



**CNIB**

**KNOW YOUR  
RIGHTS**

# **Employment**

**Know your rights! — Guide to legal information**

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**Chambre  
des notaires**

# Important

The information in this guide is of a general nature, and should not be taken as legal advice. If you require information about a specific legal issue, **contact a lawyer or a legal aid clinic.**

## Acknowledgements

**CNIB** wants to thank the volunteers and numerous contributors to this guide to legal information. For additional information about the **Know your rights!** project, please go at [cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights](https://cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights).

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# Table of contents

General issues.....	4
What are the pertinent resources when it comes to employment?.....	4
What are my rights in regard to employment in Quebec?.....	5
Where do my rights stem from? .....	10
How can I stand up for my employment rights? .....	11
Specific issues .....	12
I am self-employed, and the person I am currently working for is no longer calling me back because I refused to come to work without my guide dog. What can I do? .....	13
There is a competition for a position that has opened up at work, but I'm afraid that my visual impairment puts me at a disadvantage. What are my chances? .....	14
I am a delivery driver, and my driver's licence indicates that I have a visual impairment. Is that grounds for my employer to fire me? .....	14
A job offer is not accessible. What should I do? .....	15
I have an interview, but I don't know when I should disclose my visual impairment. ....	16
I did really well during the hiring interview, but I was not selected. I have the feeling that I was discriminated against because of my sight loss. What can I do?.....	17
My sight loss affects my ability to do my work. What can I do? .....	18
I had to quit work because my sight loss prevented me from performing my duties. What can I do? .....	18

This document covers the area of **employment**. A number of **general** and **specific** issues are addressed. The document also includes some of the laws and sections in them that will be useful to you in **standing up for your rights** in regard to employment whenever they are not respected.

## General issues

This section covers general issues about rights when it comes to employment, as well as specific recourses available to you. For information about [general recourses](#), you can consult the document on Advocacy and Essential Legal Information.

## What are the pertinent resources when it comes to employment?

The following resources will provide useful information and help you **stand up for your rights in regard to employment**<sup>1</sup> :

- [Employment Equity Act](#)
- [Directive on the Duty to Accommodate](#)

When it comes to employment, issues should be addressed from the points of view of **human rights** and **basic rights**. The main reason underlying the exclusion of disabled people from the labour market is **discrimination**.

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<sup>1</sup> <https://www.canada.ca/en/canadian-heritage/services/rights-people-disabilities.html>

# What are my rights in regard to employment in Quebec?

## Internationally

The **Convention on the Rights of Persons with Disabilities**<sup>2</sup>, was signed by Canada in 2010.

Article 27 of the **Convention** covers the issue of employment of persons with disabilities. Paragraph 1 of that article calls on States Parties to recognize the **right of persons with disabilities to work**, on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation.

Paragraph 5 of article 24 of the **Convention**, which covers education, addresses the issue of vocational training as a means for advancement in the workplace. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.

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<sup>2</sup> This Convention was adopted by the United Nations on **December 13, 2006**, and ratified by Canada on **March 11, 2010** and by Quebec on **March 10, 2010**. For comments on this Convention, see V. A. Boujeka, **La convention des Nations unies relative aux droits des personnes handicapées et son protocole facultatif**, RDSS sept-oct. 2007, n° 5, p. 799.

# Nationally

Quebec's **Charter of human rights and freedoms** provides for prohibited behaviours. Our rights and freedoms are founded in **constitutional law**. Those laws also provide for application in the context of labour relations.

The following are the fundamental rights you have, along with the links to the sections that provide for those rights in regard to employment:

## 1. The right to equality

- **Section 10, Quebec's Charter:** Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

- **Section 16, Quebec's Charter:** No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.
- **Section 17, Quebec's Charter:** No one may practise discrimination in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association

of employers or employees or any professional order or association of persons carrying on the same occupation.

