

Human Rights for Manitobans in Employment

An Overview of Human Rights Laws in Manitoba

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The laws on human rights, discrimination, harassment, and accommodation are changing rapidly. As our understanding of human rights changes, so too will the laws and the required protections change along with it. As such, this document is intended as a guide, and the user should understand that the laws may have changed since the publication date.

Disclaimer

Human Rights laws are complex and should be applied to each situation on a case-by-case basis. As such, this guide is provided as general information and is not legal advice.

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Human Rights in Employment

Human rights are fundamental to the dignity and worth of every individual. The preamble of [Manitoba's Human Rights Code](#) aptly captures the fundamental nature of human rights, stating: "We are all members of the human family, and we should have equality of opportunity for all."

Q1. Who is protected?

A. All Manitobans are protected from discrimination and harassment in employment (as well as housing, and public services). However, human rights laws do *not* apply to private disputes as between individuals.

Most workplaces are provincially regulated. If you are dealing with a human rights issue with a provincially regulated employer (or dealing with a provincially regulated landlord, or service) Manitoba's provincial human rights laws will apply. The primary legislation dealing with human rights laws for Manitobans is *The Human Rights Code*:

- [The Human Rights Code](#), which sets out laws related to discrimination, harassment and accommodation in employment (as well as housing and services).

However, there are other laws that may be applicable, these include the following:

- [The Accessibility for Manitobans Act](#), which sets out rules related to the removal of barriers for those with disabilities as it relates to employment, accommodation, the built environment, goods, services and information, etc.
- [The Employment Standards Code](#), which sets out employment laws for paid employees (but not volunteers or independent contractors), including laws related to leaves of absences and returning to work after these absences;
- [The Workplace Safety and Health Act](#) (and its Regulations), which sets out safety laws, including issues related to personal harassment in employment;
- [The Workers Compensation Act](#), which sets out laws related to workplace injuries, including issues related to accommodating your return to work following a workplace injury; and
- [The Labour Relations Act](#), which sets out the rules for collective bargaining for unionized workplaces.

While all these laws are important and may affect your legal rights, this guide focuses primarily on the rights arising from Manitoba's *Human Rights Code*.

Q2. What if I work for a federally regulated employer?

A. You are protected, and you have the same rights to a workplace free from discrimination, harassment, reprisal, and the duty to be accommodated.

If you work in a federally regulated industry, federal employment and human rights laws usually apply instead of Manitoba human rights and employment laws.

The following are some examples of industries that are federally regulated:

- Interprovincial transportation (like trucking and railroads);
- Telecommunications (like telephone companies and broadcasters);
- Grain elevators;
- Airlines;
- Postal services;
- The Federal Government and its Boards and Agencies

If you are working for a federally regulated employer, the primary legislation that applies is:

- [*The Canadian Human Rights Act*](#), which sets out rules against discrimination, harassment, and the duty to accommodate in employment (housing and services).

However, there are other laws that may be applicable, these include the following:

- [*The Canada Labour Code*](#) (and its Regulations), which sets out rules related to employment, unjust dismissal and harassment in the federal sector;
- [*The Employment Equity Act*](#), which sets out rules related to equity in the federal workplaces, by eliminating barriers for designated groups;
- [*The Accessible Canada Act*](#), which sets out rules intended to benefit all persons, especially persons with disabilities, by the identification and removal of barriers related to employment, the built environment, information and communication technologies, the procurement of goods, services, and facilities, the design and delivery of programs and services, transportation, etc.

While the specific legislation and complaint processes differ between the federal Act and Manitoba's provincial Code, the underlying principles are the same: protecting the dignity and worth of every individual. As such, this guide can be used to apply to Manitobans dealing with either provincially regulated or federally regulated businesses.

