



# Discrimination against persons with disabilities who use service animals

## Your rights Your responsibilities

A guideline developed under *The Human Rights Code*

### Introduction

The Manitoba Human Rights Commission (“the Commission”) is an independent agency of the Government of Manitoba responsible for administering *The Human Rights Code* (“*The Code*”).

*The Code* sets out a complaint process and mandates the Commission to promote human rights principles and educate the public about their rights and responsibilities under *The Code*. *The Code* has special status over all other laws of the Province of Manitoba.

Section 5 of *The Code* authorizes the Commission to prepare and distribute guidelines to assist in the understanding and application of *The Code*. These guidelines assist the public in understanding how to comply with *The Code*. They represent the Commission’s interpretation of *The Code* at the time of publication.

This guideline sets out the Commission’s interpretation of the protections in *The Code* with respect to persons with disabilities who use service animals. If there is any conflict between this guideline and *The Code*, *The Code* prevails.

# Discrimination against persons who use service animals

*The Code* prohibits discrimination against individuals based on various characteristics including physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device.

A service animal is defined in *The Code* to be “an animal that has been trained to provide assistance to a person with a disability that relates to that person's disability.”

The type of assistance a service animal may provide varies. A person may have a disability that is physical or obvious such as blindness and rely on an animal for assistance that is quite apparent. A person may also have a disability that is not as obvious, such as a mental or invisible disability such as post-traumatic stress disorder or epilepsy and rely on an animal for assistance in ways that are not readily apparent.

For example, a service animal may do any of the following:

- guiding a person who is blind
- alerting a person who is Deaf
- pulling a wheelchair
- alerting or protecting an individual who is having a seizure
- reminding an individual with a mental illness to take their prescribed medication

The assistance that service animals provide, and for whom they provide assistance, is evolving. As we start to acknowledge the stigma surrounding mental disabilities and animals are increasingly becoming a part of ongoing therapy programs, new uses for service animals will continue to be recognized.

While an animal may not have received formal training, if the person relying on the animal can demonstrate that it is an integral part of their disability related treatment program, the animal may be considered a “service animal.”

Service animals are typically easy to identify (usually by a special harness or vest) and are under the care and control of their owner (harnessed, leashed or tethered) when working, unless doing so interferes with the work or task they perform. In some cases if

a person's disability prevents them from maintaining physical control of their animal, they will maintain control of the animal through voice, signal or other means.

There is no standardized identification or certification of service animals in Manitoba. Therefore any animal that is identified as having been trained, including self-trained, to provide assistance to someone with a disability, may be a service animal for the purposes of *The Code*.

Usually, a service animal is a dog, but the broad term, "animal" used in *The Code* allows for other types of animals to be considered as service animals.

It is important to recognize that people who rely on animals for assistance with their disabilities may not label their animals as service animals as referred to in *The Code*. For example, a person may prefer to refer to their animal as a "therapy dog", "comfort animal" or "companion animal". Regardless of the label used, as long as the animal is trained to provide assistance to the person that relates to their disability, the animal is considered a service animal under *The Code*. The Commission's focus is accordingly on what a person's disability needs are and what the animal does to provide assistance with those disability-related needs.

If it is not clear that an animal is a service animal, it may be appropriate to ask the following questions:

1. Is the dog or other animal assisting the person with a disability?
2. What assistance has the dog or other animal been trained to provide related to the disability?

*The Code* prohibits discrimination and harassment on the basis of a person's actual or perceived disability. *The Code* also prohibits retaliation against a person because they have made a complaint under *The Code*, are participating in a proceeding under *The Code* or are otherwise trying to enforce their rights under *The Code*. This is called reprisal.

Discrimination may be directed towards one individual who uses a service animal. A policy or practice may also systemically discriminate, meaning it discriminates against a group of persons who use service animals.

It is possible to discriminate without intending to violate the law. A policy or practice that seems neutral may have a greater negative effect on people who use service animals, without justification or reasonable cause.

For example:

- a hotel's "no pet" policy
- a landlord's policy of requesting an additional damage deposit for tenants with pets
- a theatre that requires persons with service animals to sit in an assigned area
- a restaurant that permits persons with service animals on the patio only

## Discrimination in the workplace

*The Code* prohibits discrimination in all aspects of full-time, part-time, permanent, casual or probationary employment and applies to paid and unpaid or volunteer employment.

