

# Employment

**Know Your Rights – Legal Information Handbook**

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## Disclaimer

This content is provided as general information and is not legal advice. If you need advice about a specific legal problem, contact a lawyer or a community legal clinic.

## Acknowledgements

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# My Legal Rights

## Q: What legal rights do I have in Ontario's employment sector?

A: Under Ontario laws, people with disabilities have important legal rights when it comes to employment:

- You have the right to be treated equally in the workplace **without discrimination** because of your disability.
- You have the right to receive **accommodations** for your disability from your employer, prospective employer, or employment agency up to the point of **undue hardship**.
  - Your employer must provide you with accommodations in a way that respects your dignity, meets your individual needs and promotes your integration and full participation in the workplace.
  - Accommodations in the workplace include things like providing you with special equipment, modifying tasks, or creating new policies that enable you to succeed at your job. Examples of accommodations include: Technological supports, modifications to the work environment, customized work duties, and additional training.
- You have the right to challenge employment practices that you believe are based on unlawful discrimination.
- You have the right to work in a healthy and safe work environment.

## Duty to Accommodate & Undue Hardship

An employer's legal "duty to accommodate" means that they are legally required to provide you with the supports you need to succeed in the workplace. However, the duty to accommodate has a limit and this limit is called "undue hardship."

"Undue hardship" is a legal term. It means that if an employer can show that it is very difficult for them to provide you with a certain type of accommodation (because of high costs or health and safety risks), then they don't have to provide it.

It's usually difficult for an employer to claim undue hardship because they have to show clear evidence of undue hardship. Their evidence can only relate to these two factors:

1. Whether the cost of this type of accommodation is so high that it will significantly interfere with their ability to operate their business. When calculating cost, they must also consider outside sources of funding, e.g. grants or subsidies from government programs.
2. Whether this type of accommodation is going to create serious health and safety risks for their operations.

Even if an employer shows that a certain type of accommodation will create undue hardship for them, they still have a legal duty to provide you with the **next best** type of accommodation.

## Essential Job Requirements

There is an important exception to an employer's legal duty to accommodate you. Employers **do not** have a legal duty to accommodate you if you are unable to meet an "**essential requirement**" of a job because of your disability. Here's an example:

For the job of an airplane pilot, a certain degree of sightedness is an essential requirement to perform the work safely. If someone can't meet this requirement because of their disability, an employer does not have a legal duty to accommodate them.

[Click here](#) for more information on which kinds of requirements are "essential" to a job and which are not.

## Q: Do I have these legal rights even when I'm looking for work or when I'm leaving a job?

A: Yes. You have the legal rights explained above through all stages of employment, whether you are:

- looking for work – for example, responding to job advertisements, attending interviews, or using employment agencies;
- at work – for example, interacting with colleagues, clients or customers; and

- leaving work – for example, changing jobs or being laid off;

## **Q: Where do my legal rights come from?**

**A:** Your legal rights come from a variety of different laws, including:

- Ontario's **Human Rights Code** which prohibits discrimination based on disability in most areas of public life, including in the workplace.
- The **Accessibility for Ontarians with Disabilities Act** which requires almost all organizations in Ontario to meet minimum accessibility requirements in their employment practices. For more information about the **Accessibility for Ontarians with Disabilities Act**, see the Essential Legal Information Handbook.

Other employment related laws include:

- The **Employment Standards Act** which sets out minimum standards that most employers must comply with.
- The **Occupational Health and Safety Act** which creates safety standards within the workplace.
- The **Ontario Labour Relations Act** which provides rules about unions and collective bargaining.

## **Q: Who must comply with Ontario's employment laws?**

**A:** Almost all employees and organizations that do business in Ontario must comply with Ontario's employment laws. This includes:

- Employees;
- Employers, prospective employers, and employment agencies, both for-profit and not-for-profit;
- Independent contractors, unions, trade unions, self-governing professions and other occupational associations; and
- The Ontario government and its agencies.

Your legal rights protect you in most situations when you are dealing with:

- clients and customers;
- employers, prospective employers, or employment agencies; and
- trade unions, occupational associations, or self-governing professions.