Q3. [Does the Charter Apply?](#)

A. Typically, your recourse for human rights violations would not be under the Charter.

The Canadian Charter of Rights and Freedoms is part of the Constitution and protects every Canadian's right to be treated equally under the law. The Charter guarantees broad equality rights and other fundamental rights such as the freedom of expression, freedom of assembly and freedom of religion. However, it only applies to governments, and not to private individuals, businesses or other organizations. This means that for the most part, a person cannot bring a Charter challenge against a private business, a private organization, or a person who is not acting on behalf of the government. There may be some instances where the Charter is necessary or relevant to a claim, but most typically, this would not be the case.

Q4. I'm not a full-time employee, do human rights laws apply to me in Manitoba?

A. Yes, you are still protected by various laws.

In Manitoba, *The Human Rights Code* protections extend to all aspects of employment, which includes:

- full-time,
- part-time,
- permanent,
- casual, and
- probationary employment.

The Code also applies to both paid and unpaid or volunteer work.

Further, the Code applies to services as well, and as such, those protections are available to independent contractors (and members of the public dealing with businesses).

Other legislation in Manitoba may not be applicable if you are a volunteer or an independent contractor. For example, neither volunteers nor independent contractors are covered under Manitoba's *Employment Standards Code*. So, if you truly are an "independent contractor" based on the law (not your title), then you would not be governed by the laws related to *The Employment Standards Code*, for example.

Q5. I'm dealing with a federally regulated business, but I am not a full-time employee, do human rights laws apply to me?

A. Yes, you are still protected by various laws.

If you are dealing with a federally regulated business, section 5 of the *Human Rights Act* protects against discriminatory practices in the provision of goods, services, facilities or accommodation customarily. As such, you are similarly covered as a volunteer, or as an independent contractor.

Q6. Do these laws only apply *after* I've accepted a job?

A. No. Human rights laws apply to all aspects of employment (or housing or services), even to the job application that is posted.

It is illegal to discriminate or harass anyone at any stage of the employment process, including in job advertisements, during the interview stage or hiring processes, during employment, throughout any discipline, and in termination.

This means that employers must avoid discriminatory language or requirements in job postings, conduct interviews fairly and without bias, make hiring decisions based on qualifications rather than

personal characteristics, provide reasonable accommodations for employees with disabilities, and refrain from discriminatory practices during employment and in termination decisions.

Understanding and complying with human rights legislation is essential for employers to create inclusive and equitable workplaces.

Q7. What is Discrimination?

A. Discrimination is treating a person (or group) differently, to their disadvantage and without reasonable cause, based on a particular characteristic. Discrimination can also be the failure to reasonably accommodate a special need that is based on a protected characteristic.

To be protected by human rights law, the complaint made must fall within the enumerated characteristics, as listed in the legislative schemes (section 9(2) of Manitoba's *Human Rights Code*, and section 3 of *the Canadian Human Rights Act*). These are also enumerated, below, in Question 10.

Q8. What is Harassment?

A. Harassment is a course of abusive and unwelcome conduct or comment made on the basis of a particular characteristic.

To be protected by human rights law, the complaint must fall within the enumerated characteristics, as listed in the legislative schemes (section 9(2) of Manitoba's *Human Rights Code*, and section 3 of *the Canadian Human Rights Act*). These are also enumerated, below, in Question 10.

Q9. Is sexual harassment protected under human rights laws?

A. Yes. Sexual harassment is harassment based on sex and is protected under human rights laws, both under provincial legislation and federally.

Sexual harassment can be defined as offensive or humiliating behavior, which is typically related to a person's sex, or behavior that could reasonably be interpreted as imposing conditions on a person's job, housing, or service opportunities. This may encompass objectionable and unwelcome sexual solicitations or advances, or instances where a person in a position of authority makes such advances knowing, or should have reasonably known, that they would be unwelcome.

Additionally, retaliating against someone for rejecting a sexual solicitation or advance also constitutes sexual harassment.

In addition to protections under Manitoba's *Human Rights Code*, in Manitoba, employers have a duty under *The Workplace Safety and Health Act* (and its Regulations) to keep employment free from sexual harassment.

For federally regulated employees, the *Canada Labour Code* establishes an employee's right to employment free of sexual harassment and requires employers to take positive action to prevent sexual harassment in the workplace (Division XV. 1 of Part III of the *Canada Labour Code*).

