

SECTION: General

Effective date: February 6, 2002
REVISED DATE: December 11, 2013

SUBJECT: EMPLOYMENT: *BONA FIDE & REASONABLE CAUSE*

Purpose:

This policy is intended to assist in the understanding and application of *The Human Rights Code* (“*The Code*”). Where there is any conflict between this policy and *The Code*, *The Code* will be followed.

Context:

In determining whether a bona fide and reasonable occupational requirement or qualification exists, the Commission adopts the approach set out by the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Comm.) v. B.C.G.E.U.* (1999), 35 C.H.R.R. D/257 (“*Meiorin*”). According to this approach, once a standard, policy or rule has been shown to be discriminatory on the basis of any of the enumerated grounds under *The Code*, an employer must show on a balance of probabilities that:

1. the standard, policy or rule that was adopted by the employer was **rationally connected** to the performance of the job. In other words, what is the purpose of the standard, policy or rule, how does that purpose relate to the tasks required to fulfil the job and is there a rational connection between the two;
2. the employer adopted the particular policy, standard or rule in an **honest and good faith belief** that it was necessary to the fulfilment of the legitimate work-related purpose. Information as to the circumstances surrounding the adoption of the policy, standard or rule and considerations underlying the development of the policy, standard or rule will be considered by the Commission;
3. the policy, standard or rule is **reasonably necessary** to accomplish the 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 complainant without imposing undue hardship upon the employer.

In addressing this aspect of the Supreme Court's approach, the Commission will consider the procedures, if any, which were adopted by the employer to assess the issue of accommodation and the substantive content of either a more accommodating standard which was offered, or alternatively, the employer's reasons for not offering any such standard.

Some of the questions that may be asked in the course of this analysis include:

- a. Has the employer investigated alternative approaches that do not have a discriminatory effect, such as individual testing and/or a more individually sensitive standard?
- b. If alternative standards were investigated and found to be capable of fulfilling the employer's purpose, why were they not implemented?
- c. Is it necessary to have all employees meet the single standard for the employer to accomplish its legitimate purpose or could standards reflective of group or individual differences and capabilities be established?
- d. Is there a way to do the job that is less discriminatory while still accomplishing the employer's legitimate purpose?

APPROVED BY:

"Yvonne Peters"
Chairperson

December 11, 2013
Date