Association of Workers' Compensation Boards of Canada*, "Table 1: Number of Accepted Lost Time Claims by Jurisdiction 1982–2016," www.awcbc.org, accessed July 7, 2018.

the law. In the next section we examine various kinds of employer-initiated safety awareness programs that comply with, and in some cases exceed, legal requirements.

Employer-sponsored Health and Safety Programs

Many employers establish safety awareness programs to go beyond mere compliance with occupational health and safety regulations and attempt to instill an emphasis on safety. A safety awareness program has three primary components: identifying and communicating hazards, reinforcing safe practices, and promoting safety internationally.

Identifying and Communicating Job Hazards

Employees, supervisors, and other knowledgeable sources need to consider potential problems related to safety. One method for doing this is the **job hazard analysis technique**.⁷⁷ With this technique, each job is broken down into basic elements, and each of these is rated for its potential for harm or injury. If there is agreement that some job element has high hazard potential, the group isolates the element and considers possible technological or behaviour changes to reduce or eliminate the hazard.

job hazard analysis technique Safety promotion technique that involves breaking down a job into basic elements, then rating each element for its potential for harm or injury.

Another means of isolating unsafe job elements is to study past accidents. The **technic of operations review (TOR)** is an analysis method for determining which specific element of a job led to a past accident.⁷⁸ The first step in a TOR analysis is to establish the facts surrounding the incident. To accomplish this, all members of the work group involved in the accident give their initial impressions of what happened. The group must then, through discussion, come to an agreement on the single, systematic failure that most likely contributed to the incident, as well as two or three major secondary factors that contributed to it.

technic of operations review (TOR) Method of promoting safety by determining which specific element of a job led to a past accident.

Job analysis may be entering a new level of sophistication, thanks to the development of wearable devices that connect to the Internet. For example, Honeywell and Intel together have been developing a wearable device that contains sensors and monitors for gathering and communicating data related to the wearer's safety. The device provides immediate feedback to the wearer and the supervisor. Workers in high-risk environments could transmit data about their whereabouts, movements, and conditions in their environment, allowing

supervisors to monitor employee well-being. The data collected in particular incidents also could prove useful for future safety training.⁷⁹

To communicate with employees about job hazards, managers should talk directly with their employees about safety. Written messages are also important to restate key points and help establish a "paper trail" that can later document a history of the employer's concern regarding the job hazard. Posters, especially if placed near the hazard, serve as a constant reminder, supporting other messages. Mobile devices can provide convenient, effective channels for communicating safety messages (e.g., the use of podcasts).

In communicating risk, managers should recognize that different groups of individuals may constitute different audiences. "Young and new workers are particularly vulnerable to workplace injury or illness, many of the injuries occurring in the first month on the job."⁸⁰ "Full of energy and enthusiasm, young workers can be a valuable asset to an organization. Yet this spirit, coupled with an eagerness to please and a lack of experience, may increase the risk of workplace injuries or illnesses."⁸¹

A study of nurses showed a high correlation between shift work and the risk of developing Type 2 diabetes. Shift workers are also considered at greater risk for obesity. "The relationship now between shift work and Type 2 diabetes is much clearer, the evidence is much stronger and therefore, we need to start looking at ways to intervene and the workplace is an obvious place for that to start," said Jocelyn Clark, a Toronto-based senior editor at the publication, *PLOS Medicine*.⁸²

Experienced employees sometimes need retraining to jar them from complacency about the dangers associated with their work.⁸³ This is especially the case if the hazard in question poses a greater threat to older employees. For example, accidents that involve falling off a ladder are a greater threat to older workers than to younger ones. Over 20 percent of such falls lead to a fatality for workers in the 55-to-65 age group, versus 10 percent for all other workers.⁸⁴

**So you think hearing protection is boring...
think again.**



© WorkSafeBC. Used with permission. Copies of the poster, "So you think hearing protection is boring . . . think again" and other workplace health and safety materials are available free of charge at the WorkSafeBC website (WorkSafeBC.com).

WorkSafeBC produces a variety of posters and other resources to communicate job hazards and promote working safely.

