

Part I – Freedom from discrimination

The *Code* protects people from discrimination in specific situations. Under the *Code*, you have the right to be free from discrimination in five parts of society – called social areas – based on one or more grounds.

The five social areas are: employment, housing, services, unions and vocational associations and contracts.

Discrimination based on 17 different personal attributes – called grounds – is against the law under the *Code*. The grounds are: citizenship, race, place of origin, ethnic origin, colour, ancestry, disability, age, creed, sex/pregnancy, family status, marital status, sexual orientation, gender identity, gender expression, receipt of public assistance (in housing) and record of offences (in employment).

Your rights under the *Code* are not violated unless the discrimination occurs in one of the social areas based on one or more of the protected grounds. For example, the *Code* does not apply if a stranger on the street insults you by making a racist comment, because this did not happen in a specific social area, such as at your job or in a restaurant.^[1] The *Code* will also not apply if you feel you were treated differently in your job due to a personality conflict with your manager, because the treatment is not related to a ground such as your age, sex or race.

To establish discrimination under Ontario's *Human Rights Code*, a claimant must show that:

1. they have a characteristic protected by the Code (e.g. race)
2. they experienced adverse treatment/impact within a social area (for example, in accessing a service, housing or employment)
3. the protected characteristic was a factor in the adverse treatment or impact.

A person discriminates “directly” when the action itself is discriminatory and when the person acts on his or her own behalf. For example, a building manager who refuses to rent an apartment because he prefers to rent to someone of his own ethnic background is discriminating directly.

“Indirect discrimination” is discrimination carried out through another person. For example, a building manager tells her superintendent not to rent to people of a certain ethnic group because their food “smells too much.” The manager can be named in the human rights claim because she used the superintendent indirectly to discriminate against people because of their ethnic origin.

Sometimes a rule or practice unintentionally singles out particular people and results in unequal treatment. This type of unintentional discrimination is called “constructive” or “adverse effect” discrimination. The *Code* also protects against this type of discrimination. For example, an employer has a rule that employees are not allowed to wear hats or head coverings. The rule is not intended to exclude people who wear head coverings for religious reasons, but it may have this effect. Unless an employer can show that a change or exception to the rule would be too costly or create a health and safety danger, the employer should agree to change the rule.

[\[1\]](#) For more information on racism and racial harassment, see the OHRC’s *Policy and guidelines on racism and racial discrimination* (2005).

Services

You have the right to be free from discrimination when you receive goods or services, or use facilities. For example, this right applies to:

- stores, restaurants and bars
- hospitals and health services
- schools, universities and colleges
- public places, amenities and utilities such as recreation centres, public washrooms, malls and parks
- services and programs provided by municipal and provincial governments, including social assistance and benefits, public transit and policing
- services provided by insurance companies
- classified ads in a newspaper.

This section also applies to businesses, government, community agencies and other organizations in Ontario.

Services and age

You must be at least 18 years old to file a human rights application based on age under this section. Parents or guardians can file applications on behalf of children and youth under 18.

The *Code* permits special discounts for older persons,[2] “golden age” passes and other benefits for persons over 65 years old. Limits on selling tobacco and alcohol to people under 19 are also allowed.

Services and religion

You have the right to education, community and other services that respect your sincerely held religious practices and beliefs.[3]

[2] For more information, see the OHRC’s *Policy on discrimination against older persons because of age* (2007).

[3] For more information, see the OHRC’s *Creed case law review* at www.ohrc.on.ca/en/creed-case-law-review (2012), or the *Policy on creed and the accommodation of religious observances* (1996).

Housing [4]

Every person has the right to be free from discrimination in housing because of *Code*-protected grounds. You have the right to equal treatment when buying, selling, renting or being evicted from an apartment, house, condominium or commercial property. This right also covers renting or being evicted from a hotel room.

The *Code* applies to terms and conditions in contracts and leases such as the amount of rent, security deposits, the need for guarantors, occupants’ rules and regulations, ending a lease and eviction.

Your right to housing without discrimination also includes suitable access to doors, laundry rooms, swimming pools, other common areas, repairs and other aspects of housing.

Housing and age

You must be at least 18 years old to file a human rights application based on age, or 16 or 17 years old when you have legally withdrawn from your parents’ authority. If you claim this right when you are 16 or 17 years old, you have the same legal responsibilities you would if you were 18 years old.

Housing and public assistance

A landlord cannot discriminate because of a person's income source, such as social assistance, family benefits, disability pension, or other forms of public assistance.

Shared housing

The right to be free from discrimination in housing does not apply if you share housing and a bathroom or kitchen facility with the owner or the owner's family.

