

Human rights, mental health and addiction disabilities



Ontario
Human Rights Commission

Commission ontarienne des
droits de la personne

The Ontario *Human Rights Code*

The Ontario *Human Rights Code* provides for equal rights and opportunities, and freedom from discrimination. The *Code* recognizes the dignity and worth of every person in Ontario. It applies to employment, housing, goods, facilities and services, contracts, and membership in unions, trade or professional associations.

In all of these areas, the human rights of people with mental health disabilities or addictions are protected. At work, when receiving services, or in housing, you are entitled to the same opportunities and benefits as people without mental health disabilities or addictions. Examples of services are schools, learning centres, restaurants, shops, hotels, movie theatres, transit, policing, and government services.

In some cases, you may need alternative arrangements or “accommodations” to fully take part at work, in housing or in a service.

Mental health and addiction disabilities

Mental health issues and addictions are “disabilities” that are protected under the *Code*. For example, the *Code* protects people who have anxiety disorders, panic attacks, post-traumatic stress disorder (PTSD), depression, schizophrenia, bipolar disorder, or addictions to alcohol or drugs, just to name a few.

People with mental health and addiction disabilities experience impairment and barriers in different ways. Disabilities are often “invisible” to others and may involve periods of wellness and periods of disability. All people with disabilities have the same rights to equal opportunities under the *Code*, whether their disabilities are visible or not.

People with addictions have the same right to be free from discrimination as anyone else with a disability. There is often a cross-over between addictions and mental health disabilities, and many people experience both. The *Code* also protects people from discrimination because of past and perceived disabilities.

Example: A person is not hired as a teacher because many years ago, she had an alcohol addiction. This is discrimination based on disability.

Discrimination and harassment

Discrimination against people with mental health or addiction disabilities is often linked to prejudicial attitudes, negative stereotyping, and the overall stigma surrounding these disabilities.

Discrimination in employment, housing or services may happen when a person is treated in a way that has a negative impact on them because of their mental health or addiction disability.

Example: A landlord does not rent an apartment to someone with a mental health disability because they think the person will not take care of their apartment or pay their rent.

Example: An employer learns that an employee has depression. Because of this, the employer doesn't think he can do the job, and fires him.

Discrimination does not have to be intentional. And, a person's mental health disability or addiction may only be one factor in the treatment they received for discrimination to happen. Discrimination can happen in a direct or overt way, or it can be more subtle.

Discrimination can also happen when people single you out for greater scrutiny, or treat you as a security risk to other people based on stereotypes about your disability, not on "reasonable grounds." This is called "mental health profiling."

Example: Security staff at a hospital are routinely called to be present if a person's file shows a mental health diagnosis, regardless of the person's behaviour.

Discrimination can happen when the rules, policies or practices of an organization seem to be neutral on the surface, but have a negative effect or exclude people with mental health disabilities or addictions.

Example: In one court case, a housing co-operative had a rule that all members must perform a set number of volunteer duties every month. It tried to evict a member because she did not do these duties, despite her doctor's note saying she could not do so for medical reasons. The co-op's rule on volunteer service had an adverse effect on the woman because of her mental disability. The court found that if she could not do any of the volunteer tasks for "valid medical reasons," excusing her from this rule would not be likely to create "undue hardship."

When an organization does not accommodate your mental health issue or addiction to the point of undue hardship, this also violates the *Code*.

Harassment

Harassment means "engaging in a course of vexatious (which means distressing or annoying) comment or conduct that is known or ought to be known to be unwelcome." This happens when someone shows a pattern of doing or saying something based on a person's mental health disability or addiction that they know, or ought to know, is unwelcome. Even one incident, if serious enough, can "poison" someone's environment.

Harassment could include:

- ✧ Slurs and name-calling
- ✧ Graffiti, images or cartoons showing people with mental health disabilities or addictions in a negative light
- ✧ Singling you out for teasing or jokes related to your mental health disability or addiction
- ✧ Comments that ridicule you because of mental health or addiction-related characteristics
- ✧ Intrusive personal questions or comments on your disability, medication or accommodation needs
- ✧ Repeatedly not including you in social situations, or “shunning” you
- ✧ Revealing your mental health or addiction issue to people who do not need to know
- ✧ Circulating offensive material about people with mental health disabilities or addictions at an organization by email, text, the Internet, etc.