**Q: I work in a federally regulated industry. Do Ontario employment laws apply to me?**

**A:** If you work in a federally regulated industry, federal employment laws usually apply instead of Ontario employment laws.

You learn more about whether federal laws apply to your situation, you can start by visiting [this](#) Government of Canada website.

**Q: What can I do to enforce my legal rights?**

**A:** If you have experienced discrimination while looking for work or while working, there are things you can do to stand up for yourself.

In general, you should first try to resolve your concerns by speaking with the people who are directly involved in an informal and collaborative way.

For more resources on self-advocacy, please visit the Self-Advocacy section of the Know Your Rights website.

If your concerns can't be addressed through collaborative discussions, you should consider consulting with a lawyer who specializes in human rights or employment issues to see if any of the following options are appropriate:

- A report/complaint to the Ontario Ministry of Labour for violations of the Employment Standards Act
- An application to the Human Rights Tribunal of Ontario
- A claim before an Ontario Court of Justice

## Common Scenarios

Even though there are laws to protect you from discrimination, people with disabilities still face barriers to accessing employment opportunities and fulfilling their potential in the workplace.

This section describes barriers that are commonly experienced and suggests practical next steps. Keep in mind that, in most situations, you should first try to resolve your concerns by speaking with the people who are directly involved in an informal and collaborative way.

### Looking for Work

#### **Q: I'm looking for a volunteer position. Am I entitled to receive accommodations as a volunteer?**

**A:** In general, yes. Ontario's **Human Rights Code** applies to people who perform duties within a "work context" including volunteers.

Most organizations that accept volunteers have a legal duty to provide you with reasonable accommodations for your disability, but not beyond the point of undue hardship.

#### **Q: There's a requirement in a job advertisement that I can't meet because of my disability. Should I still consider applying for the job?**

**A:** Sometimes job advertisements include "requirements" that are not essential to doing the job in a safe or effective way.

If you can't meet a requirement in a job advertisement because of your disability, and you believe that requirement is **not essential** to doing the job, then you should still consider applying for the job.

When a job advertisement includes a "requirement" that is **not essential** to doing the job safely or effectively, the employer is **not allowed to reject** your application on the basis that you could not meet that requirement. Here's an example:

Mary is looking for work. She is trained as an accountant and she has sight loss which prevents her from driving.

Mary sees a job advertisement for an accountant position that is based in one office and does not require travel to other locations. The job advertisement includes a requirement that “all applicants must have a driver’s licence”.

In this example, the requirement that applicants must have a driver’s licence is not essential because it does not affect whether someone can do the job in a safe or effective way.

If Mary chooses to apply for this job, the employer is not allowed to reject her application on the basis that she doesn’t have a driver’s licence.

How can you tell which job requirements are “essential” and which are not?

It is not always easy to know because the law on this topic can be complex. Whenever you are in doubt, it’s important to get help from a lawyer who can apply the law to your specific situation.

Here’s an example when it’s not 100% clear if a job requirement is essential:

Fara is looking for work. She is an experienced salesperson and she has sight loss which prevents her from driving.

Fara sees a job advertisement for a sales associate position that will require frequent travel to different client locations. The job advertisement includes a requirement that “all applicants must have a driver’s licence”.

If most clients are located nearby, then Fara could take a taxi to meet clients. The cost of a local taxi will probably not be an **undue hardship** for the employer. In this case, the requirement that applicants must have a driver’s licence is **probably not essential** to the job.

However, if most clients are located far away, the cost of travelling by taxi to remote locations might create an undue hardship for the employer. In this case, the requirement that applicants must have a driver’s licence **could be essential** to the job.

Fara should consider getting help from a lawyer who can apply the law to her specific situation.

**Q: A job posting is not in an accessible format. What can I do?**

**A:** If you find a job posting in Ontario that's not in an accessible format, you have the right to request the job posting in an accessible format from the employer as an accommodation for your disability.

By disclosing your disability and making a request for accommodation, you trigger the employer's legal duty to accommodate you up to the point of [undue hardship](#).

If you don't want to disclose your disability to the employer before you apply for the job, you can ask a friend to make the request for you. You can also get help from a local community organization or the CNIB.