- **Section 18, Quebec's Charter:** No employment bureau may practise discrimination in respect of the reception, classification or processing of a job application or in any document intended for submitting an application to a prospective employer.
- **Section 18.1, Quebec's Charter:** No one may, in an employment application form or employment interview, require a person to give information regarding any ground mentioned in **section 10** unless the information is useful for the application of **section 20** or the implementation of an **affirmative action program** in existence at the time of the application.
- **Section 19, Quebec's Charter:** Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.  
A difference in salary or wages based on experience, seniority, years of services, merit, productivity or overtime **is not considered discriminatory** if such criteria are common to all members of the personnel.  
Adjustments in compensation and a pay equity plan are deemed not to discriminate on the basis of gender if they are established in accordance with the **Pay Equity Act** (chapter E-12.001).
- **Section 20, Quebec's Charter:** A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature or a non-profit institution

or of an institution devoted exclusively to the well-being of an ethnic group, is deemed **non-discriminatory**.

- **Section 86, Quebec's Charter:** The object of an **affirmative action program** is to remedy the situation of persons belonging to groups discriminated against in **employment**, or in the sector of **education** or of **health services** and other services generally available to the public.

An affirmative action program is deemed **non-discriminatory** if it is established in conformity with the **Charter**.

An equal access employment program is deemed not to discriminate on the basis of race, colour, gender or ethnic origin if it is established in accordance with the Act respecting equal access to employment in public bodies.

An equal access to employment program established for a handicapped person within the meaning of the Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration is deemed to be non-discriminatory if it is established in conformity with the Act respecting equal access to employment in public bodies.

## **2. The right to inviolability of the person**

- **Section 1, Quebec's Charter:** Every human being has a right to life, and to personal security, inviolability and freedom. He also possesses juridical personality.
- **Section 46, Quebec's Charter:** Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.



- **Article 2087, Civil Code of Québec:** The employer is bound not only to allow the performance of the work agreed upon and to pay the remuneration fixed, but also to take any measures consistent with the nature of the work to protect the health, safety and dignity of the employee.

In this regard, it is worth noting that aside from **Quebec's Charter**, the **Act respecting equal access to employment in public bodies** requires more than 600 public organizations to implement equal access employment programs to increase, in particular, the representation of disabled people. The **National Strategy for Labour Market Integration and Maintenance of Handicapped Persons** is designed to achieve employment equality and enhanced labour market participation for people with handicaps. The **Contrat d'intégration au travail** uses subsidies to encourage employers to hire and retain disabled people in the regular workforce. The **Subventions aux entreprises adaptées** program supports more than 40 businesses that hire a majority of disabled people who would not be able to work under ordinary conditions. In addition, the Government has adapted the offer of **public employment services to facilitate access to disabled people**. And lastly, a financial assistance program provides increased benefits for people with severely limited capacity for employment<sup>3</sup>.

### 3. The right to dignity, honour and reputation

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<sup>3</sup> **Convention on the Rights of Persons with Disabilities – First report of Canada**, para. 198

- **Section 4, Quebec's Charter:** Every person has a right to the safeguard of his dignity, honour and reputation.

#### 4. The right to respect for his private life

- **Section 5, Quebec's Charter:** Every person has a right to respect for his private life.
- **Article 35, Civil Code of Québec:** Every person has a right to the respect of his reputation and privacy.

The privacy of a person may not be invaded without the consent of the person or without the invasion being authorized by law.

#### 5. The right to fair and reasonable conditions of employment

- **Section 46, Quebec's Charter:** Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.

#### 6. Freedom of association

- The Supreme Court recognizes the value of individual and collective freedom of association<sup>4</sup>.

## Where do my rights stem from?

The **Constitution of Canada** protects our rights and fundamental freedoms. More specifically, they stem from the **Canadian Charter of Rights and Freedoms** and Quebec's **Charter of human rights and freedoms**. Neither of those two mention the right to work. Nonetheless, the

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<sup>4</sup> Robert P. GAGNON et Langlois KRONSTRÖM DESJARDINS, **Le droit du travail du Québec**, 7<sup>e</sup> édition Cowansville, Édition Yvon Blais, 2013, EYB2013DDT5

guarantees they offer affect your relationships with the workforce in numerous ways.

The **Canadian Charter** focuses more on governments in their legislative, executive and administrative functions (Section 32, **Canadian Charter**). It can also be used to contest the constitutionality of a government action or measure. The only exceptions are where the situation has been earmarked by the National Assembly in order to declare an exception (Section 33, **Canadian Charter**) to suspend rights under sections 2, 7 and 15 of the **Canadian Charter**.