Q10. What are the listed grounds in Manitoba's *Human Rights Code*?

A. The following contains the listed grounds in Manitoba's *Human Rights Code*, section 9(2), which is current as of 2024.

- | | | |
|---|--|--|
| -ancestry, including colour and perceived race; | -sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy; | -political belief, political association or political activity; |
| -nationality or national origin; | -gender identity; | -physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device; |
| -ethnic background or origin; | -sexual orientation; | |
| -religion or creed, or religious belief, religious association or religious activity; | -marital or family status; | |
| -age; | -source of income; | -social disadvantage. |

These are the enumerated grounds. Discrimination or harassment may not be protected under the *Code* if it is not based on these grounds. For example, personal "bullying" that is not based on any of these characteristics, would not fall under the protections of Manitoba's *Human Rights Code*. You could have recourse through other laws, such as Manitoba's *Workplace Safety and Health Act* (and its Regulations). In addition, there may be other legal remedies available such as a claim against your employer for constructive dismissal.

Q11. Is the list the same for federally regulated employees?

A. For federally regulated employees, the listed grounds are similar to those above, with minor difference in the *Canadian Human Rights Act*, which is current as of 2024.

- | | | |
|-----------------------------|------------|-------|
| -race, | -colour, | -age, |
| -national or ethnic origin, | -religion, | -sex, |

-sexual orientation,
-gender identity or
expression,
-marital status,

-family status,
-genetic characteristics,
-disability and

-conviction for an offence
for which a pardon has
been granted or in respect
of which a record
suspension has been
ordered.

Q12. Are these lists exhaustive?

A. No. The listed characteristics in both Manitoba's *Human Rights Code*, and the *Canadian Human Rights Act*, is not a complete list.

In addition to the listed characteristics in the legislation, there are also analogous grounds that are not specifically enumerated in the Code, but may still be protected grounds.

For example, criminal records are not listed as a protected ground in Manitoba's *Human Rights Code*. Despite this, the Human Rights Commission issued a [Policy](#) stating:

"Alleged discrimination on the basis of a criminal charge or conviction may constitute the basis of a complaint under section 9(1)(a) of The Code."

Sometimes these issues are also developed by case law. For example, the issue of a criminal record was addressed in [A.B. v. University of Manitoba, 2020 MBHR 1](#), where Adjudicator Michael Werier ruled that a criminal record should be entitled to the same protections from discrimination as religion, sex, age and ethnicity.

Similarly, some of the enumerated grounds are further elaborated upon in case law. Physical disability, for example has been held to include things such as migraine headaches, but not the common cold.

The protections afforded by human rights legislation should be interpreted broadly and any exceptions to the protections should be interpreted narrowly.

Q13. Can an employer have valid reasons to discriminate?

A. Yes. If the discrimination was based upon a *bona fide* and reasonable requirements or qualifications for employment, then the action may be justified under human rights.

If an employer has a *bona fide* or reasonable occupational ("BFOR") requirement that results in treating people differently on the basis of a characteristic listed in Manitoba's *Code*, or the federal *Act*, then the action may be justified.

In order to establish a BFOR, there is a three-step test to determine whether, on a balance of probabilities, the discriminatory action was a *bona fide* occupational requirement in employment, as follows:

- (1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;
- (2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and
- (3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

This test comes from the *Meiorin* decision in [British Columbia \(Public Service Employee Relations Commission\) v BCGEU, 1999 CanLII 652 \(SCC\)](#).

Q14. What if the discrimination or harassment was not intentional?

A. Behaviour does not need to be direct or intentional in order for it to be contrary to human rights.

A complainant is not required to prove that the respondent intended to discriminate in order to establish a prima facie case. To the contrary, discrimination often arises due to our unconscious biases, and it is not a practice that would ordinarily be displayed openly or even practiced intentionally.

Human Rights laws must examine all of the circumstances, which often involve circumstantial evidence, that both support and undermine the allegation of discrimination, to determine if there exists what the Tribunal has called the "[subtle scent of discrimination](#)".