Removing barriers and designing inclusively

People with mental health disabilities or addictions face many kinds of barriers every day. These can include attitude, communication, physical and systemic barriers. Organizations must identify and remove barriers, and design inclusively to reduce the need for people to ask for individual accommodation.

Example: A municipality passes a by-law that says that 10% of the units offered through all new rental housing developments must be affordable housing. It does this because many groups protected by the *Code*, including people with mental health or addiction disabilities, need affordable housing.

Example: When assessing people's eligibility for a program, a service provider provides quiet and private spaces to sit. This benefits many people protected by the *Code*, including some people with mental health disabilities or addictions, who may need a quiet environment and a place to talk about confidential medical information.

Negative attitudes about people with mental health or addiction disabilities can be barriers too. Taking steps to prevent “ableism” – attitudes in society that devalue and limit the potential of people with disabilities – will help promote respect and dignity, and help people with disabilities to fully take part in community life.

Duty to accommodate

Under the *Code*, employers, unions, landlords, service providers and others have a legal duty to accommodate people with mental health or addiction disabilities.

This means that employers, housing and service providers may need to change their rules, policies or procedures to create equal access and equal opportunities.

Example: A person misses a deadline to apply for a benefit because she is away receiving treatment for a drug addiction. The service provider extends the deadline to accommodate her disability.

Accommodation is a shared responsibility. Everyone involved, including the person asking for accommodation, should share information and jointly explore accommodation solutions.

Sometimes, a person with a mental health or addiction disability cannot identify they need accommodation. Accommodation providers must try to help a person who is clearly unwell, or they think has a mental health or addiction disability. They have a duty to inquire if the person has needs related to a disability and offer help and accommodation.

Example: An employer is not aware of an employee's mental health disability, but thinks changes in his behaviour may be due to a disability. The employer sees that he is having trouble doing his job, and is showing obvious signs of distress that include crying at his desk. The employer asks him if he has any accommodation needs and offers to refer him to an employee assistance program.

However, organizations are not entitled to try to diagnose illness or “second-guess” a person's disability.

Many accommodations can be made easily and at low cost. Where putting the best solution in place right away may result in “undue hardship” because of costs or health and safety factors, the person or organization that accommodates has to look at and take the next-best steps that would not result in undue hardship. Next-best steps should be taken only until better solutions can be put in place.

If you need accommodation based on your disability:

- ✧ Tell your employer, union, landlord or service provider what your disability-related needs are related to your job duties, tenancy or the services being provided, in writing, if you can

- ✧ Provide supporting information about the needs and limitations relating to your disability, including information from health professionals where needed
- ✧ Co-operate with the accommodation provider on an ongoing basis to manage the accommodation process.

Employers, unions, landlords and service providers must:

- ✧ Accept requests for accommodation in good faith, unless there are legitimate reasons for acting otherwise
- ✧ Ask only for information needed to provide the accommodation. For example, employers may need to know that someone needs time off to go to medical appointments related to their disability, but not that they have schizophrenia
- ✧ Take an active role in looking at accommodation solutions that meet individual needs
- ✧ Deal with accommodation requests as quickly as possible, even if it means creating a temporary solution while developing a long-term one
- ✧ Respect the dignity of the person asking for accommodation, and keep information confidential
- ✧ Cover the costs of accommodations, including any needed medical or other expert opinion or documents.

Example: An employee sends her employer an email stating that because of her disability, she needs to attend medical appointments every Wednesday morning for the next month. The employer accepts this information in good faith and provides flexible hours on those days as an accommodation.

Generally, the organization or person providing the accommodation does not have the right to know your confidential medical information, such as the cause of the disability, diagnosis, symptoms or treatment, unless these clearly relate to the accommodation asked for.