Employers should not treat a person differently because they use a service animal, unless it is reasonable to do so.

Employers may have *bona fide* or reasonable occupational requirements or qualifications for a job that result in treating people differently; however they must be carefully considered and able to be justified. An employer must be able to show that the requirement has been established in good faith and is reasonably necessary for the safe or efficient performance of the job.

Discrimination in the workplace against persons with disabilities who use service animals typically looks like denying a person with a service animal opportunities such as a job or promotion in part, because they are a person with a disability who uses a service animal, or restricting access in the workplace to a person who uses a service animal.

For example:

- an employee may believe that they were not hired or promoted, in part because they use a service animal

An employer is entitled to ask whether or not the animal is trained to provide assistance to the person with a disability and to ask for information to identify or clarify the disability-related need. An employer should be cautious not to ask for information or require a person to substantiate the need to rely on the animal if it is obvious.

While it may be appropriate to ask for more information to substantiate that the animal is required because of a disability, which may include information from medical or paramedical providers or evidence of the animal's participation in a training or certification program, it is not appropriate to ask for information about the person's diagnosis. It is not appropriate to ask that the animal demonstrate its ability to perform the tasks for which it is trained. Questions should always be asked with respect and understanding.

Employers also have a duty to reasonably accommodate the special needs of a person based on their disability, or any other protected characteristic. These requests must be assessed on a case-by-case basis. An employer has a responsibility to consider the specific request, ask for more information to substantiate it if necessary and assess how to offer an accommodation that is reasonable and does not cause undue hardship.

For example:

- a person who uses a service animal may request breaks at specific times to enable them to feed or walk the animal or enable them to toilet outside

Employers must ensure a harassment-free work environment, which includes taking reasonable steps to terminate harassment if it is brought to the employer's attention, or the employer ought reasonably be aware of it.

For example:

- an employee who uses a service animal may complain that her co-workers have been making inappropriate jokes or isolating her based on their alleged allergies. The employer must take steps to investigate the situation and determine if there is harassment in the workplace and then take reasonable steps to address it and ensure it ceases

## **Discrimination in housing**

*The Code* prohibits discrimination with respect to leasing, renting or purchasing residential or commercial premises.

Landlords must not treat a person differently because they have a disability and use a service animal, unless it is reasonable to do so.

Landlords may have *bona fide* or reasonable cause to treat people differently; however those situations must be carefully considered and able to be justified. A landlord must

be able to show that the seemingly discriminatory policy or practice has been established in good faith and is reasonably necessary for the safe or efficient operation of the premises.

Discrimination in housing against persons with disabilities who use service animals typically involves not renting to a person wholly or in part, because they use a service animal or in the case of a condominium complex, not permitting the person to live in their unit with their service animal.

For example:

- a person is able to establish that their animal clearly provides assistance to them with certain disability-related needs and is not merely a pet, but the landlord refuses to allow them to rent

A landlord is entitled to ask whether or not the animal is trained to provide assistance to the person with a disability and to ask for information to identify or clarify the disability-related need. A landlord should be cautious not to ask for information or require a person to substantiate the need to rely on the animal if it is obvious.

While it may be appropriate to ask for more information to substantiate that the animal is required because of a disability, which may include information from medical or paramedical providers or evidence of the animal's participation in a training or certification program, it is not appropriate to ask for information about the person's diagnosis. It is not appropriate to ask that the animal demonstrate its ability to perform the tasks for which it is trained. Questions should always be asked with respect and understanding.

Landlords and condominium corporations also have a duty to reasonably accommodate the special needs of a person based on their disability, or any other protected characteristic. These requests must be assessed on a case-by-case basis. A landlord or condominium corporation has a responsibility to consider the specific request, ask for more information to substantiate it if necessary and assess how to offer an accommodation that is reasonable and does not cause undue hardship.

For example:

- a tenant with a service animal requests to occupy a main floor unit to allow them easy and frequent access to the garden area. The landlord must consider whether or not it would cause an undue hardship to do so.

Landlords must not harass a tenant or potential tenant because they use a service animal and condominium corporations must ensure that their buildings are harassment-free.

For example:

- a person with a service animal complains that every time they access the building the security guard asks them to demonstrate that the animal can follow basic commands like “sit”, “stand” and “lie down”. This may be harassment.