For example, a workplace policy that requires employees to wear a certain type of clothing may not intend to discriminate. However, if the policy has the indirect effect of excluding those of a certain group, it could still be a discriminatory policy.

In Manitoba, the Adjudicator in [Zimmer v Manitoba \(Jobs and the Economy Market Abilities Program\), 2020 MBHR 2 \(CanLII\)](#) summarized this issue well, as follows:

A Human Rights Adjudication process in Manitoba is not restricted to hunting for an intentional desire to discriminate. Whether or not discrimination is intended or is an "accidental byproduct of innocently motivated practices or systems", discrimination, as defined by the Code, is contrary to the practices, policies, and intentions of Manitobans, and will attract sanction under the Code.

Q15. What about microaggressions?

A. Microaggressions are subtle, and often hard to prove, but have harmful lasting impacts on the target person or group. This is a recent developing area of the law.

While Manitoba's Human Rights Commission has yet to provide any specific written policy on microaggressions, other jurisdictions in Canada have recognized the significant harm that is caused by microaggressions.

For example, the B.C. Human Rights Tribunal defines microaggressions as:

[Brief and commonplace daily verbal, behavioral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative slights and insults to the target person or group.](#)

While the "subtle scent" of workplace racism has long been recognized in human rights jurisprudence, microaggressions differ in that the impact of each incident, taken on its own, may appear minor. This is an emerging area of the law, with "microaggressions" entering the lexicon in around 2017, and cases emerging using this term since around 2018. A 2022 Alberta decision provides a summary of microaggressions, in [Wint v Alberta \(Human Rights Commission\), 2022 ABQB 87 \(CanLII\)](#).

Q.16 What if I don't object to an offensive joke at the time it was made. Can I still be successful for a discrimination claim?

A. Yes. It is not necessary to object to the impugned behaviour at the time it occurred in order for there to have been discrimination or harassment. Similarly, participating in a joke does not nullify the discrimination or harassment.

A target of discrimination or harassment does not have to object to the acts of harassment at the time they occur. The test is whether a reasonable person would realize the actions were unwelcome (see, for e.g. [Emslie v. Doholoco Holdings Ltd., 2014 MBHR 6 \(CanLII\)](#) at para. 63).

Similarly, laughing at an offensive joke does not necessarily nullify discrimination or harassment (see, for e.g. [T.M. v Manitoba \(Justice\), 2019 MBHR 13 \(CanLII\)](#)).

However, it is recommended that you raise your issues either directly with the individual, or if you are unable, with any individual mentioned in your workplace's Respectful Workplace policy.

Q.17. Am I protected from reprisal?

A. Yes. It is illegal to take action against someone for exercising their legal rights, or for refusing sexual advances.

It is against the law for retaliatory actions to be taken against employees in either exercising any of their legal rights, or in refusing sexual advances, in the case of sexual harassment.

Reprisal comes in many forms, but could be:

- Removing an employee from a regular meeting, meeting group or division;
- Changing (or removing) an employee's hours of work, work location, reporting supervisor, duties or tasks, or office location;
- Disciplining an employee, particularly where other employees engage in the same behaviour without receiving discipline; and
- Termination.

For example, in Manitoba's *Human Rights Code*, a reprisal can be:

- a threat of reprisal for rejecting a sexual solicitation or advance (s. 19(2)(d)), or
- denying (or threatening to deny) any benefit because someone has filed (or may file) a complaint, has made any type of complaint about a possible contravention of the Code, testified or participated in any proceeding under the Code, or refused to contravene the Code.

Q18. What are my rights for reasonable accommodation?

A. Those with disabilities protected under human rights law have the right to reasonable accommodation.

The duty to accommodate refers to the legal requirement for employers (landlords and service providers) to make reasonable adjustments to ensure that no individual competes at a disadvantage for employment opportunities, or is prevented by a rule, policy, practice or physical barrier from carrying out the essential components of a job because of any of the protected grounds of discrimination within the Manitoba Human Rights Code.