**Quebec's Charter** applies to relations between private, physical or legal persons. Section 52 of this **Charter** provides that “No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter”. This Charter has a significant impact on relations between an employee and an employer.

## **How can I stand up for my employment rights?**

There are a number of ways you can stand up for your fundamental rights. In order to clearly understand how to stand up for your employment rights using the tips provided below, we recommend that you refer to the [Advocacy and Essential Legal Information document](#), which explores in detail the methods presented here.

## **Human Rights Tribunal**

The Human Rights Tribunal (Section 100, **Quebec's Charter**) is mandated to hear and dispose of any application submitted under section 80, 81 or 82 of the **Charter**, in particular in matters of employment, as well as any application submitted under section 88, 90 or 91 in respect of an affirmative action program (section 111, paragraph 1, **Quebec Charter**). It also hears and disposes of any application submitted under section 6, 18 or 19 of the **Act respecting equal access to employment in public bodies** (section 111.1, **Quebec's Charter**).

## **Specialized administrative tribunals**

An administrative tribunal interprets laws in general in the exercise of its mandate established by its enabling act<sup>5</sup>.

## **Specific issues**

This section covers specific situations and certain rights in regard to **employment** that can be trampled.

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<sup>5</sup> Gagnon et Kronström Desjardins, op. cit., n° 82

**I am self-employed, and the person I am currently working for is no longer calling me back because I refused to come to work without my guide dog.**

## **What can I do?**

You can file a complaint with the **Commission des droits de la personne et des droits de la jeunesse**. You can consult the [Advocacy and Essential Legal Information](#) guide on this matter. This actually constitutes a violation of your rights under [sections 4, 10 and 16](#) of **Quebec's Charter**. In Quebec, a guide dog is a means to palliate a visual impairment.

**Therefore, a guide dog cannot be separated from its handler.**

Discrimination against disabled people is due to the failure to provide them with a reasonable means to palliate their disability. Where there is no accommodation, there is discrimination. Your rights to safeguard your dignity and to be treated equally are violated when you are prohibited from bringing your guide dog to your workplace. In that regard, you can refer to [Commission des droits de la personne et des droits de la jeunesse \(Sauvé\) c, Spa Bromont Inc. 2013 QCTDP 26](#).

## **There is a competition for a position that has opened up at work, but I'm afraid that my visual impairment puts me at a disadvantage. What are my chances?**

In the case of a job competition, an employer must help applicants who have serious visual impairments find ways to palliate their disability so that they are not at a disadvantage. The types of accommodations should not entail an excessive constraint. You can refer to **Commission des droits de la personne et des droits de la jeunesse c. Québec [Procureur général]**<sup>6</sup>.

## **I am a delivery driver, and my driver's licence indicates that I have a visual impairment. Is that grounds for my employer to fire me?**

No. The fact that a delivery driver employee's driver's licence indicates a limitation due to a visual impairment does not dispense the employer from

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<sup>6</sup> **Commission des droits de la personne et des droits de la jeunesse c. Québec (Procureur général)**, (2005) R.J.D.T. 1110 ; J.E. 2005-780 ; EYB 2005-87481 (T.D.P.).

the obligation to try to accommodate that employee before firing him or her. You can refer to [Gagnon c. Marc Villeneuve Inc., 2019EXP-1159 \(T.A.T.\)](#).

## **A job offer is not accessible. What should I do?**

Accessibility in the workplace is very important. The Government of Quebec encourages businesses to foster accessibility for everyone. The right to access to employment is provided in **Quebec's Charter**.

The first thing to do would be to contact the employer, who could then provide the most inclusive reasonable accommodation possible. However, if the employer refuses or the applicant feels excluded, the latter can consult a legal professional to find out which of his or her rights under **Quebec's Charter** is being trampled in order to determine what steps to take. If the applicant does not have access to the same job offers because of a disability, the right to equality may well be the issue. That person could then be represented by the **Commission des droits de la personne et des droits de la jeunesse** before the Human Rights Tribunal, for instance.