Same-sex residences

The right to be free from discrimination based on sex does not apply to residences that are male-only or female-only. An owner of a residence can restrict access to that residence to men only or women only. Trans people should be provided access to these residences in accordance with their lived gender identity.

Lease applications and tenant screening

Landlords can use income information, credit checks, credit references, rental history, guarantees or other similar business practices for selecting tenants, as long as they do so in a way that is consistent with the *Code* and its regulations.

Regulation 290/98 under the *Code* allows landlords to request income information from a prospective tenant only if the landlord also requests credit references, rental history, and credit checks. The landlord must consider income information together with all the other information obtained.

The Regulation specifically reaffirms that none of these assessment tools may be used in an unfair way to screen out prospective tenants based on *Code* grounds. The criteria must be used in a genuine and non-discriminatory way.

Adult-only buildings

It is discrimination, under the ground of family status, if you are denied housing because you have children.[\[5\]](#) Adult-only buildings are not permitted in Ontario except for specific situations such as subsidized seniors' residences or care facilities.

Harassment in housing

Everyone has the right to be free from harassment in housing because of *Code*-protected grounds. "Harassment" means comments or actions that are unwelcome to you or should be known to be unwelcome. You have the right to be free from

humiliating or offensive conduct that is based on one or more of the Code grounds. Harassment requires a “course of conduct,” which means that a pattern of behaviour or more than one incident is usually required. For example, a landlord’s repeated demeaning comments about how a tenant uses a wheelchair could be harassment in housing. However, one incident may be enough to support a finding of harassment where the incident creates a poisoned environment.

Poisoned environment

You might feel that your housing is hostile or unwelcoming to you because of insulting or degrading comments or actions that have been made about you or others based on a ground in the *Code*. When comments or actions of this kind have an influence on others and how they are treated, this is known as a “poisoned environment.” A poisoned environment cannot, however, be based only on your personal views. You must have facts to show that an objective person would see that the comments or conduct would make a person feel unwelcome based on *Code* grounds.

[\[4\]](#) For more information on your right to be free from discrimination in housing, see the OHRC’s *Policy on human rights and rental housing* (2009).

[\[5\]](#) For more information, see the OHRC’s *Policy and guidelines on discrimination because of family status* (2007).

Contracts

Every person having legal capacity has a right to contract on equal terms without discrimination because of any *Code* ground.

A contract is a legal agreement. It can be a written or verbal agreement.

The right to enter into a contract on equal terms covers all steps in the contract, including the offer, acceptance, price or even rejection of a contract. The *Code* covers all types of contracts, including contracts to buy a house, condominium or other type of residential accommodation, and contracts for buying a business, such as office or retail space.

For example, an automobile manufacturer cannot refuse to enter into a contract with the owner of a car dealership because the owner is gay.

Employment [6]

Every person has the right to equal treatment in employment without discrimination based on *Code* grounds. In Ontario, about three-quarters of all human rights claims come from the workplace.

Employment is used in a very general way in the *Code*. Employees, independent contractors[\[7\]](#) and volunteers are covered.

Human rights applications can be filed against employers – and also against contractors, unions or boards of directors. Employers and unions have a joint duty to make sure that workplaces are free of discrimination and harassment.

The right to “equal treatment with respect to employment” covers applying for a job, being recruited, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs. It also covers rate of pay, overtime, hours of work, holidays, benefits, shift work, discipline and performance evaluations.

People with disabilities have the right to be provided with equipment, services or devices that will allow them to do their job.[\[8\]](#)

Employment and age

In employment, you must be at least 18 years old to file a claim stating that you were discriminated against because of your age. There is no age maximum on the right to freedom from discrimination in the workplace because of age. This means that older persons, who feel that they have discriminated against based on their age, may file a human rights claim.[\[9\]](#)

Employment and record of offences

When you apply for a job, you cannot be asked if you have any kind of criminal record. However, employers can ask whether you have been convicted of a federal offence for which you have not received a pardon. You may be asked during an interview whether you are bondable, if that is a requirement for the job.

Employment and unions

If you are a member of a union, you may have the right to file a grievance under your collective agreement. Check with your shop steward or representative.

Employers cannot come to an agreement with a union or an employee that some or all of the *Code* does not apply to them. Also, if a union does not support an employer's efforts to meet its obligations under the *Code*, a human rights application may be filed against the union.

Employment and creed[\[10\]](#)

You have the right to employment that respects your sincerely held beliefs and practices. You may have religious or creed-based needs such as prayer breaks, religious or creed-based days off, and dress requirements. If you ask your employer to meet these needs, they should be met unless your employer can show that it would prevent you from doing the essential duties of your job, or would cause undue hardship based on costs or health or safety risks.

