



Discrimination based on COVID-19

Your rights
Your responsibilities

A guideline developed under The Human Rights Code

Introduction

The Manitoba Human Rights Commission (the “MHRC”) is an independent agency of the Government of Manitoba responsible for administering *The Human Rights Code* (“*The Code*”).

The Code sets out a complaint process and mandates MHRC to promote human rights principles and educate the public about their rights and responsibilities under *The Code*. *The Code* has special status over all other laws of the Province of Manitoba.

Section 5 of *The Code* authorizes MHRC to prepare and distribute guidelines to assist in the understanding and application of *The Code*. These guidelines assist the public in understanding how to comply with *The Code*. They represent MHRC’s interpretation of *The Code* at the time of publication.

This guideline sets out MHRC’s interpretation of the protections in *The Code* with respect to discrimination on the basis of COVID-19. If there is any conflict between this guideline and *The Code*, *The Code* prevails.

Discrimination and COVID-19

Manitobans are reminded to keep human rights principles under *The Code*, *The Canadian Charter of Rights and Freedoms* (*The Charter*) and international human rights treaties front and centre during the COVID-19 global pandemic.

All organizations must recognize their human rights obligations, and consider the potential impacts of COVID-19 on individuals in vulnerable circumstances.

This includes:

- Indigenous and racialized peoples;
- people with disabilities;
- incarcerated individuals and people who reside in institutions;
- older people;
- low-income communities who have unequal access to housing, health care, childcare; and
- unemployed people or people employed in low-paying, hourly-wage, benefit-free and otherwise precarious jobs.

MHRC also recognizes the importance of balancing an individual's right to be free from discrimination with public health and safety, including the need to address the risks associated with COVID-19.

The Code prohibits unreasonable discrimination or harassment on the basis of a protected characteristic in the areas of employment, public services, housing, contracts and signs or statements. This includes unreasonable discrimination or harassment related to COVID-19 when it is connected to a characteristic protected by *The Code*.

The Code protects against discrimination based on 12 characteristics, whether real or perceived, including disability, ethnic origin, country of origin, ancestry and race. Like other commissions across Canada, MHRC's policy position is that *The Code* ground of disability applies in relation to COVID-19 as *The Code* protects against discrimination on the basis of medical conditions or perceived medical conditions that carry significant social stigma.

COVID-19 is not specific to people of any country or ancestry. Imposing some restrictions, such as a self-isolation or quarantine based on where an individual recently travelled, may be reasonable and not discriminatory. However, all Manitobans should avoid subjecting people of specific ethnic backgrounds or nationalities to stereotypes or prejudice related to COVID-19.

There may be circumstances where discrimination is justifiable, for example where health and safety risks are serious and would amount to undue hardship. Employers, service and housing providers should ensure any restrictions are consistent with the most recent advice from medical and public health officials, and are justified for health and safety reasons.

COVID-19 and Employment

Employers are prohibited from unreasonably discriminating against employees on the basis of a characteristic protected by *The Code* and related to COVID-19. Employers have a duty to reasonably accommodate employees in relation to COVID-19, unless it would amount to undue hardship.

An employer should not send an individual employee home, or ask them not to work because of concerns over COVID-19, unless the employer's concerns are reasonable and consistent with information from medical and public health officials. Currently, Manitoba's public health officials are advising workplaces to practice social distancing, which might require some employees to work from home or not come into work.

Employers should review absenteeism policies to ensure they do not negatively impact employees who cannot work because of COVID-19. In addition, employers should avoid disciplining or terminating an employee who is unable to come to work because they are quarantined or have been advised by medical professionals to self-isolate.

An employee who has care-giving responsibilities should be accommodated to the point of undue hardship, which might include staying home. Caregiving responsibilities which relate to *The Code* ground of family status could include situations where another family member is ill or in self-isolation, or where their child's school is closed due to COVID-19.

Employers should be sensitive to other factors such as any particular vulnerability an employee may have (for example, if they have a compromised immune system).

Employers should give employees flexible options, such as working remotely where feasible, as a good practice, and as an accommodation even if they are not currently sick but need to self-isolate or stay home due to other reasons related to COVID-19.

MHRC advises employers to be cautious and flexible when making requests for medical notes related to COVID-19. Unnecessarily visiting medical offices increases further risk of exposure for everyone and places additional burden on our health care system.

An employee who cannot work because of COVID-19 may be entitled to sick leave or disability leave benefits offered by the employer or available under government benefit programs.

At the same time, employers are entitled to expect that employees will continue to perform their work unless they have a legitimate reason why they cannot. If an employee is required to self-isolate for legitimate reasons, the employer is entitled to explore alternative options for how the employee may still continue to perform productive work for the employer (for example, telework). It is also not discriminatory to lay off employees if there is no work for them to do because of the impacts of COVID-19.

COVID-19, Public Services and Housing

All Manitobans have the right to be free from discrimination including harassment related to COVID-19 in services and housing based on grounds under *The Code*.

Services include, among other things, education institutions, retail shops and malls and the hospitality industry including restaurants, bars, hotels and entertainment facilities. Housing providers include condo corporations, rental apartments and residential institutional facilities like long-term care and retirement homes.

Negative treatment of service recipients or residents who have, or are perceived to have, COVID-19, for reasons unrelated to public health and safety, could be discriminatory and prohibited under *The Code*. Organizations in these areas may also have a duty to accommodate persons in relation to COVID-19. Again, MHRC recognizes that service and housing providers must respect human rights principles while balancing their obligation to follow the instruction of the health officials. Imposing restrictions that are consistent with the most recent advice from health officials may be justification for discriminatory treatment, and therefore would not constitute a violation of *The Code*.



Need more information?

For further information on this guideline or
The Human Rights Code, please contact us at
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Le présent guide est également disponible en français.