



Hospitality Industry Services

YOUR RIGHTS, YOUR OBLIGATIONS

Guidelines under *The Human Rights Code* for hotels, motels, restaurants, bars and other hospitality industry services

Introduction

The Human Rights Code prohibits discrimination on the basis of protected characteristics, including ancestry and disability, in the provision of hospitality services such as those provided by hotel/motels, restaurants, bars, nightclubs, entertainment and travel services.

This guideline sets out the Manitoba Human Rights Commission's interpretation of protections from discrimination under *The Human Rights Code* ("The Code") with respect to services provided by the hospitality industry. It is subject to the specific language of *The Code* and to interpretations by adjudicators and the courts.

For further information regarding rights and obligations under *The Code* with respect to employment, please refer to the following guidelines,

- **Pre-employment inquires: you can respect human rights in hiring**
- **Reasonable accommodation**
- **Drugs and alcohol testing in the workplace**
- **Parents and pregnancy**
- **Discrimination based on gender Identity**

The Human Rights Code

The Code is administered by the Manitoba Human Rights Commission and is the provincial law that protects individuals and groups in Manitoba from discrimination. It sets out a process for filing a human rights complaint. There is no charge for filing a human rights complaint or for seeking advice about a human rights concern.

The Code has special status over all other laws of the Province of Manitoba. If there is any conflict between this guideline and *The Code*, *The Code* prevails.

What is discrimination?

Discrimination under *The Code* is treating a person or group differently, to their disadvantage and without reasonable cause, in a protected activity, such as services available to the public, on the basis of a protected characteristic, such as ancestry.

Other protected characteristics are nationality, ethnic origin, religion, sex (including pregnancy and gender identity), gender-determined characteristics, sexual orientation, marital or family status, source of income, political belief and physical or mental disability.

Failure to reasonably accommodate a special need that is based on a protected characteristic, such as disability, is also discriminatory. Harassment on the basis of a protected characteristic, such as sex, is also prohibited.

Who is legally responsible for discrimination?

The Code not only places responsibility for a discriminatory act on the person whose conduct is discriminatory. Hotel/motel, restaurant or other hospitality service owners may be held responsible for the discriminatory actions of their employees, and in some cases, of discriminatory harassment of one guest by another guest.

Owners, employers and service providers are encouraged to train their managers and to inform their employees about the requirements of *The Code* in order to ensure that their obligations under *The Code* are being met.

What if there is no intention to discriminate?

It is possible to discriminate without intending to violate the law. Systemic discrimination is a form of discrimination that is often not intended. It takes place when a policy or practice that seems neutral has a greater negative effect on some people based on their protected characteristic, such as disability.

For example, a hotel has a policy or practice that all guests with dogs must pay an additional cleaning fee and stay in a group of smoking rooms that is furthest from the front desk, pool and restaurant. There is no intention behind this policy to discriminate against guests who are blind and rely on guide dogs, but the uniform application of this policy in a manner that does not distinguish between guests with pets and guests with guide dogs may have that result.

Service standards, rules or policies

Hospitality industry service providers often adopt service standards, rules or policies, such as a hotel or motel adopting a “no pet” policy.

If a standard, rule or policy a service provider is using might have a discriminatory effect on a service user based on a protected characteristic under *The Code*, such as disability, adopting an alternative approach, which avoids or limits the discriminatory effect, such as individual testing and/or a more individually sensitive standard, will further compliance with *The Code*.

Service providers must ensure that any standards, policies or rules they adopt for the service:

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

Service providers must also ensure that reasonable accommodation of any special needs, which are based on protected characteristics under *The Code*, such as disability, has been made.

Applying this test to a hotel or motel's "no pet" policy, a hotel or motel that adopted such a policy in good faith for a business purpose would still have to ensure that its staff were informed that service animals, including guide dogs relied on by blind persons, were not considered "pets" under the policy and that guests accompanied by service animals were not to be denied accommodation without reasonable cause.

Can hotels restrict families with children?

It is contrary to *The Code* for a hotel or motel to refuse to rent to families with children or to restrict families with children to certain floors or rooms within a hotel or motel complex, without reasonable cause.

Hotel or motel owners wanting to ensure a quiet environment can address unreasonable noise from guests, but must not adopt standards which unreasonably discriminate based on age (children) or family status (families with children). Reasonable noise from children must not be the basis for any detrimental treatment of guests.

It is also contrary to *The Code* for a service provider, such as a restaurant, to discriminate on the basis of age or family status, without reasonable cause. For example, it is contrary to *The Code* for a restaurant to restrict its dining room to adults only, unless reasonable cause exists.

Customer dress codes

Customer dress codes adopted by some restaurants or entertainment establishments so as to maintain a certain atmosphere do not contravene *The Code* unless the application of the dress code results in discrimination based on a protected group characteristic or the dress code fails to reasonably accommodate special needs based on a protected characteristic.