Reinforcing Safe Practices

To ensure safe behaviours, employers should not only define how to work safely but also reinforce the desired behaviour. One common technique for reinforcing safe practices is implementing a *safety incentive program* to reward workers for their support of and commitment to safety goals. Such programs start by focusing on monthly or quarterly goals or by encouraging suggestions for improving safety. Goals might include good housekeeping practices, adherence to safety rules, and proper use of protective equipment. Later, the program expands to include more wide-ranging, long-term goals. Typically, the employer distributes awards in highly public forums, such as company or department meetings. Using merchandise, instead of cash, for prizes, provides a lasting symbol of achievement. A good deal of evidence suggests that such incentive programs are effective in reducing the number and cost of injuries.⁸⁵

Besides focusing on specific jobs, organizations can target particular types of injuries or disabilities, especially those for which employees may be at risk. For example, the CNIB reports that every day 700 Canadian workers sustain eye injuries on the job, often resulting in lost time and, in some cases, either temporary or permanent vision loss.⁸⁶ Organizations can prevent such injuries through a combination of job analysis, written policies, safety training, protective eyewear, rewards and sanctions for safe and unsafe behaviour, and management support for the safety effort.

Industries and occupational groups also provide organizational safety awards. For example, the Canadian Association of Petroleum Producers—CAPP presents awards to oil and gas companies for innovative health and safety accomplishments. Talisman Energy Inc. was recognized for its “Cypress 3D Seismic Program,” a large-scale, low-environmental impact, geophysical exploration program near Fort St. John, British Columbia. The program’s study included the potential to improve helicopter safety while also protecting migratory birds.⁸⁷

Employee Health and Wellness Programs

Another way to improve the well-being and overall health of employees is to offer an **employee health and wellness program**, a set of communications, activities, and facilities designed to change health-related behaviours in ways that reduce health risks. Typically, wellness programs aim at specific health risks, such as high blood pressure, high cholesterol levels, smoking, and obesity, by encouraging preventive measures such as exercise and good nutrition. However, many organizations

employee health and wellness program A set of communications, activities, and facilities designed to change health-related behaviours in ways that reduce health risks.

are adopting an integrated strategic approach to wellness that promotes a corporate culture to support employees in taking responsibility for their health and overall wellness. Chapter 8 will explore employee health and wellness programs in more detail.

Organizations that place a strategic emphasis on employee health and wellness achieve economic benefits including reduced injury and disability insurance costs, enhanced productivity and service, and reduced costs due to a reduction in employee absenteeism and turnover.⁸⁸ Some organizations are also attempting to measure the return on investment (ROI) of health and wellness programs. For example, Desjardins Group reports “a return on investment of between \$1.50 and \$3 for every dollar invested in their program in addition to other positive employee self-reported outcomes including making healthier food choices, lower stress, and engaging in more physical activity.”⁸⁹

The Town of Conception Bay South, Newfoundland and Labrador, is a growing municipality located just minutes away from St. John’s, the provincial capital. After senior leaders noted a significant increase in Workplace Health, Safety, and Compensation Commission claims and premiums, they decided to create a health and wellness program. After seeking feedback from all employees on health and wellness concerns, a health and wellness program with several components was implemented. Employees receive free use of all recreational facilities (e.g., swimming, tennis, skating, and squash); they are also encouraged to use the employee assistance program (EAP), attend luncheon sessions, and access the monthly wellness newsletters. Some of the outcomes experienced to date include annual savings of \$45,000 in sick leave, significant and sustained savings in WHSCC premiums due to a significant decline in claims, and achieving a score of over 90 percent on the town’s occupational health and safety audit, a considerable improvement from its initial audit score of 38 percent.⁹⁰

Employee Assistance Programs (EAPs)

An **employee assistance program (EAP)** is a confidential, short-term counselling service for employees with personal issues that affect their work performance.⁹¹ EAPs began in the 1950s with a focus on treating alcoholism, and in the 1980s they expanded into drug treatment. Today, many EAP providers offer a very broad range of services that may overlap with health, wellness, and lifestyle-related services (e.g., dealing with stress). To enhance inclusivity for Indigenous employees, some organizations’ employee assistance programs have integrated Indigenous elders.⁹²

employee assistance program (EAP) Confidential, short term, counselling service for employees with personal issues that affect their work performance.

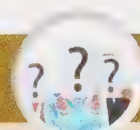
Many organizations extend EAP services to family members. Left untreated, these issues may cause employees to lose their ability to cope and their work performance and safety may suffer. Employees must be able to feel confident the program respects their confidentiality. In addition to services provided, other considerations include proximity to counsellors, client references, and availability of effectiveness reporting measures.⁹³

Promoting Safety Globally

Given the increasing focus on globalization, organizations also need to consider how to ensure the safety of their

employees regardless of the nation in which they operate. Cultural differences may make this more difficult than it seems. For example, a study examined the impact of one standardized corporation-wide safety policy on employees in three different countries: the United States, France, and Argentina. The results of this study indicate that employees in the three countries interpreted the policy differently because of cultural differences. The individualistic, control-oriented culture of the United States stressed the role of top management in ensuring safety in a top-down fashion. However, this policy failed to work in Argentina, where the culture is more “collectivist” (emphasizing the group). Argentine employees tend to feel that safety is

