
**THE SOCIAL PLANNING COUNCIL OF PEEL
DIVERSITY AND HUMAN RESOURCES
MANAGEMENT**

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**“Diversity and Accommodation Issues
for Non-Profit Employers”
(Power Point Presentation)**

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Part 1: Hiring and Interview Screening Protocols for Non-Profit Organizations

Introduction

A properly conducted hiring process is critical not merely as a means to finding a suitable candidate,

but also,

for protecting employers from being held liable for transgressing any of the provisions existing in law

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The Ontario Human Rights Code (“Code”) and the Ontario Human Rights Commission

- The Ontario Human Rights Commission (OHRC) is the regulatory authority in charge of ensuring the implementation of the Code.
- Generally speaking, the OHRC is of the view that the only legitimate consideration determining an applicant’s suitability for employment is his/her job qualifications.

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- To facilitate this objective, the OHRC issues guidelines, including a sample application form, which is intended to guide employers so as to avoid breaching any of the provisions contained in the Code – available at www.ohrc.on.ca

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The Ontario Human Rights Code

Section 5(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or disability.

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Section 23(1) The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

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Section 23(2) The right under section 5 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

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Prohibited Grounds of Discrimination

As of the time of this presentation, the following are prohibited grounds of discrimination for employment:

- Race
- Ancestry
- Place of Origin
- Colour
- Ethnic Origin
- Citizenship
- Creed
- Sex
- Sexual Orientation
- Age
- Record of offences
- Marital status
- Same-sex partnership status
- Family status
- Disability

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Prohibited Questions on Applications

A question is categorically prohibited if it concerns the following:

- Race (e.g. physical characteristics or requests for pictures, etc)
- Creed (e.g. religious affiliation, holidays and customs observed, etc)
- Sex (e.g. Mr., Mrs., Miss., Ms.; insurance beneficiary, etc)
- Sexual Orientation (e.g. marital status, insurance beneficiary, etc)

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- Marital Status (e.g. marital status, maiden/birth name, etc.)
- Family Status (e.g. marital status, children or dependents, etc)
- Disability (e.g. health, handicaps, medical history, medications, etc)

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Section 23(3) Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination of such ground is permitted under this Act.

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Permissible Questions on the Application
The OHRC does, however, permit the following questions:

1) Citizenship/Place of Origin/Ethnic Origin

- Are you legally entitled to work in Canada?

2) Record of Offences

- Have you ever been convicted of a criminal offence for which a pardon has not been granted?

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3) Age

- Are you 18 years of age or older and less than 65 years of age?

The above three examples demonstrate that legal discrimination does not constitute a contravention of the Code

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Practically Speaking:

In practice this means that:

- 1) **When advertising for employment, or when conducting interviews employers must ensure that they are in compliance with the Code.**
- 2) **Employers must be careful that they do not inadvertently breach the provisions of the Code.**

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- 3) **Employers should have employment policies in place and established to assist human resources personnel to ensure that they are not engaging in hiring practices that are in violation of the Code.**

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Part 2: Employing and Management Protocols for Non-Profit Organizations

Introduction

A properly managed human resources department is critical not merely as a means of keeping employees content,

but also,

for protecting employers from being held liable for transgressing any of the provisions existing in law

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The Ontario Human Rights Code

Section 5(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or disability.

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“Creed” is not defined in the Code, but has been broadly interpreted by the OHRC

“Creed” is interpreted to mean “religious creed” or “religion”. It is defined as a professional system and confession of faith, including both beliefs and observances or worship

“Creed” does not include secular, moral or ethical beliefs or political convictions

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Section 11(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where the requirement, qualification or factor is reasonable and bona fide in the circumstances

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Section 11(2) The Commission, the Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any

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Bona Fide Occupation Requirements

- 1. The employer adopted the requirement in question for a purpose rationally connected to the performance of the particular employee's job**
- 2. The employer adopted that requirement in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose**

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- 3. The requirement is reasonably necessary to the accomplishment of the legitimate work-related purpose. To prove reasonable necessity, it must be shown to be impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship on the employer**

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Undue Hardship

- Cost
- Outside sources of funding
- Health and safety risks

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Exceptions

- Participating in special interest organizations
- Employment in special interest organizations
- Reasonable and bona fide occupational requirements, qualifications or factors

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Conclusion

1. Employers should have employment policies in place to assist human resources personnel to ensure that they are not engaging in human management practices that are in violation of the Code
2. Employers should understand that the issues of accommodation and undue hardship are complex and need to be assessed on a case-by-case basis

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