An example of an application of a dress code that may result in discrimination based on nationality or ethnic background is a restaurant or casino with a dress code of "formal attire" that unreasonably refuses entry to a man who is not wearing a tie and suit jacket but who is wearing formal attire from his cultural background. Another example is a motel/hotel with a policy that restricts customers wearing bathing suits to the poolside area only, but which only applies this policy or standard to guests who are teenagers.

Guests and intoxication

Hospitality industry staff must exercise reasonable care when refusing the sale of alcoholic beverages to a guest they believe is intoxicated to ensure that the customer's symptoms are not due to a disability unrelated to intoxication. Some disabilities cause speech and mobility impairment, and *The Code* prohibits unreasonable discrimination in services on the basis of disability.

Treatment of guests who are intoxicated must also not unreasonably discriminate on the basis of any protected characteristics under *The Code*, including ancestry.

Minimum charges and lengths of stay

Some business establishments, such as restaurants, have a minimum charge or set limits on how long customers may stay. These provisions do not contravene *The Code*, providing they are not applied in a manner that unreasonably discriminates against people based on a protected characteristic.

For example, a hotel coffee shop has a maximum stay of one hour. While the standard itself is not contrary to *The Code*, if the staff only enforces this time limit for students from a local middle school or for persons of disadvantaged social condition, a human rights complaint may result.

Senior discounts and other target marketing or promotional activities

Sometimes a hospitality industry provider offers specials for certain groups of people as incentives to use the service. For example, some restaurants offer children and senior menus, and some transportation services offer special senior or student rates.

Not all different treatment is discriminatory. Unless the benefit of a special or a promotion is withheld in a way that reflects stereotypes about the group not eligible for the benefit or the personal characteristics of members of that group, or perpetuates disadvantage or prejudice, such specials or promotions do not contravene *The Code*. An example of a promotion that would not contravene *The Code* would be a senior's discount for guests at a hotel.

In considering the context of any such different treatment, the Commission will keep in mind the broad purposes of *The Code* as reflected in its preamble and in interpretations by the courts.

Denial of service

Hospitality service owners and their staff may refuse service to an individual provided the decision is based on that individual's behaviour and that a characteristic of the person, such as their ancestry or religion, is not an operating factor in the decision.

For example, a bar manager may refuse entry to a person who has been disruptive, harassed staff or other customers, or refused payment on a previous visit, providing that persons with group characteristics other than those of that customer would also be refused entry in similar circumstances. A nightclub or restaurant may not, however, refuse to serve someone because they are a family member of a person who has been barred from the premises.

The Code says that individuals have the right to be considered based on their merit and not because the person is a member or associated with a protected group, or based on a generalization about members of a disadvantaged group to which they belong. So for example, a motel may not refuse service to seasonal workers from a given industry because there have been some problems with other seasonal workers in the past. *The Code* protects the right of individuals to not be unreasonably discriminated against, including based on stereotypes or group associations.

Denial of service without reasonable cause and based on fears or misconceptions of health risks that a guest might pose based on physical or mental disability or a guest's association with others who have a physical or mental disability and not upon objective medical evidence is contrary to *The Code*. For example, a hotel that refuses to provide service to someone without reasonable cause and because their home is a First Nation community that has had an outbreak of influenza may be subject to a human rights complaint.

It is contrary to *The Code* for hospitality industry service providers to treat customers or guests differently based on disadvantaged social condition, without reasonable cause. For example, a restaurant in a business district may be able to show reasonable cause for a minimum charge during its peak weekday lunch hour, but it may not be able to show reasonable cause for a minimum charge that is not time-limited and that has the effect of barring persons based on disadvantaged social condition. Refusing to accept cash and only allowing for payment with credit or debit cards may also unreasonably discriminate based on disadvantaged social condition, depending on the circumstances.

Duty to reasonably accommodate

The Code prohibits discrimination in the provision of hospitality services on the basis of protected characteristics, such as disability, and requires service providers to reasonably accommodate special needs that are based on protected characteristics, to the point of undue hardship.

Examples of reasonable accommodation include:

- a hotel/motel maintains a sufficient number of rooms that are fully wheelchair accessible;
- a restaurant provides booster seats or high chairs for guests with babies and young children;
- a hotel/motel accommodates guests with service dogs by providing a relief area for their dogs that is in an accessible and safe location; and
- a restaurant modifies a menu item to reasonably accommodate a customer's religious dietary restrictions.

Wheelchair accessible washrooms

Restaurants, bars, entertainment facilities and other hospitality industry service providers are required to reasonably accommodate special needs of their guests that are based on protected characteristics, to the point of undue hardship. This means, for example, that to the point of undue hardship, a washroom must not only be built to allow for access by a wheelchair user but must also be maintained as barrier-free. Hospitality service providers who unreasonably obstruct the path to the “accessible” washroom or the use of the washroom itself with stored items, such as cleaning supplies, extra chairs or baby change tables may be failing to meet their obligations under *The Code*.

