



Human rights considerations in hiring

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 outlines a complaint process and mandates the Commission to educate the public about *The Code* and promote human rights principles. *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*.

This guideline represents the Commission’s interpretation of *The Code* around hiring and recruitment. If there is any conflict between this guideline and *The Code*, *The Code* prevails.

Discrimination in employment

The Code prohibits discrimination against individuals based on various characteristics including ancestry, age, sex (including pregnancy), family status, sexual orientation, gender identity and physical or mental disability, in employment.

The prohibition against discrimination extends to all aspects of full-time, part-time, permanent, casual or probationary employment and applies to paid and unpaid or volunteer work, including:

- recruitment (job postings, application forms, interviews)
- working conditions (benefits, wages, training, suspensions, lay-offs, dress codes)
- promotion
- dismissal (including during a probationary period)
- employment agency referrals
- trade union, occupational association or employee association activity.

Discrimination means treating a person or group differently because they have, or are presumed to have, one of the characteristics listed in *The Code*. Discrimination may be based on stereotypes or assumptions and offends a person's dignity because it ignores their individual merit.

Employers may have bona fide or reasonable job requirements that result in treating people differently on the basis of one of the characteristics listed in *The Code*.

The employer must be able to show that the requirement is connected to successful performance of the job, has been established in good faith, and is reasonably necessary for the safe or efficient performance of the job.

For example:

- A job description for a delivery driver position identifies the requirement for a Class 1 driver's license. This may necessarily exclude persons with certain disabilities who are not able to obtain a driver's license; however, a driver's license may be a reasonable job qualification.

Reviewing the job description

The first step in ensuring equality of opportunity in the hiring process is to review the job description to identify the essential job duties as well as the criteria, skills or qualifications that are necessary to perform those duties. Required qualifications should be distinguished from preferred qualifications.

For example:

- A job description for a hostess at a restaurant might identify an undergraduate degree as a required qualification because the employer does not think that a high school student will be mature enough for the job. The employer should consider whether a degree is an essential qualification or whether there are other ways of recruiting candidates with the desired maturity level.

- A job description for a customer service representative in a call-centre might identify the ability to write proficiently in English as a required qualification because the job includes completing work orders and other standard forms. The employer should consider whether the ability to write proficiently in English is a required or preferred qualification for duties that are done largely over the phone.

To avoid unreasonably restricting employment opportunities for a group with characteristics listed in *The Code*, ensure that any standards, policies or rules that are adopted:

1. are rationally connected to the performance of the job;
2. are adopted in an honest and good faith belief that they are necessary to the fulfillment of a legitimate work-related purpose; and
3. are reasonably necessary to accomplish the legitimate work-related purpose.

Employers have the right to select the most appropriately qualified person for the job, providing the three points listed above have been considered and met.

For example:

- An employer may have a uniform policy that requires employees to wear a hair net. Candidates who wear religious head coverings like a hijab or a turban may not be able to comply with this standard. The employer should consider the reason for requiring the hair net. If it is for health reasons, it may be reasonable to allow an employee who otherwise wears a head covering that secures loose hair not to wear a hair net.

An employer may have a uniform or dress code policy that requires women to wear provocative or tight-fitting clothes and high heels. The employer should review the policy to ensure that it does not impose greater restrictions or requirements on women that are not applied to male staff. The employer should also consider having an inclusive policy that is sufficiently flexible for all staff regardless of their sex or gender identity.

The hiring process is guided by the desire to recruit the best candidate with the skills and qualifications necessary to perform the job. The hiring process includes the job advertisement or posting, screening tests if necessary and the interview. Each of these should be based on the job description for the position.

Creating the job posting

The job posting or advertisement should identify criteria that is directly related to the duties set out in the job description.

In some cases, it may be reasonable to exclude certain persons or groups based on characteristics listed in *The Code*, however the job criteria or qualifications should be carefully considered to ensure that you are not relying on stereotypes or generalizations about particular groups. The essential duties or qualifications of the position should therefore be carefully set out before the recruitment process even begins.

- An employer hiring a community education worker may identify the ability to travel as a requirement. The employer should first consider whether travel is required or preferred. The employer should also consider whether the job requires travel within the city or travel to areas that are more remote and not accessible by public transit. Based on this, the job posting may not need to identify the need for a driver's license or access to a vehicle, if the employee can utilize public transport or a taxi for work-related duties.