## Discrimination in services

*The Code* prohibits discrimination with respect to any service, accommodation, facility, benefit or program available or accessible to the public or to a section of the public. Examples of services include stores, theatres, restaurants, police services, sports associations, healthcare services, government services, food banks, schools, rehabilitation programs and insurance services.

Service providers must not treat a person differently because they use a service animal unless it is reasonable to do so.

Service providers may have *bona fide* or reasonable cause to treat people differently; however those situations must be carefully considered and able to be substantiated. A service provider must be able to show that a seemingly discriminatory policy or practice has been established in good faith and is reasonably necessary for the safe or efficient operation of the service being provided.

Discrimination in services against persons with disabilities who use service animals typically involves denying access to a person wholly or in part, because they use a service animal.

For example:

- a fine dining restaurant refuses to allow a person with a service animal access
- a convenience store requires a person who uses a service animal to leave the animal tethered outside the store

A service provider is entitled to ask whether or not the animal is trained to provide assistance to the person with a disability and to ask for information to identify or clarify the disability-related need. A service provider should be cautious not to ask for

information or require a person to substantiate the need to rely on the animal if it is obvious.

While it may be appropriate to ask for more information to substantiate that the animal is required because of a disability, which may include information from medical or paramedical providers or evidence of the animal's participation in a training or certification program, it is not appropriate to ask for information about the person's diagnosis. It is not appropriate to ask that the animal demonstrate its ability to perform the tasks for which it is trained. Questions should always be asked with respect and understanding.

Service providers also have a duty to reasonably accommodate the special needs of a person based on their disability, or any other protected characteristic. These requests must be assessed on a case-by-case basis. A service provider has a responsibility to consider the specific request, ask for more information to substantiate it if necessary and assess how to offer an accommodation that is reasonable and does not cause undue hardship.

For example:

- a student with a service animal requests permission to leave school grounds at recess to take the animal for a lengthier walk. The school must consider whether or not it would be an undue hardship to do so, which would include considering its obligations regarding care of the student and safety.

Service providers must ensure that they maintain harassment-free environments and have a process to deal with harassment complaints.

## **The “right of access” of persons who use service animals**

A person who uses a service animal has the right to access any area that is generally accessible to the public.

A person with a service animal should therefore have access to any store, restaurant, and office - including a cafeteria or doctor's office, despite public health or other legislation that might exclude animals from these premises. Landlords, taxi drivers and hotels must also generally allow clients or tenants with service animal.



In some exceptional circumstances, it may be reasonable to restrict access to a person who uses a service animal. Areas where a person may not be allowed access with their service animal are often areas where the public may be restricted generally.

For example, restricting service animals from sterile or other protected areas, such as a food preparation area, operating theatre or laboratory, may be justified.

A person should not be penalized or isolated, for using a service animal in the same way that they would not be penalized for using a wheelchair.

Employers, landlords and service providers should carefully consider their policies and practices to ensure that there is enough flexibility to ensure the rights and dignity of all staff, employees, tenants and patrons. This means considering whether a policy or practice denies or limits a person's access to opportunities or benefits because they use service animals to assist with their disability-related needs or isolates a person who uses a service animal.

Flexibility with respect to policies and referring back to basic principles of respect, dignity and safety to ensure equality for all persons are essential.

1. The first step in ensuring equality is to examine policies and practices to identify barriers for people who use service animals.
2. The second step in ensuring equality is to establish a process to assess and respond to request for accommodation whether they have a disability and use a service animal or some other protected characteristic.

There may be situations in which an employer, landlord or service provider may have to balance the rights of more than one person under *The Code*. For example, a taxi driver may advise his or her employer of a severe allergy to dogs that would prevent transporting a person with a service animal. The employer would in that case, request medical documentation to establish the driver's medical need and proceed to assess ways to ensure the person with the service animal has access to alternative transportation.

A service animal must be under the care and control of its owner at all times. No one should interfere with, pet or feed a service animal while the animal is working, without seeking permission of the animal's owner.

If the person with the service animal is not able to effectively control the animal's behavior, which would include displaying disruptive behaviours such as barking, snapping, defecating or whining excessively, they may be refused access or asked to leave.

## Need more information?

For further information on this guideline or *The Human Rights Code*, please contact the Manitoba Human Rights Commission at [hrc@gov.mb.ca](mailto:hrc@gov.mb.ca).

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This publication is available in alternate formats.

Le présent guide est également disponible en français.

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