Thinking ETHICALLY



Simple Situations Can Become Awkward

“What did you do on the weekend?” It sounds like a simple question that managers might ask their employees in order to build a team atmosphere and show interest in their lives outside work. But for LGBTQIA2+ employees (lesbian, gay, bisexual, transgender, questioning, intersex, asexual, or two-spirit employees), who may not be “out” to their work colleagues or bosses, it can be one of the hardest questions to answer. Similarly company-sponsored social events that invite partner attendance, or even casual after-hours gatherings of co-workers, can become uncomfortable or awkward for employees navigating their sexual orientation, gender identity, or gender expression in the workplace. Transgender employees may be particularly vulnerable. According to survey results from the National Center for Transgender Equality, “80 percent of the transgender population experienced harassment or mistreatment on the job, or took steps to avoid it.”

Companies that promote diversity emphasize hiring, training, and retention of people protected by human rights and employment equity legislation. Some companies take diversity efforts further. For example, Loblaw Companies, Ltd. recently introduced a LGBTQ Youth Internship, and KPMG LLP provides an employee network called pride@KPMG.

When Apple CEO Tim Cook announced in a column he wrote that he “is proud to be gay,” he became the first openly gay CEO of a Fortune 500 company. “I’ve come to realize that my desire for personal privacy has been holding me back from doing something more important,” he said in *Bloomberg Businessweek*. “If hearing that the CEO of Apple is gay can help someone struggling to come to terms with who he or she is, or bring comfort to anyone who feels alone, or inspire people to insist on their equality, then it’s worth the trade-off with my own privacy.”

Questions

1. Are corporate diversity initiatives (e.g., the employee networks at Loblaw Companies Inc. and KPMG LLP) good business? Do they illustrate good ethics? Should a company pursue an approach to diversity that goes beyond legal requirements? Why or why not?
2. How confident are you that workplaces are increasingly becoming genuinely inclusive—so that employees are less likely to feel they need to hide their sexual orientation, gender identity, or gender expression or endure harassment?

Sources: “Lesbian, Gay, Bisexual, and Transgender Workplace Issues,” *Catalyst Knowledge Center*, June 6, 2018, www.catalyst.org, accessed July 12, 2018; Diane Jermyn, “2018 Best Diversity Employers: Diversity and inclusion give these firms a competitive advantage,” *Special to The Globe and Mail*, March 7, 2018, www.theglobeandmail.com, accessed July 12, 2018; Sandy E. James, Jody L. Herman Susan Rankin, et al., “The Report of the 2015 U.S. Transgender Survey,” *National Center for Transgender Equality*, 2016; Sarah Dobson, “Out and Proud at Work,” *Canadian HR Reporter*, December 1, 2014, pp. 1–2; Timothy Cook, “Tim Cook Speaks Up,” *Bloomberg Business*, October 30, 2014, www.bloomberg.com/news/articles/2014-10-30/tim-cook-speaks-up, accessed March 30, 2014; Amanda Silliker, “LGBT Staff Still Face Bias,” *Canadian HR Reporter*, December 19, 2011, pp. 1, 9; and Susan Turner, “Simple Questions and Awkward Situations: The Impact of the Closet at Work,” *Canadian HR Reporter*, December 20, 2004, p. 10.

everyone's joint concern, so the safety programs needed to be defined from the bottom of the organization up.⁹⁴

Another challenge in promoting safety globally is that laws, enforcement practices, and political climates vary from country to country. With the increasing use of offshoring, described in Chapter 1, more companies have operations in countries where employment and labour

standards are far less strict than in Canada. Managers and employees in these countries may not think the company is serious about protecting workers' health and safety. In that case, strong communication and oversight will be necessary if the company intends to adhere to the ethical principle of valuing its global workers' safety as much as the safety of its workers in Canada.

SUMMARY

LO1 Explain the overall context and legal framework for human resource management in Canada.

Although the practice of valuing diversity has no single form, organizations that value diversity are likely to be mindful of the benefits and work actively to create a work environment in which individuals feel valued and able to perform to their potential. Approximately 94 percent of Canadian employees are covered by provincial and territorial legislation. The remaining 6 percent are covered by federal legislation. Although jurisdictional differences exist, laws tend to mirror one another. Increasingly, organizations are taking a strategic approach to occupational health and safety by adopting a values-based commitment to safe and healthy operations.