In Ontario, employers can meet their duty to accommodate time off for religious holy days by searching for solutions that allow time off without adverse employment consequences, including a loss of pay. However, forcing an employee to use vacation time instead of exploring other options would likely be found discriminatory.[\[11\]](#) Providing several alternatives and choices is always preferable.

Height and weight requirements

Minimum standards for height and weight sometimes unintentionally screen out certain job applicants, such as women and racialized persons. Such a standard is only allowed if it:

1. was adopted for a purpose or goal that is rationally connected to the function being performed
2. was adopted in good faith, in the belief that it is needed to fulfill the purpose or goal
3. is reasonably necessary to accomplish its purpose or goal, in the sense that the person cannot be accommodated without undue hardship.

The ultimate issue is whether the person responsible for accommodation has shown that accommodation has been provided up to the point of undue hardship.

Employment, language and accent[\[12\]](#)

If you believe you have been discriminated against because of your language or accent, you can make a human rights claim based on a number of grounds, such as ancestry, ethnic origin, place of origin and race.

An employer can require that you speak English fluently if it is a genuine job requirement. An employer cannot use language or accent as a way to screen out racialized people or people of particular ethnic origins where language fluency is not essential to the job.

For example, an employer refuses to hire a person from Spain as a school bus driver because he does not speak fluent English. However, being fluent in English is not essential to the job. This could be discrimination because of place of origin.

Employment, medical examinations and drug or alcohol testing[\[13\]](#)

Drug and alcohol dependencies, as well as perceived dependencies, may be considered a form of disability under the *Code*. While not all people with drug and alcohol dependencies see themselves as having a disability, they are protected under the *Code* against discrimination in the workplace based on the ground of disability.

Testing for alcohol and drug use is a form of medical examination. Employment-related medical examinations or questions, as part of the job screening process, are prohibited. Medical examinations to determine the ability to do essential job duties should only be used after a conditional offer of employment has been made, preferably in writing.

If an employer cannot show that it has an effect on job safety and performance, drug and alcohol testing has been found to be a violation of employee rights.

Employment agencies

Employment agencies cannot discriminate. They also cannot discriminate at the request of a client. For example, an employer asks an agency to send them a young, attractive woman for a receptionist position. This would be discrimination based on age and sex.

Section 23 of the *Code* talks about other issues in employment, such as job applications, medical examinations or inquiries, and interviews.

Harassment in employment

“Harassment” means comments or actions that are unwelcome to you or should be known to be unwelcome. You have the right to be free from humiliating or annoying behaviour that is based on one or more *Code* grounds.

Harassment requires a “course of conduct,” which means that a pattern of behaviour or more than one incident is usually needed. It doesn’t matter what type of business or employment it is – harassing behaviour based on *Code* grounds in any employment setting is prohibited under the *Code*.^[14] Harassment in the workplace is also prohibited under the *Occupational Health and Safety Act*.^[15]

Poisoned environment

You might feel that your workplace is hostile or unwelcoming to you because of insulting or degrading comments or actions that have been made about you or others based on a *Code* ground. When comments or conduct of this kind have an influence on others and how they are treated, this is known as a “poisoned environment.” A poisoned environment cannot, however, be based only on your personal views. You must have facts to show that an objective person would see the comments or conduct resulting in unequal or unfair terms and conditions.

^[6] For more detailed information, see the OHRC’s publication, *Human Rights at Work* (2008).

^[7] See *Sutton v. Jarvis Ryan Associates* (2010)] HRTO 2421 (CanLII) and *Ketola v. Value Propane*, (2002) HRTO 46510 (CanLII)

^[8] For more information, please see the Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate* (2001).

^[9] Please see the Commission’s *Policy on Discrimination Against Older Persons Because of Age*, (2007).

^[10] For more information about creed and employment, please see the Commission’s *Creed Case Law Review* at www.ohrc.on.ca/en/creed-case-law-review (2012), and the Commission’s *Policy on creed and the accommodation of religious observances* (1996).

^[11] *Shapiro v. Peel (Regional Municipality)*(No. 2)(1997), 30 C.H.R.R. D/172 (Ont. Bd. Inq.)

[12] Further information can be obtained in the Commission's *Policy on discrimination and language* (1996). For a more complete discussion on racism and racial discrimination, please see the Commission's *Policy and guidelines on racism and racial discrimination*, (2005).

[13] For more detailed information, please see the Commission's *Policy on drug and alcohol testing* (2000) and *Human Rights at Work* (2008).