**Q: I got an interview! But I'm not sure when to disclose my sight loss to my prospective employer. What should I do?**

**A:** While you are not required to disclose your disability to your employer, it may be a good idea to do so, depending on the situation.

There's no single "right answer" about whether you should disclose your disability to an employer and when you should do so. You need to consider the pros and cons depending on what you know about the job, the employer, the industry, and your own feelings.

It's often a good idea to disclose your disability before an interview to make sure that appropriate accommodations will be provided to you during the interview. This is especially important where written tests or other types of evaluation could be part of the interview process.

Other reasons to disclose your disability in advance of an interview are:

- To give you the first opportunity to frame your disability in a positive way that highlights your achievements
- To ensure the employer is not surprised
- To demonstrate how you are pro-active in finding solutions

There are also potential cons to disclosing your disability before an interview. For example, you may be worried that the employer could form misconceptions about you based on false stereotypes before you are able to meet them in-person.

There are many [resources](#) to help you decide when and how to disclose your disability to an employer. You can also reach out to CNIB Career services who can connect you with more [supports](#).

**Q: I had the qualifications and performed well during the interview, but I didn't get the job. I feel that I have been discriminated against because of my sight loss. What can I do?**

**A:** Sometimes there are clear signs that you have been discriminated against during an interview process. For example:

- When an employer asks intrusive and inappropriate questions
- When an employer makes statements that are offensive or based on false stereotypes
- When an employer says that they cannot hire because of your sight loss

Before deciding what to do, it's important to understand how the law applies to your specific situation. You should consider consulting with a human rights or employment lawyer about your legal options. You can also contact [CNIB's Career Support and Employment Services](#) who can help connect you with more supports.

When the signs of discrimination are not as clear, it may be harder to prove that you were discriminated against. Even if you think it will be hard to prove discrimination, you may **still** have legal options available. You should consider consulting with a lawyer to understand how the law applies to your specific situation.

## **At Work**

**Q: My sight loss is affecting my ability to do my job. What can I do?**

**A:** Eventually, you will need to tell your employer about how your disability is affecting your ability to perform job-related tasks. When you choose to disclose your disability to your employer, you will trigger their legal duty to accommodate you up the point of undue hardship.

Who should I disclose my disability to in the workplace?

It depends on the size of the employer and of other types of organizations involved (for example, a union or a temporary placement agency). In a large company, you may want to speak with the human resources department or a workplace accessibility advisory committee.

In most situations, you should consider consulting with a [Job Accommodation Service](#) who can provide you with more support on how to talk about your disability with your employer.

Before deciding what to do, it's important to understand how the law applies to your specific situation. You should consider consulting with a human rights or employment lawyer about your legal options. You can also contact CNIB's [Career Support and Employment Services](#) who can help connect you with more supports.

**Q: My employer has provided me with accommodations, but they aren't working. What can I do?**

**A:** Eventually, you will need to tell your employer about how your current accommodations are not providing you with the support you need to succeed in your job.

Your employer has a legal duty to accommodate you up to the point of undue hardship. It's important to remember that selecting an appropriate accommodation is a **collaborative process**. As an employee requesting an accommodation, you have a legal duty to collaborate with the employer to help them select an appropriate accommodation.

Your employer has the right to get enough information from you about your disability to select an appropriate accommodation. If the employer asks for medical documentation about your disability, you should provide only the information that is necessary to explain your need for accommodations. You are not required to tell your employer your exact diagnosis. You are not required to give your employer information that is not related to your need for accommodations.

In most situations, you should consider contacting a [Job Accommodation Service](#) who can provide you with more support around how to best communicate with your employer.

Before deciding what to do, it's important to understand how the law applies to your specific situation. You should consider consulting with a human rights or employment lawyer about your legal options. You can also contact CNIB's [Career Support and Employment Services](#) who can help connect you with more supports.

**Q: Do I have to pay for my employment-related accommodations?**

**A:** Your employer cannot make you pay for your accommodations. It is your employer's duty to accommodate you to the point of undue hardship and your employer is responsible for paying the costs of your accommodations.