In **rare** situations where your accommodation needs are complex, challenging or unclear, you may be asked to provide more information, including possibly your diagnosis. But the accommodation provider must justify why they need the information.

Here are some examples of accommodations:

Employment

- ✧ Modified job duties
- ✧ Changes to the building (for example, building partitions in an open office space to increase someone's ability to concentrate)
- ✧ Job coaching (someone to help the employee adjust to the workplace)

- ✧ A referral to an employee assistance program
- ✧ Alternative supervision arrangements (such as having meetings more often)
- ✧ Different ways of communicating with the employee (such as giving instructions in writing)
- ✧ More training, or training that is delivered in a different way
- ✧ Changes in break policies (for example, to allow people to take medication when they need to)
- ✧ Short-term and long-term disability leave
- ✧ A flexible work schedule
- ✧ Job bundling (taking various tasks from existing positions and creating a new job that supports the employer's business needs)
- ✧ Alternative work.

Services

- ✧ Many different ways of contacting a service including by phone, in person and by regular and electronic mail
- ✧ Extra time (for example, for school exams)
- ✧ More breaks, where appropriate (for example, during a court hearing)
- ✧ Flexible attendance requirements, where possible, if an absence is linked to a disability
- ✧ Flexible rules if someone does not comply with a deadline, if the reason is linked to a disability
- ✧ A quiet, comfortable space to sit

- ✧ To have one's disability taken into account if it is related to behaviour that would otherwise lead to withdrawing the service or some other consequence.

Housing

- ✧ Help filling out application forms (for example, for social or supportive housing)
- ✧ Adjusted criteria used to select tenants (such as using a guarantor when other information, such as credit history or rental history, is not available)
- ✧ Changed deadlines (such as deadlines to report income changes in social and supportive housing)
- ✧ Changes in the ways that information is communicated to tenants (for example, making sure legal language is explained plainly)
- ✧ A list of support people the landlord can call in emergency situations
- ✧ Structural changes to units (such as sound-proofing)
- ✧ The landlord working with outside professionals to address someone's needs, if agreed to by the tenant (such as where people collect and store possessions to the point where this becomes a major risk to themselves and others).

Confidentiality

In any discussion on accommodation, and especially involving mental health disabilities and addictions, confidentiality is very

important. Speaking to a person in private, instead of in front of co-workers, other tenants or other people using a service is an important first step.

Accommodation providers should only share documentation about an accommodation with people who need to be aware of the information.

Keeping information about people with mental health or addiction disabilities confidential is especially important because of strong social stigma and negative stereotyping.

Example: An employer posted confidential details about an employee's medical condition on the bulletin board for others to see. This was discrimination because it stigmatized the employee and poisoned her work environment.

For more information:

The OHRC's *Policy on preventing discrimination based on mental health disabilities and addictions* and other publications are available online at www.ohrc.on.ca.

The website includes information on:

- ✧ Forms of accommodation
- ✧ Ableism, negative attitudes, stereotyping and stigma
- ✧ Mental health profiling
- ✧ The power of words

- ✧ The duty to accommodate
- ✧ Information for employers
- ✧ Information for housing providers
- ✧ Information for service providers.

If you think you have been discriminated against, you can speak to your service provider, housing provider or employer. You can also file a complaint – called an application – with the Human Rights Tribunal of Ontario (HRTO).

You can contact the Human Rights Legal Support Centre if you need more information about your rights, the human rights process, or need help filing an application. You can also ask another organization or person to file an application on your behalf.

You have the right to assert your rights, complain, or file an application with the HRTO, without reprisal. This means that it is against the *Code* for you to be punished or threatened with punishment because you object to discrimination.

To make an application, contact the Human Rights Tribunal of Ontario at:

Toll Free: 1-866-598-0322

TTY Toll Free: 1-866-607-1240

Website: www.hrto.ca

To talk about your rights or if you need legal help, contact the Human Rights Legal Support Centre at:

Toll Free: 1-866-625-5179

TTY Toll Free: 1-866-612-8627

Website: www.hrlsc.on.ca

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