The recourses indicated above in the section entitled [How can I stand up for my employment rights](#) are applicable in cases of employment discrimination.

# **I have an interview, but I don't know when I should disclose my visual impairment.**

These days, hiring is so focused on skills and performance, that applicants make drastic choices in order to improve as much as possible their chances of getting the job they want. In order to avoid being excluded, some applicants refuse to answer a discriminatory medical questionnaire in order to protect their right to equality. However, if they make false statements, they could be fired. Employers are entitled to conduct an individual assessment of the applicants' capacities in order to make an informed choice about who to hire. They are entitled to ensure that the applicant they select has the required qualifications or skills to safely perform the tasks he or she is given<sup>7</sup>.

Employers are obligated to offer a selection process that complies with **Quebec's Charter** (sections 10, 16 and 18.1). However, they are entitled to clear and complete information so they can make a good decision in order to meet their organizational obligations.

Therefore, it is important to let the employer know such facts. Even if an applicant is afraid to disclose such details, there are sections in **Quebec's Charter** that prohibit discrimination, and therefore protect the applicant. The violation of a right protected under the Charter can lead to the victim

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<sup>7</sup> Stéphanie FOURNIER. **Service de la Formation continue De Charybde en Scylla : le dilemme des candidats face à une question discriminatoire en embauche**, Montréal, Congrès annuel du Barreau du Québec, 2014. (CAIJ), p.132



seeking compensation for moral or material harm<sup>8</sup>.

## **I did really well during the hiring interview, but I was not selected. I have the feeling that I was discriminated against because of my sight loss. What can I do?**

The first step to take when you think you have been discriminated against during an interview is to consult a legal professional to determine your rights and possible recourses. The **Commission des droits de la personne et des droits de la jeunesse** could intervene and represent you before the court mandated to hear the matter.

In those situations, it is always important to consult a legal professional so that you can be properly represented and stand up for your rights.

It is important to determine whether the hiring employer has any discretionary authority. The employer's discretion is subject to compliance with the different parameters set by society, including those pertaining to equality and non-discrimination<sup>9</sup>. The questions and mechanisms used in the hiring process cannot bias it in a way that leads to discrimination under section 10 of **Quebec's Charter**. At the same time, section 18.1 of Quebec's Charter prohibits discrimination on the grounds indicated above.

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<sup>8</sup> Ibid., p. 132

<sup>9</sup> Ibid., p.130

In regard to employment, section 20 of Quebec's Charter explicitly provides that, as a means of defence, an exclusion based on the aptitudes or qualifications required for an employment is deemed non-discriminatory. A requirement will only be deemed as such if it is rationally linked to the execution of the work in question and reasonably necessary to achieve the legitimate purpose of the work.<sup>10</sup>

## **My sight loss affects my ability to do my work. What can I do?**

When you run into difficulties, it is important to talk to your supervisor about them. Supervisors are required to protect employees in the workplace in accordance with **occupational health and safety standards**.

## **I had to quit work because my sight loss prevented me from performing my duties. What can I do?**

You have access to the previously mentioned recourses. You should find work that will be safe considering your limitations. However, employers must do everything they can to ensure equality for employees (15) through assistance or means that might be more reasonable.

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<sup>10</sup> Maurice DRAPEAU et Alexis AUBRY. **La discrimination fondée sur le handicap ou le moyen pour y pallier : concepts fondamentaux et évolution nécessaire**. La revue du Barreau du Québec, t. 74, 2015.

# When your rights are not respected, stand up for them!

We hope this guide will help you stand up for your rights as they relate to education. We believe that you are in the best position to defend your rights. When your rights are not respected, you have the right to stand up for them and to make sure that others **Know your Rights**.

**CNIB is here for you.** Since its inception in 1918, CNIB has undertaken a variety of advocacy initiatives to **break down barriers** for people who are blind and to **advocate for an inclusive society**.

Please feel free to contact us for referrals and to take advantage of our services.

[DroitsDevant@inca.ca](mailto:DroitsDevant@inca.ca)

**1 800 465-4622**

Visit the campaign website for information on other rights:

**[cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights](http://cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights)**

Join the conversation on social media by using the tagline:

**#KnowyourRights**

**Together, enforce the rights of blind people!**