## **Leaving Work**

**Q: I had to leave my job because my sight loss prevented me from performing my duties. What now?**

**A:** If you lose your job (for example, you resign or you are laid off) and you believe you lost your job because of your sight loss, you should get help from a lawyer to understand what your legal options are. A lawyer can help you determine whether your employer may have discriminated against you in a way that breaks the law.

You can also contact CNIB's [Career Support and Employment Services](#) who can help connect you with more supports.

# Getting Help

## Services

### Workplace Accommodation Services

Workplace accommodation services can assist you in many ways including:

- Providing support and assistance with communicating disabilities to prospective employers/employers and requesting accommodations
- Providing support to employees and employers with developing and implementing accommodation plans

To learn more about different Job Accommodation Service providers, contact [Vision Loss Rehabilitation Ontario](#).

### Employment Support Programs

There are many [employment support programs](#) that serve people with disabilities are part of the Ontario Disability Support Program (ODSP). Their services include:

- Drafting of resumés
- Networking and communicating with prospective employers/employers
- Advocating for accommodations

You can find service providers in your region by visiting [this Ontario government website](#).

### CNIB Career Support and Employment

We're here to help – contact CNIB's [Career Support and Employment Services](#) for more services, support and resources. Some ways we can assist include:

- Helping you with resumé writing, job searches and job retention
- Helping you and your employer develop and implement a job accommodation plan

- Providing employers and employment agencies with training and education about how to accommodate people who have sight loss

CNIB's [Mentoring Program](#) provides job seekers and employees with skills and strategies to effectively engage employers. Mentors answer your questions and share their firsthand experiences in the workplace.

### **CNIB Entrepreneurship Program**

CNIB's entrepreneur program provides resources and inspiration to help you succeed in your business venture. To learn more, [click here](#).

## **Legal Services**

### **Legal Aid Ontario**

Legal Aid Ontario provides legal services to low-income Ontarians. In order to receive services from Legal Aid Ontario:

- You must meet their [financially eligibility criteria](#); and
- Your problem must fall in one of these areas: domestic violence, family law, immigration and refugee law, criminal law, or poverty law.

Even if you don't meet these two requirements, you call Legal Aid Ontario's [toll-free hotline](#) and a representative can [refer you](#) to other organizations or agencies that can help you with your legal problem.

### **Ontario's Community Legal Clinics**

In Ontario, legal help is available to low-income people through 73 independent community legal clinics, including 13 [specialty clinics](#). To get the contact information for your regional community clinic visit [this website](#).

## **Pro Bono Ontario**

Pro Bono Ontario is a non-profit that provides a toll-free legal advice hotline to help people with their legal needs. By [calling their hotline](#), you can speak to a lawyer for 30 minutes about a civil law matter (they do not provide advice for problems related to family law or criminal law)

## **The Human Rights Legal Support Centre**

The Human Rights Legal Support Centre (also known as HRLSC) is an independent agency, funded by the government of Ontario, to provide legal services to individuals who have experienced discrimination. They have a [toll-free hotline](#) where you can get:

- Legal assistance in completing an application to the Human Rights Tribunal of Ontario
- Legal advice about how to address the discrimination that you experienced

## **ARCH Disability Law Centre**

ARCH Disability Law Centre (also called ARCH) is a specialty legal clinic that practices exclusively in disability rights law. ARCH has a [toll-free hotline](#) where you can get:

- up to 30 min of free, confidential legal advice
- referrals to organizations that can provide you with further help

If you meet eligibility certain criteria, ARCH may be able to provide you with additional legal services.

## **Legal Information**

### **Steps to Justice**

Steps to Justice is a resource that provides practical information about common legal issues, including [employment and human rights at work](#). They have step by step answers to questions including:

- [What laws apply to me as a worker?](#)

- [What if I'm not hired because an employer discriminates against me?](#)
- [What does it mean to experience discrimination?](#)
- [I have a disability. What are my rights at work if I have needs related to my disability?](#)
- [I'm an independent contractor and I have a disability. Do I have rights at work?](#)
- [When I apply for a job, what can an employer ask me?](#)
- [Where can I get help and advice about my rights as a worker?](#)

## **Disability Alliance BC**

Disability Alliance BC created a [Comprehensive Guide](#) to assist individuals with deciding how and when to disclose a disability to current or potential employers. While this guide was developed in British Columbia, it provides a lot of helpful, relevant guidance for people across Canada. Note that Ontario's human rights laws are very similar to those in British Columbia.

