

The principle of the Human Rights Act

The Human Rights Act recognizes the legitimate right of an employer to hire the most qualified and suitable candidate for a particular job. The basic principle guiding the legislation is that employment decisions should be based only on criteria that relate to the applicant's ability to do the job.

The Human Rights Commission has programs to help people follow the act, and to set up Employment Equity and Affirmative Action Programs.

For more information refer to other pamphlets and booklets including:

- *A Guide to Mediation*
- *Basic Guide to the Work of the Nova Scotia Human Rights Commission*
- *Guide to the Complaint Process*
- *Introduction to Settlement Initiatives*
- *Race Relations and Affirmative Action— a very active Division of the Nova Scotia Human Rights Commission*
- *Workshops and Training through the Race Relations and Affirmative Action Division*

How the act protects individuals

The Human Rights Act sets out particular characteristics that it protects. With respect to employment, it prevents a person or organization from treating someone unfairly because of a characteristic that is not relevant to the person's ability to work.

These are the characteristics that the act protects:

- disability, physical or mental
- race or colour
- sex (includes gender and pregnancy)
- sexual harassment
- sexual orientation
- marital status
- family status
- ethnic origin
- national origin
- Aboriginal origin
- religion and creed
- source of income
- political belief, affiliation or activity
- irrational fear of contracting an illness
- age
- association with someone protected under the Act
- retaliation because a person has co-operated with any HRC investigation—for their own complaint or someone else's

Getting in touch

Contact the Human Rights Commission for more information on resources and programs, and for help dealing with human rights issues. Visit our web site at www.gov.ns.ca/humanrights/ for more information, fact sheets and guides to our programs.

Call
424-4111
or toll-free 1-877-269-7699

For TTY dial 424-3139
or toll free 1-866-811-3732

A scent reduced environment.

For Employers

A guide for drafting job application forms and interview questions

Guidelines to the types of questions you can and can't ask

There are certain questions you should not ask job applicants or employees because they could result in a violation of the Human Rights Act.

These are some examples of questions you can and can not ask in relation to protected characteristics under the act.

physical or mental disability

BEFORE a person is hired

Can not ask

- ✗ any questions about disabilities, past dependency on drugs or alcohol, or health issues

AFTER a person begins work

Can ask

- ✓ what kind of accommodation the person may need for a disability

race or colour

BEFORE and AFTER a person is hired

Can not ask

- ✗ any questions

SEX (includes gender & pregnancy)

BEFORE and AFTER a person is hired

Can not ask

- ✗ any questions, including any about gender, pregnancy, or plans for child-bearing

sexual orientation

BEFORE and AFTER a person is hired

Can not ask

- ✗ any questions

marital status

BEFORE a person is hired

Can not ask

- ✗ any questions, including any about a person's spouse or a second family income

family status

BEFORE and AFTER a person is hired

Can ask

- ✓ about a person's ability to meet job requirements such as for travel and shift work

Can not ask

- ✗ any questions about issues such as childcare arrangements or number of dependents or children

age

BEFORE a person is hired

Can not ask

- ✗ any questions, including any that ask for birth or baptism records

origin / ethnic, national, or Aboriginal

BEFORE a person is hired

Can ask

- ✓ for a Social Insurance Number and other documents that show the person is eligible to work in Canada
- ✓ questions to find out if the person speaks or writes a language well enough to do a job when there is a legitimate need for them to be fluent in a particular language to do the job
- ✓ for names and locations of post-secondary institutions a person has attended
- ✓ for a person's highest level of education
- ✗ about the nationality of the person or their relatives
- ✗ for a birth certificate, citizenship status, or mother tongue
- ✗ where or how a person learned another language
- ✗ for elementary and secondary schools which might reveal a person's national, ethnic, or Aboriginal origin

religion or creed

BEFORE a person is hired

Can not ask

- ✗ any questions, including any about religious affiliations or customs, or whether the person will want to take religious holidays

AFTER a person begins work

Can ask

- ✓ what kind of accommodation the person may need for such things as religious holidays

source of income

BEFORE a person is hired

Can not ask

- ✗ any questions

political belief, affiliation, or activity

BEFORE and AFTER a person is hired

Can not ask

- ✗ any questions, including any about political activities, or memberships, or affiliation with political parties

Exceptions

Programs that help establish equality

The Human Rights Act endorses programs that support people who face barriers to employment. If a workplace has an Affirmative Action or Employment Equity Program, an applicant or employee may volunteer information about themselves in relation to such a program. These programs are designed to address barriers in employment faced by visible minorities, persons with disabilities, women, and aboriginal persons.

The Commission offers assistance to help employers set up such programs.

The Human Rights Act recognizes some limits to human rights protection in certain employment situations

The act requires an employer to assess a job applicant or employee as an individual. Employers have a duty to accommodate job applicants and employees. However, some limits may be needed, such as for jobs that require particular physical abilities. An employer is not obliged to accommodate an employee or applicant if this would cause **undue hardship** such as

- a significant risk to health or safety
- a serious financial hardship to the employer
- an unacceptable disruption to the employer's operation

Employers may set general physical requirements, known as **bona fide requirements**, for certain jobs

- if it is not possible to adapt a particular requirement for a job—for example, a blind person cannot drive a front end loader
- if it is not practical to assess an applicant's ability to do a job

Other exceptions are listed in the Human Rights Act. Contact the Commission if you have questions about this.

Other Questions

Name and contact information

Can ask

- ✓ a person's last name
- ✓ contact information including a person's address and phone number

Job applicant must be able to choose

- between using first and middle names or using initials - L. A. Smith versus Lou Anne Smith
- using a form of address—Mr, Miss, Mrs, or Ms

Can not ask

- ✗ whether the person has an address outside the country

Other personal information

Can ask

- ✓ if a person is legally entitled to work in Canada

Only if it is a REQUIREMENT for the job

Can ask

- ✓ about a person's memberships in professional associations or occupational groups

Can not ask

- ✗ for a list of memberships in other associations, clubs, and organizations
- ✗ for a person's height or weight

BEFORE a person is hired

Can ask

- ✓ questions about any specific physical or mental abilities that a job requires, when they are bona fide requirements for the job

Can not ask

- ✗ for a photograph
- ✗ for a medical examination

AFTER a person begins work

Can ask

- ✓ for a photograph for identification purposes
- ✓ for any information required for tax benefit or insurance purposes:
- ✓ for a medical exam that is required for the job. The medical exam questions must relate to the job, for purposes such as these
 - to verify illness for an employee who has been absent from work
 - to verify an employee's fitness to return to work after an illness
 - to have an employee receive an inoculation required for work in a health care setting