[14] See *Lombardi v. Watson Enterprises*, (2012) HRTO 1675 (CanLII)

[15] See the Ministry of Labour's website for more information at www.labour.gov.on.ca/english/hs/topics/workplaceviolence.php

Vocational associations and unions

This section deals with your right to join and be treated equally in a union, professional or other vocational association.

This applies to membership in trade unions and self-governing professions, including the terms and conditions of membership, rates of pay and work assignments. It would include employees', employers' and managers' associations.

Sexual harassment [16]

Sexual harassment in housing and workplaces

"Harassment" in this section means comments or actions based on sex, sexual orientation, gender identity or gender expression that are unwelcome to you or should be known to be unwelcome. They may include humiliating or annoying conduct. Harassment requires a "course of conduct," which means that a pattern of behaviour or more than one incident is usually required for a claim to be made to the Tribunal. However, a single significant incident may be offensive enough to be considered sexual harassment.

Women and men have the right to be free from sexual and gender-based harassment. Sexual harassment includes unwelcome sexual contact and remarks, leering, inappropriate staring, unwelcome demands for dates, requests for sexual favours, spreading sexual rumours (including on-line) and displays of sexually offensive

pictures or graffiti. For example, an employer's repeated and vulgar sexual comments to an employee could constitute sexual harassment.

The comments or conduct do not have to be sexual in nature. Someone may tease or bother you because of gender-based ideas about how men or women "should" look, dress or behave. If you are a trans person, you are protected from degrading comments, insults or unfair treatment because of your gender identity or gender expression.[\[17\]](#)

Poisoned environment

You might feel that your workplace is hostile or unwelcoming to you because of insulting or degrading comments or actions that have been made about you or others based on the ground of sex. When comments or conduct of this kind have an influence on others and how they are treated, this is known as a "poisoned environment." A poisoned environment cannot, however, be based only on your personal views. You must have facts to show that an objective person would see the comments or conduct resulting in unequal or unfair terms and conditions.

Sexual solicitation

You have the right to be free from unwelcome advances or requests for sexual favours made by a boss, supervisor or other person in a position of authority.

Example: A supervisor makes unwanted sexual advances to an employee. In this situation, it may be implied, directly or indirectly, that a promotion is at risk of being denied if the person does not agree to accept the advances.

If the supervisor punishes the person because he or she rejected the advance, this is called a "reprisal". This kind of "getting even" is not allowed under the *Code*.

Example: A female employee is fired or demoted because she refused a "sexual proposition" from her manager.

Harassment and your safety

If you are being harassed at work and have concerns about your safety, alert someone you believe can help you. This could be your employer, police, local community agencies and/or women's shelters. You can also contact your local Ministry of Labour office to report incidents of workplace harassment or violence.[\[18\]](#)

[16] For more detailed information, see the OHRC's *Policy on preventing sexual and gender-based harassment* (2011).

[17] For more information, see the OHRC's *Policy on discrimination and harassment because of gender identity* (2000). Note that in 2012, "gender identity" and "gender expression" were added as grounds of discrimination in the Ontario *Human Rights Code* and the OHRC is currently updating this policy.

[18] See www.labour.gov.on.ca/english/feedback/index.php.

Punishment for exercising rights

If you believe that your rights under the *Code* have been violated, you can contact the Legal Support Centre, consult a lawyer of your own choosing, file a human rights application with the Tribunal, or file a grievance under your collective agreement to protect your rights. You may not be punished or threatened with punishment for trying to exercise these rights. Any attempt or threat to punish you is called a "reprisal."

The following examples may be a form of punishment or "reprisal" and can result in another human rights claim:

- A tenant makes a claim under the *Code* against a landlord and tells the landlord of this. The landlord then refuses to make requested repairs to the tenant's unit and increases the rent as a form of punishment.
- An employee believes that he was not promoted in his job because he is racialized. He tells his manager that he will contact the Human Rights Tribunal of Ontario to make a claim of discrimination. The next day, he is fired.
- An employee quits her job after making a sexual harassment claim under the *Code* against her employer and obtains new employment. She discovers that her previous employer contacted her present employer and made negative comments about her because of her human rights claim.

Poisoned environment

You might feel that your workplace or housing is hostile or unwelcoming to you because of insulting or degrading comments or actions that have been made about you or others based on a *Code* ground. When comments or conduct of this kind have an influence on others and how they are treated based on *Code* grounds, this is known as a "poisoned environment."

A poisoned environment cannot, however, be based only on your personal views. There must be facts to show that an objective person would see that the comments or conduct would make a person feel unwelcome or uncomfortable at work.

Example

A restaurant owner makes negative remarks about African-Canadians. A co-worker of Chinese origin believes that that work environment is “poisoned” for all racialized people because of these comments.