## **Human Rights Legal Support Centre**

The Human Rights Legal Support Centre (also known as HRLSC) is an independent agency, funded by the government of Ontario, to provide legal services to individuals who have experienced discrimination. As part of its service, HRLSC provides information about the *Ontario Human Rights Code* and answers to [frequently asked questions](#) about the rights of employees in Ontario

## **NEADS**

The [National Educational Association of Disabled Students](#) (also known as NEADS) is a Canadian charitable organization that supports full access to education and employment for students with disabilities. As part of its effort to support full access to education and employment, NEADS has developed resources including:

- A [comprehensive guide to understanding the rights of employees with disabilities](#) and the obligations of their employers to accommodate

- A web portal for jobs called “Breaking it Down” which includes many resources, links, and articles for job seekers
- A booklet on the [Duty to Accommodate](#) (Word Doc)

## **Hire for Talent**

[The Hire for Talent website](#) is designed to support people with disabilities in developing their careers. It covers many employment topics including legal rights. While this website was created in New Brunswick, it provides a lot of helpful, relevant guidance for people across Canada. Note that Ontario's human rights laws are very similar to those in New Brunswick.

## **Government of Alberta Careers Website**

[The Government of Alberta's Careers website](#) includes many employment-related resources for people who have disabilities. While this website was created in Alberta, it provides a lot of helpful practical advice for people across Canada. Note that Ontario's human rights laws are very similar to those in Alberta.

## **Resources for Employers**

### **Ontario Human Rights Commission**

The Ontario Human Rights Commission has written an online book entitled, "[Human Rights at Work 2008 – Third Edition](#)". The book provides helpful information regarding the Ontario's **Human Rights Code** and how it applies to employment in Ontario. Print copies of the book are also available on the website

### **CNIB Foundation**

Blindness at Work - with only simple accommodations, many people with sight loss are empowered to work independently. These resources can help employers make the workplace more accessible:

- [Workplace accommodations](#): Examples of tools and technologies that can be used to accommodate people with sight loss. This site also includes a link to some quick tips around creating an accessible workplace
- [Creating an inclusive workplace](#): Simple tips about how to be comfortable and supportive of co-workers with sight loss
- [Hiring someone with sight loss](#): Tips for employers around making the recruiting process (e.g. job advertisements, etc.) and interviews accessible to job candidates with sight loss

## **Access Forward**

[The Access Forward website](#) offers free training modules for employees on their obligations under the **Accessibility for Ontarians with Disabilities Act**. It was created in partnership with the Government of Ontario to assist organizations with meeting the training requirements under the **Accessibility for Ontarians with Disabilities Act**. To learn more about the legal force of the **Accessibility for Ontarians with Disabilities Act** standards, please see the Know Your Rights – Essential Legal Information Handbook.

## **March of Dimes Canada**

March of Dimes Canada is an organization that is dedicated to providing support to people with physical and other disabilities. It has developed a [guide](#) for employers to create more inclusive work environments that are designed to accommodate the needs of people with disabilities. This guide also includes statistics and myths about hiring people with disabilities.

## **Human Resources Professional Association of Canada**

The Human Resources Professional Association is a regulatory association. It maintains a hub of [resources](#) for employers on best practices for hiring people with disabilities. The hub also contains resources to support employers with meeting their obligations under the **Accessibility for Ontarians with Disabilities Act**.

## **Conference Board of Canada**

The Conference Board of Canada is a not-for-profit research organization. It maintains a hub of resources to support [accessible employment practices](#) in Canada

## **Ontario Disability Employment Network**

The [Ontario Disability Employment Network \(ODEN\)](#) is a professional body of employment service providers that have united to increase employment opportunities for people with disabilities. It develops services and information resources to help employers create career opportunities for people with disabilities.

**Web / Site Web : [cnib.ca](http://cnib.ca) / [inca.ca](http://inca.ca)**

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