Whether or not there has been reasonable accommodation is best left to a case-by-case basis, but some examples of accommodations could be the following:

- Providing accessible facilities such as ramps or elevators for employees with mobility impairments.
- Offering flexible work hours or telecommuting options for employees with medical conditions or caregiving responsibilities.
- Modifying job duties or providing assistive technology for employees with visual impairments.

Accommodation requires effort from the employer, the employee, and often others as well. In [*McGill University Health Centre \(Montreal General Hospital\) v Syndicat des employés de l'Hôpital général de Montréal, 2007 SCC 4*](#), the Court said:

The scope of the duty to accommodate varies according to the characteristics of each enterprise, the specific needs of each employee and the specific circumstances in which the decision is to be made. Throughout the employment relationship, the employer must make an effort to accommodate the employee. However, this does not mean that accommodation is necessarily a one-way street. In O'Malley [Ont Human Rights Comm v Simpsons-Sears, 1985 CanLII 18 (SCC), [1985] 2 SCR 536] (at p. 555) and Central Okanagan School District No. 23 v. Renaud, 1992 CanLII 81 (SCC), [1992] 2 S.C.R. 970, the Court recognized that, when an employer makes a proposal that is reasonable, it is incumbent on the employee to facilitate its implementation. If the accommodation process fails because the employee does not co-operate, his or her complaint may be dismissed. ...

Q19. What is undue hardship?

A. Undue hardship is the limit on accommodation.

Human Rights laws recognize that the duty to accommodate is not limitless. Accommodation may not be required if it can be shown that providing accommodation would pose an undue hardship on the employer.

While there is no set list of factors of what constitutes "undue hardship" some things that may be considered include: health and safety risks, employee morale, customer preference, interchangeability of the work force, facilities and size of the business, and cost.

Q20. Is my employer supposed to have a policy on discrimination and harassment?

A. Absolutely. The law requires workplaces to develop a policy on harassment and discrimination, and employers are required to take reasonable measures to protect employees from harassment and discrimination, to investigate, and provide a safe workplace.

In Manitoba, [Part 10 of the Workplace Safety and Health Regulations](#) govern the requirement for a harassment prevention policy. Workplaces must have a policy and the specific requirements are outlined in the Regulation.

For federally regulated companies, workplaces must similarly have a harassment policy, with specific requirements, including requirements for timely investigations. The Government of Canada provides detailed overview of the requirements under the Canada Labour Code on harassment policies, prevention and training, which can be found [here](#).

Of course, simply having a workplace policy is not sufficient for employers to meet their legal obligations to keep employees safe. Good workplaces reinforce safe workplaces by providing training on respectful workplaces, act swiftly in the event of an issue arising, and continually try to improve their processes.

Q21. How long do I have to file a complaint with the Human Rights Commission?

- A. You must file your complaint within one (1) year of the event occurring, or, in the case of ongoing issues, within one (1) year of the last occurrence.

If you feel you have been discriminated against or harassed due to one of the characteristics, you must file your complaint within one (1) year with Manitoba's Human Right Commission.

You must also file within one (1) year with the Canadian Human Rights Tribunal if you are federally regulated.

If you are past this time, there may be some exceptions to late filing.

Unfortunately, the Manitoba Human Rights Commission continues to experience a significant backlog, and it can take numerous years before an investigator is even assigned to a file to begin an investigation into the conduct.

Q22. Is the Human Rights Commission (Manitoba) or Human Rights Tribunal (Canada) the only recourse I have?

- A. No. In fact, in some situations you may only be able to have your human rights matter dealt with through other channels.

In Manitoba, there may be other venues for you to deal with your human rights matter. In fact, there may be instances where you must have your human right matter dealt with outside of the Human Rights Commission.

In 2021, the Supreme Court of Canada released a decision called, [*Northern Regional Health Authority v. Horrocks, 2021 SCC 42*](#), that clarified the grievance and labour arbitration process is the exclusive jurisdiction of human rights in Manitoba for unionized workers.

