

Prohibited Grounds

Source: OPSEU Course, *Duty to Accommodate: A Tool for Inclusive Workplaces*. Revised March 2010

It is against the law to discriminate in employment against people on the basis of 14 “grounds” – age, ancestry, citizenship, colour, creed, disability, ethnic origin, family status, marital status, place of origin, race, record of offenses, sex, and sexual orientation. These protected identities of people are called “prohibited grounds”. Some of these “prohibited grounds” are defined in Section 10 of the *Ontario Human Rights Code*. Still other definitions are emerging and changing from case law. Below are brief definitions.

Age - means an age that is eighteen years or more.

Ancestry - lineage, whom you are descended from – how you trace family and heritage. This ground is of particular significance to Aboriginal peoples, in disputes about status and entitlements.

Citizenship - refers to citizenship from any country. Individuals can be Canadian citizens ‘by birth’ or ‘by naturalization’. ‘By birth’ means that a person was either born in Canada or born outside Canada if, at the time of his or her birth, one or both parents were Canadian citizens and had retained citizenship. Citizenship is also linked to having landed status. Employers should only be concerned with whether a person has legal status to work in Canada.

Creed - religious creed, or religion; a professed system and confession of faith, including both beliefs and observances or worship. It isn’t necessary to believe in one god or gods, to be a belief system. Religion includes non-deistic bodies of faith such as the spiritual faiths/practices of Aboriginal cultures, as well as bona fide newer religions assessed on a case by case basis.

Disability – Section 10 of the *Ontario Human Rights Code* says this includes:

- a) any form of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness. Without limiting the generality of the above, this includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device;
- b) condition of mental impairment or developmental disability

- a) learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language
- b) a mental disorder
- c) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*)

Case law is also recognizing that conditions like fibro myalga are disabilities. (Helpful Resources at the back, “Which Disabilities warrant Accommodation and which Don’t”).

Section 10(3) makes it clear that discrimination based on “past or presumed disabilities” is also against the law.

Ethnic origin - connected to “ancestry” but includes a wider range of characteristics. May include language, dress, culture, values and traditions, foods, and could be connected to place of origin, nation, tribal, religious, background or race.

Family Status - means the status of being in a parent and child relationship. This definition includes biological and adoptive parents and persons who act in the position of a parent to a child. It also includes situations where employees have a responsibility to provide care to elderly or sick parents. Men and women are equally protected under this ground.

Marital Status - means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage;

Place of Origin - country of birth, usually outside of Canada, or it could include an area, province or region of Canada, for example, Quebec, Newfoundland, or even a particular town that is well-known for some reason.

Race and Colour - Race is a socially constructed way of judging, categorizing and creating difference among people based on physical characteristics such as skin colour, eye, lips and nose shape, hair texture and body shape. The process of social construction of race is termed “racialization.” This is the “process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life.” (*The Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*). Despite the fact that there are no biological “races”, the social construction of race is a powerful force with real consequences for individuals. Someone’s “race” can also extend to specific traits which are deemed to be “abnormal” and of less worth. Individuals may have prejudices related to various racialized characteristics. In addition to physical features, these characteristics could include accent or manner of speech,

name, clothing and grooming, diet, beliefs and practices, leisure preferences, and places of origin.

Receipt of Public Assistance – refers to discrimination towards someone because they receive public assistance. This is not a prohibited ground under employment, but is a prohibited ground for accommodation (housing), Section 2 of the Ontario Human Rights Code.

Record of Offences means a conviction for:

- i) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or
- ii) an offence in respect of any provincial enactment.

Sex – includes what is commonly referred to as sexual harassment or inappropriate comments and actions of a sexual nature. However, the ground of “sex” may also include harassing comments and conduct made to a person because of gender.

People who are discriminated against or harassed because of gender identity are legally protected under the ground of ‘sex’. This includes transsexual, transgender and intersex persons, gender variant, cross-dressers, and other people whose gender identity or expression is, or is seen to be, different from their birth-identified sex.

Gender identity is linked to a person’s sense of self, and particularly the sense of being male, female or where they identify on the gender continuum. A person’s gender identity is different from their sexual orientation, which is also protected under the *Code*. People’s gender identity may be different from their birth-assigned sex, and may include:

Transgender: People whose life experience includes existing in more than one gender. This may include people who identify as transsexual, and people who describe themselves as being on a gender spectrum or as living outside the binary gender categories of “man” or “woman.”

Transsexual: People who were identified at birth as one sex, but who identify themselves differently. They may seek or undergo one or more medical treatments to align their bodies with their internally felt identity, such as hormone therapy, sex-reassignment surgery or other procedures.

Intersex: People who are not easily classified as “male” or “female,” based on their physical characteristics at birth or after puberty. This word replaces the inappropriate term “hermaphrodite.”

Gender Variant: Displaying gender traits that are not usually associated with their biological sex. “Feminine” behaviour or appearance in a male is gender-variant as is “masculine” behaviour or appearance in a female. Gender variance is a term that refers to those expressions of gender (masculinity and femininity) that do not conform to the dominant gender norms of western culture.

Crossdresser: A person who, for emotional and psychological well-being, dresses in clothing usually associated with the “opposite” sex.

Finally, Section 10(2) states that “sex” *includes discrimination related to pregnancy.*

Sexual Orientation - Sexual orientation” is a personal characteristic that forms part of who you are. It covers the range of human sexuality from gay and lesbian, to bisexual and heterosexual orientations. Sexual orientation is different from gender identity, which is protected under the ground of "sex."

The *Code* makes it against the law to discriminate against someone or to harass them because of their sexual orientation or their marital status which includes same-sex relationships. This right to be free from discrimination and harassment applies to employment, facilities, accommodation and housing, contracts and membership in unions, trade or professional associations. This means that a person cannot be treated unequally or subjected to harassment in these areas because he or she is gay, lesbian, heterosexual or bisexual. It is also illegal to discriminate because someone is in a same-sex relationship.

Real or “perceived” ground

Because human rights law focuses on the *effects* of the discrimination, discrimination based on a real or perceived ground is covered under the *Code*. For example, if someone believes you have a disability or that you are gay and discriminate against you on that basis, even though you are not actually a person with a disability or are gay, you will still be protected under the *Code*.