LO2 Discuss major areas of employment legislation including their relevance and implications for human resource management.

Employers can prevent discrimination by avoiding differential treatment of job applicants and employees. Organizations can develop and enforce practices and policies that demonstrate a high value placed on diversity and inclusion and preventing harassment. Employment equity initiatives may remove employment barriers to the designated groups.

Privacy legislation provides rules about how organizations can collect, use, and disclose information about you. Employment/ labour standards legislation deals with

minimum standards. Pay equity provisions help assure equal pay for work of equal value. Human Rights Commissions, Employment/Labour Standards Offices, and Privacy Commissioners play key roles to provide education and support in addition to providing oversight and enforcement.

LO3 Identify the requirements and implications of workplace health and safety.

All jurisdictions in Canada have occupational health and safety legislation. Canada's approach to safety in the workplace is based on the internal responsibility system whereby both employers and employees are responsible for safety. Employers, managers, and supervisors have a duty to provide a safe workplace. Canada's workers have fundamental rights as well as specific responsibilities. Psychological safety has also become a significant workplace health and safety issue.

LO4 Discuss the ways employers promote worker health and safety.

Besides complying with occupational health and safety regulations, employers often establish safety awareness programs designed to instill an emphasis on safety. Employers may identify and communicate hazards through the job hazard analysis technique or the technic of operations review. They may adapt communications and training to the needs of different employees and establish incentive programs to reward safe behaviour.

CRITICAL THINKING QUESTIONS

1. Some people say that Millennials and Generation Z are more likely than other generations to "notice the absence of inclusion than when it exists." Millennials and Generation Z have also been credited as seeing inclusion as "more about varying ideas and workstyles than it is about skin colour, religion, or ethnicity."⁹⁵ Do you agree or disagree with these statements? Why or why not?
2. On the basis of your knowledge of diverse religious practices, what types of accommodations should an employer be prepared to provide?
3. What is your reaction to the #MeToo movement? Do you think it has reduced the stigma of reporting sexual harassment? Why or why not?

4. Research minimum wages across various jurisdictions in Canada; for example, Alberta, New Brunswick, and Ontario. What are your observations and conclusions about minimum wages and employer reactions to recent changes?
5. Do you think that employers violate current or prospective employees' privacy rights when they use social media sites such as LinkedIn, Instagram, or Twitter to conduct informal background checks? Why or why not?
6. Have you ever experienced harassment at work or been injured on the job?
7. What are jobs that you consider particularly hazardous? What types of hazards and hazardous activities might workers experience in these jobs? What is your advice to reduce or eliminate the hazards and hazardous activities identified?
8. Why are younger workers more likely to be injured on the job?
9. Do you think that fatigue is a form of impairment? Why or why not? What should organizations do about worker fatigue in their efforts to provide a safe and healthy workplace for all stakeholders; e.g. employees, co-workers, customers, and the general public?
10. For each of the following occupations, identify at least one possible hazard and at least one action employees could take to minimize the risk of any injury or illness related to that hazard.
 - a. Server in a restaurant
 - b. House painter
 - c. Data scientist
 - d. Worker in a personal care home for seniors

EXPERIENCING HR—IDENTIFYING WORKPLACE HAZARDS

Form groups of three or four students. In your group, identify an office location that you can visit to identify any potential workplace hazards that may be present. If you have been given time for research, review the chapter for ideas of where to gather information about the type of workplace injuries that are most prevalent in office settings. Visit the office location you identified (ensuring you have received the necessary advance approval from the

appropriate manager). Carefully document any workplace hazards and/or any unsafe behaviours you observed.

With your entire class, share your findings. What types of hazards (if any) did your team identify? Did you observe any unsafe employee behaviours? What is your advice to remove potential hazards (if any) in the office you visited? What is your advice to reduce/eliminate any unsafe behaviours you observed?⁹⁶

CASE STUDY: EVIDENCE-BASED HRM

Sodexo Examines the Impact of Gender-balanced Leadership on Performance

Rohini Anand, global chief diversity officer at Sodexo, a global food services and facilities management company, collected, analyzed, and shared data showing the value of gender diversity. She conducted a study of the company's 50,000 managers in 80 countries from executive to site management levels to quantify the impact of gender balance in management.

Anand's findings revealed that gender balance in management significantly related to improved financial performance, employee engagement, and client retention. She found that teams with a management male–female ratio of between 40 and 60 percent delivered the consistently best results on both financial and non-financial performance indicators. Specific results of Sodexo's internal study found that gender-balanced management entities had:

- better employee engagement: +4 points
- higher gross profits: +23 percent
- stronger brand image: +5 points

Anand's study also determined that globally, 56 percent of Sodexo's employees currently work in a team with gender-balanced leadership. In Canada, Sodexo reports that 87 percent of its management teams are gender-balanced.