Washroom use and gender identity

Hospitality industry service providers are required to reasonably accommodate special needs that are based on gender identity, to the point of undue hardship. This means, for example, that flexibility with respect to a bar or restaurant's washroom use policy may be necessary to ensure that persons who are transgender or transsexual have access to a washroom that is as safe and comfortable as that available to other guests. Providing a private gender neutral washroom option is also a way to be more inclusive.

Service animals

Customers or guests who rely on service animals must be allowed to accompany the individual that they are trained to assist into whatever areas customers or guests are generally allowed, including restaurants, unless there is reasonable cause to restrict entry. Examples of service animals include guide dogs trained to assist a person who is blind and an animal trained to assist a person who is quadriplegic.

While a business may have a “no pet” policy, it is contrary to *The Code* to consider service animals as pets under such a policy. Guide dogs for the blind are of various breeds and sizes, and undergo extensive training. Guide dogs and service animals usually wear harnesses or collars that identify them as service animals. If a business operator is reasonably unsure as to whether an animal is a service animal or a pet, they may ask the person if their accompanying animal is a service animal required due to a disability.

It is contrary to *The Code* for a hotel/motel operator to require a deposit or charge a cleaning fee for a service animal, even where such deposits or fees are required for pets. A hotel/motel operator may, however, charge a customer for any damage done by a service animal where the usual practice is to charge non-disabled guests for similar types of damage.

Sometimes situations may arise that require a hospitality service provider to balance the rights of two guests who require reasonable accommodation of special needs based on disabilities. For example, one hotel guest may have a severe allergy to dogs, while another guest may be blind and rely on a guide dog. Often, with some flexibility, the special needs of both guests can be readily met. In the above example, it may be possible to meet the needs of both guests by checking them into rooms located in different areas of the hotel.

The preference of other customers is not a valid reason to restrict service to a customer with a service animal.

Taxis and customers with guide dogs or service animals

It is contrary to *The Code* to discriminate against taxi customers who rely on a guide dog or other service animal without reasonable cause. An example where a cab driver's refusal to provide a ride to a customer with a service animal may be reasonable is a taxi cab driver who has a severe allergy to dogs, has previously provided their employer with sufficient medical documentation of same, informs their fare who is accompanied by a guide dog of the reason that they cannot provide service, and calls for another cab for that fare.

Breastfeeding

It is contrary to *The Code* to discriminate, without reasonable cause, against a nursing mother because she is breastfeeding her child in a public area. Service providers also have a duty to reasonably accommodate special needs of customers that are based on sex, including circumstances related to pregnancy, or family status, to the point of undue hardship. While one such accommodation that service providers may provide is a quiet, comfortable area for the use of nursing mothers, nursing mothers who are told to move to another place without reasonable cause may file a human rights complaint.

"No Stroller" policies

It is contrary to *The Code* for a hotel, motel, restaurant or other hospitality service provider to adopt a "no stroller" policy, unless there is reasonable cause for such a policy.

Service providers are required to provide equal access to their services regardless of family status, and "no stroller" policies present barriers to families with young children.

"Adults Only" policies

Hospitality industry service providers cannot restrict access to all or part of their services on the basis of age and/or family status, unless there is reasonable cause for doing so. An example of reasonable cause is a hotel operator refusing to admit young children to the pool area unless accompanied by an older teen or adult.

Section 13(2) of *The Code* “Exception for age of majority”, says that it is not discrimination to deny or refuse a service to a person who has not attained the age of majority where that denial or refusal is required or authorized by another law in force in Manitoba.

Examples of policies that could be the subject of human rights complaints are a vacation resort that refuses families with children, or which does not allow families with children to eat in the dining room.

Harassment

Harassment based on sex, ancestry, sexual orientation or any other protected characteristic under *The Code* is prohibited in hospitality industry services.

While this includes harassment of a guest by an employee, it is also contrary to *The Code* for anyone responsible for hotel or motel accommodations or another hospitality industry service to knowingly permit or fail to take reasonable steps to terminate harassment of one participant by another participant - such as the harassment of one guest in the hotel bar or restaurant by another guest.

Examples of situations where failure to take steps to terminate harassment may result in liability under *The Code* are:

- A guest in a restaurant is approached by another diner. She is invited to join him at his table, but declines. He returns to his table and continuously stares at her, making menacing gestures. She informs the restaurant manager;
- A gay couple in a nightclub is subjected to repeated, offensive comment related to their sexual orientation by other patrons in the club. The owner and manager witness the harassment but fail to terminate it; and
- A hotel guest who is Aboriginal is repeatedly awakened by housekeeping staff, despite having placed a “please do not disturb” sign on his door. His colleague, who is not Aboriginal and who is in the next room down the hall, is not disturbed.

If there is any conflict between these guidelines and *The Human Rights Code*, *The Human Rights Code* prevails.

Le présent guide est également disponible en français