The application form or process should not require an applicant to disclose their age, sex, ancestry, marital or family status, or other protected characteristic, unless that information is relevant to your assessment of them.

For example:

- if it is not relevant to the employer's assessment, do not ask the applicant to identify as Mr., Mrs., Ms, or Mx.
- if it is not relevant to the employer's assessment, do not ask the applicant to identify whether they are a member of a Mennonite congregation or faith community.
- if it is not relevant to the employer's assessment, do not ask the applicant to identify if they have any family members already working for the company.

Utilizing a screening test

A written or practical test, group interview or mock exercise should be designed to screen a pool of applicants to ensure that only those applicants who have the essential qualifications for the position are interviewed.

For example:

- For a youth crisis counselor position, it may be an essential qualification for the position that the employee be able to manage difficult content and a stressful work environment. This qualification can be tested using a situational interview or mock exercise in which scoring criteria is established in advance of testing.

Employers should be very cautious in using drug and alcohol screening tests prior to an interview as it may open the employer to allegations of discrimination against a person with an alcohol or drug dependency or addiction. The employer must be able to justify that the test is reasonably necessary due to real and significant workplace safety concerns but also that the

test is reasonably necessary at this stage. In most cases, it is more appropriate to require a drug and alcohol test as a condition to the job offer, once it has been determined that the applicant has the required skills and qualifications for the position.

Similarly, employers should be cautious in using medical screening tests and be prepared to justify their use, as well as the stage at which they are required. It should also be clear which criteria is being assessed in relation to an essential job duty or qualification.

Criminal record checks are most often used at a later stage in the hiring process and are generally requested as part of a conditional job offer. Again, the requirement to provide a satisfactory criminal record check should relate to the essential job duties of the position. The information provided regarding a history of charges or convictions should be assessed based on the length of time that has passed since the charge or conviction and the nature of the charge or conviction as it relates to the specific job duties.

An employer has a duty to reasonably accommodate the special needs of any applicant in the screening process where those needs are based on one of the characteristics in *The Code*. Therefore the screening tool should be flexible enough to allow for modification if requested and based on a special need.

The interview

The employer should also take proactive steps to remove barriers based on one of the characteristics listed in *The Code*. Where possible, interviews should be arranged in an accessible building or room.

For example:

- An applicant may advise that they are unable to attend a scheduled interview because of a religious holiday. Although the employer may have scheduled one single day to conduct all interviews, they may need to accommodate the request to reschedule as it would not pose an undue hardship to the employer.
- An applicant may request interview questions in advance because of a mental disability that is exacerbated by stress. Although the employer may be concerned about providing the employee with an advantage in the hiring process, the employer should consider if the applicant can substantiate the need and whether it would cause an undue hardship to provide all or some of the questions in advance.

Be cautious not to use information obtained to substantiate an accommodation request to make assumptions about the applicant's ability to do the job. Remember the applicant should have already screened in for an interview because they have the requisite skills or qualifications to perform the essential duties of the position. The information related to the accommodation request should not be used to assess the applicant's suitability for the position.

For example:

- If it is an essential duty of the position to be available to open the office for contractors at 6:00 a.m., ask the candidate if they would have any difficulty meeting that requirement, rather than asking the candidate if they have young children or can make child care arrangements.

- If it is an essential duty of the position to drive a forklift, ask the candidate if they have experience driving a forklift rather than asking the applicant if they have any physical limitations or restrictions.
- If it is an essential duty of the position to travel by car to various sites in the province, ask the candidate if they have the ability to work overtime or have access to a vehicle, rather than asking the applicant if they have any family obligations in the evenings or if they participate in any evening religious activities.

Hiring preferences or special programs

Section 11 of *The Code* permits affirmative action programs or other special programs that are designed to create a representative workforce, reduce disadvantage to individuals or groups listed in *The Code*, or otherwise improve the condition of groups that are listed in *The Code*.

Special programs must be carefully considered and should include identify benchmarks and objectives prior to collection of data that might identify a person's membership in one of the groups listed in *The Code*.

Special programs often include having employees identify as having a characteristic listed in *The Code*. Information obtained in this way should be used specifically for the purpose of the program. It should not be confused with information that is used to identify the need for workplace accommodations.

See our Guideline on Special Programs.



Need more information?

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This publication is available in alternate formats.
Le présent guide est également disponible en français.