One of the action items moving forward, is the creation of gender-balance targets for leaders. For example, Sodexo's global CEO, Michel Landel, has set a goal that by 2025 at least 40 percent of Sodexo's 1,400 global senior leaders will be women (a total of 560 women leaders). To ensure that goal is reached, 10 percent of senior leaders' bonuses are based on their yearly progress toward that goal.

Sodexo Canada recently announced the appointment of its first female President—Suzanne Bergeron. Bergeron had been the vice-president of human resources and is based in Montreal. Sodexo Canada has more than 10,000 employees and has been recognized for five consecutive years as one of Canada's Best Diversity Employers.

Questions

1. What is your reaction to Sodexo's goal that by 2025 at least 40 of senior global leaders will be women? What could go wrong? What must go right?

2. Why do you think Sodexo teams with gender-balanced leadership have achieved higher levels of performance than teams that do not have gender-balanced leadership?

Sources: Based on J. Simons, "Workplace Diversity Efforts Get a Reboot," *Wall Street Journal*, February 15, 2017, p. B5; Sodexo Canada website, "Sodexo Canada announces the appointment of Suzanne Bergeron as new Country President," May 28, 2018, www.sodexo.com, accessed July 10, 2018; "Sodexo named Top Diversity Employer Five Years Running," *CNW Newswire*, March 2, 2018, www.newswire.ca, accessed July 10, 2018; "Case Study: Sodexo Analyzes the Impact of Gender Balance on Performance," *Gender Balance Business News*, https://ca.sodexo.com/files/live/sites/sdxcom-global/files/020_Global_Content_Master/Building_Blocks/GLOBAL/Multimedia/PDF/Diversity_and_Inclusion/SODEXO_GBBN2015_GB_WEB.pdf, accessed July 10, 2018.

CASE STUDY: HRM SOCIAL

Using Social Media in Hiring Poses Discrimination Risk

At many organizations, the people who make hiring decisions conduct an online search of social media to learn more about candidates. According to a 2017 CareerBuilder poll of 2,380 HR and hiring private-sector managers, approximately 70 percent of employers said they used social media for hiring—a significant increase from 60 percent in 2016 and 11 percent a decade ago. The objective is to gain greater insight into people's character and spot red flags that a person might behave unprofessionally. However, some recent research suggests that screening candidates with social media contributes to discriminatory hiring decisions.

In one study, researchers created fictional résumés and social-media profiles and sent the résumés to businesses that had advertised job openings. All the résumés listed the same qualifications under different names, but the social media hinted that applicants were either Christian or Muslim or that they were either gay or straight. The companies were more likely to call the applicants with the Christian-sounding profiles than the applicants who seemed to be Muslim. Broken down geographically, the difference was statistically significant. The researchers did not find a difference in response rates related to sexual orientation in this study.

To avoid discriminatory behaviour, it is important for employers to get expert advice to ensure compliance with human rights and privacy requirements. For example, employers must be sure the information they gather is related to job qualifications. Some suggest that employers consider using a third-party company to conduct background checks on social media. That agency would report only the job-related information obtained from the background check and omit protected information, such as an employee's religion, health, and pregnancy status. One recent survey found that 95 percent of social media screening is conducted internally and 5 percent is outsourced to an external vendor.

Questions

1. Explain how the findings of the research study provide an example of differential treatment.
2. For the employee characteristics protected by human rights legislation, which could you avoid revealing on a social media site? Which would be difficult or impossible to avoid disclosing?

Sources: Debbie Lamb, "Social Media Screening Continues Its Upward Trends," *Sterling Talent Solutions*, October 5, 2017, www.sterlingtalentsolutions.com, accessed July 10, 2018; "Is trawling social media the future of background checks?," *HRD*, July 6, 2017, www.hrmonline.ca, accessed July 10, 2018; Michael Bologna, "Social Media Strategies in Recruiting, Hiring Pose Legal Risks for Employers," *Bloomberg BNA*, April 21, 2014, <http://www.bna.com>; Jennifer Valentino-DeVries, "Bosses May Use Social Media to Discriminate against Job Seekers," *Wall Street Journal*, November 20, 2013, <http://online.wsj.com>.

PART 2

Preparing for and Acquiring Human Resources

CHAPTER 3

Analyzing Work and Designing Jobs

CHAPTER 4

Planning for and Recruiting Human Resources

CHAPTER 5

Selecting Employees