The following provides a summary of some other entities that may have exclusive jurisdiction over human rights matters in Manitoba. However, when in doubt, ensure that you file a complaint with the Human Rights Commission in Manitoba, or the Canadian Human Rights Commission, within the one (1) year timeframe in order to preserve your legal rights, and speak to your legal representative or union representative to ensure your rights are preserved.

Q23. Can I file a claim in Court?

- A. If your matter relates to employment, and you are a non-unionized employee, you can file a complaint with the Human Rights Commission, but you can also initiate legal proceedings in the Court of King's Bench.

If you are not unionized, you may also be able to file a complaint of discrimination or harassment arising out of employment in the Court of King's Bench.

Q24. What if I am a unionized employee?

A. If you are a unionized employee, and your human rights matter relates to your employment, you must pursue your human right matter through the grievance and arbitration proceedings.

The principle of exclusive jurisdiction means that labour arbitrators will have exclusive jurisdiction over matters arising under a collective agreement. This means that disputes related to human rights within a unionized workplace should be resolved through the grievance or arbitration process.

However, if your human rights claim does not directly implicate the interpretation or application of the collective agreement, it may be appropriate for the human rights tribunal to consider the claim separately.

Manitoba's [Labour Relations Act, C.C.S.M., c. L10](#) has been held to contain a mandatory dispute resolution clause, which grants exclusive jurisdiction to the labour arbitrator over all disputes arising from the collective agreement (section 78). As such, in Manitoba, the grievance arbitration process would be the sole dispute resolution mechanism under the collective agreement, and this mechanism is binding on the parties if the human rights matter relates to the collective agreement.

Your Collective Agreement will set out timelines to follow to file any complaint. These timelines may be shorter than what is provided for by Human Rights. Ensure you review your Collective Agreement and speak with a Union Representative as soon as possible.

Q25. What if my complaint relates to a workplace injury?

A. If your matter relates to your Workers Compensation claim with Manitoba's Workers Compensation Board, your related human rights matter will likely be dealt with under the jurisdiction of Workers Compensation Board.

If your human rights matter is related to your workplace injury (for example, if your employer failed to accommodate your workplace injury, or failed to return you to work following an injury), your matter may be dealt with by the Workers Compensation Board under the jurisdiction of [The Workers Compensation Act](#).

List of Resources

There are numerous helpful websites you can visit for more information, depending on what issue you are facing.

For Provincially Regulated Matters

Manitoba Human Rights Commission

<https://manitobahumanrights.ca/>

Toll Free: 1-888-884-8681

Email: hrc@gov.mb.ca

Manitoba Employment Standards

<https://www.gov.mb.ca/labour/standards/contact.html>

Telephone: 204-945-3352 or Toll free in Manitoba 1-800-821-4307

SAFE Work Manitoba

<https://www.safemanitoba.com/>

Call 204-957-SAFE (7233) in Winnipeg or Call 1-855-957-SAFE (7233) outside Winnipeg

Email information@safeworkmanitoba.ca

Workplace Safety and Health

<https://www.manitoba.ca/labour/safety/>

Winnipeg: 204-957-SAFE (7233) or Toll-free: 1-855-957-SAFE (7233)

wshcompl@gov.mb.ca

Workers Compensation Board

<https://www.wcb.mb.ca/>

wcb@wcb.mb.ca

1-855-954-4321

Worker Advisor Office (for assistance with WCB matters)

<https://www.gov.mb.ca/labour/wao/>

Telephone: 204-945-5787 or Toll free at 1-800-282-8069 (ask for the Worker Advisor Office at ext. 5787)

Fax: 204-948-2020

E-mail: wao@gov.mb.ca

Federally Regulated Employment

Canadian Human Rights

<https://www.chrc-ccdp.gc.ca/en>

Toll Free: 1-888-214-1090

Phone: 613-995-1151
TTY: 1-888-643-3304
FAX: 613-996-9661
VRS: Canada VRS

Accessible Canada Unit

<https://www.accessibilitychrc.ca/en/overview-accessible-canada-act>

Phone: 613-995-1151

Email: Info.Com@chrc-ccdp.gc.ca