

# Know Your Rights

## Employment



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# Employment

## Q: What legal rights do I have in Nova Scotia's employment sector?

Under Nova Scotia laws, people with disabilities have important legal rights when it comes to employment:

- You have the right to receive equal treatment, equal opportunity and equal access to employment opportunities without discrimination because of your disability.
- You have the right to receive accommodations for your disability from your employer, prospective employer, or employment agency up to the point of undue hardship.
- You have the right to work in a healthy and safe work environment.
- You have the right to challenge/make a complaint about unfair or unsafe working conditions without fear of punishment.

## Duty to Accommodate and Undue Hardship

**Duty to Accommodate:** An employer's legal "duty to accommodate" means that they are legally required to provide you with the support you need to succeed in the workplace. In most cases, the "duty to accommodate" will arise after the employee has made an accommodation request. In some instances, however, the "duty to accommodate" will arise without an accommodation request being made, for example, if the employer has reason to believe an employee is experiencing difficulties as a result of a disability.

The "duty to accommodate" involves a two-step process:

1. **Information gathering:** Requires the employer to conduct *individual* assessments of an employee's needs and capabilities. This will likely involve the assistance of healthcare professionals.
2. **Providing a suitable accommodation:** Once the employee has been assessed, the employer has a duty to make efforts to provide the employee with reasonable accommodations.

**Undue Hardship:** The “duty to accommodate” has a limit and this limit is called “undue hardship. “Undue hardship” is a legal term. It means that if an employer can show that it is very difficult for them to provide you with a certain type of accommodation, then they don’t have to provide it. The point of undue hardship is determined by the courts or human rights tribunals.

It is difficult to demonstrate that accommodation would result in undue hardship. To establish this, the employer would have to prove that providing accommodations would:

- Be impossible;
- Create serious health or safety risks; or
- Be so costly as to significantly interfere with the employer’s ability to operate.

In each case, the employer would have to prove that they had considered all reasonable alternatives to accommodate you.

## **Q: Where do my legal rights come from?**

In Nova Scotia, your legal rights come from two main pieces of legislation, including:

- Nova Scotia’s **Human Rights Act** prohibits discrimination based on disability in different areas of public life within Nova Scotia, including discrimination by employers and within the workplace.
- The **Labour Standards Code** is a provincial code that sets out minimum standards with which employers must comply.

Other relevant pieces of legislation that are based on the principles of equity and inclusion include:

- Nova Scotia’s **Accessibility Act** – This provincial Act requires the prevention and removal of barriers that people with disabilities may experience with respect to employment, among other factors.
- The **Accessible Canada Act** – This federal Act works to identify and remove barriers in federal jurisdiction. The goal of this legislation is to make Canada a “Barrier Free” country by the year 2040.
- The **Employment Equity Act** - This federal Act aims to achieve equality in the workplace by setting out responsibilities that federally regulated employers are encouraged to follow to eliminate discrimination within the workplace.

- The **Canadian Human Rights Act** – This federal Act prohibits discrimination based on disability in federally regulated areas of public life, including discrimination by employers and within the workplace.

### **Q: What can I do to enforce my legal rights?**

If you have experienced discrimination while seeking employment or while employed, there are things you can do to stand up for yourself. In general, you should first try to resolve your concerns by speaking with the people who are directly involved informally and collaboratively.

If your concerns remain unaddressed, your options depend on the type of problem you may be experiencing. Consider consulting with a lawyer about the options that may be available to you.

If you feel that you have been treated unfairly due to your disability, filing a complaint under the Nova Scotia **Human Rights Act** with the **Nova Scotia Human Rights Commission** may be a good option. You can **contact** the Nova Scotia Human Rights Commission or visit its **Complaint Self-Assessment** page to get a better sense of whether your experience falls within the purview of the Human Rights Act. If your issue falls within the purview of the Human Rights Act, commission staff can help you file a complaint. Generally, you must make a complaint within twelve months of the incident. See the Human Rights Guide for more information.

If you are employed by a federally regulated organization/employer, then you may have the option of filing a **complaint** with the **Canadian Human Rights Commission**. To learn more about whether federal laws apply to your situation, you can start by visiting the Government of Canada's website, titled **List of federally regulated industries and workplaces**.

The **Labour Standards Code** addresses issues and sets out minimum standards on topics such as hiring and firing, breaks, compensation, and various types of leave. Under the Labour Standards Code, the Director can bring complaints under the Act against an employer on behalf of an employee. If you feel you have been treated unfairly by your employer, in violation of the Labour Standards Code, you can **contact** Nova Scotia's Labour Standards Division or visit their **website** to **learn more about the complaints process**.

The Labour Standards Code does not apply to unionized employees. If you are an employee in a union, you should contact your union representative.

## Common Scenarios

Even though there are laws to protect you from discrimination, people with disabilities still face barriers to accessing employment opportunities and fulfilling their potential in the workplace.

This section describes barriers that are commonly experienced and suggest practical next steps. Keep in mind that, in most situations, you should first try to resolve your concerns by speaking with the people who are directly involved proactively and collaboratively. This may help you get the results you are looking for, and it is also a good place to start before pursuing a more formal dispute resolution process.

### **Q: I'm looking for a volunteer position. Am I entitled to receive accommodations as a volunteer?**

There are no specific protections for volunteers; however, under the Human Rights Act and the Blind Persons Rights Act, you are entitled to general protections. One cannot be denied accommodations, services, or facilities to the point of undue hardship, that are available to the public.

The Nova Scotia Human Rights Act protects against discrimination based on a protected ground, such as disability. The Human Rights Act applies to most employers. Employers must accommodate an employee or applicant to the point of Undue Hardship. The Human Rights Commission may consider what steps an employer has taken to accommodate an individual. If the accommodation would cause "Undue Hardship" to the employer, then they do not have to make the accommodation. See the Human Rights Guide published as part of this series for more information.

### **Q: There's a requirement in a job advertisement that I can't meet because of my disability (e.g. driver's licence). Should I still consider applying for the job?**

Sometimes job advertisements include "requirements" that are not essential to do the job safely and effectively.

If you can't meet a requirement in a job advertisement because of your disability, and you believe that requirement is not essential to doing the job, then you should still consider applying.

Sometimes job advertisements include “requirements” that are not essential to doing the job in a safe or effective way. If you can’t meet a requirement in a job advertisement because of your disability, and you believe that requirement is not essential to doing the job, then you should still consider applying for the job.

When a job advertisement includes a “requirement” that is not essential to doing the job safely or effectively, the employer is not allowed to reject your application on the basis that you could not meet that requirement. The determination of whether or not a job requirement is essential is fact-dependent. Here’s an example:

Mary is looking for work. She is trained as an accountant and she has sight loss which prevents her from driving.

Mary sees a job advertisement for an accountant position that is based in one office and does not require travel to other locations. The job advertisement includes a requirement that “all applicants must have a driver’s licence”.

In this example, the requirement that applicants must have a driver’s licence is not essential because it does not affect whether someone can do the job in a safe or effective way.

If Mary chooses to apply for this job, the employer is not allowed to reject her application on the basis that she doesn’t have a driver’s licence.

### **How can you tell which job requirements are “essential” and which are not?**

It is not always easy to know because the law on this topic can be complex. Whenever you are in doubt, it’s important to get help from a lawyer who can apply the law to your specific situation.

Here’s an example of when it’s not entirely clear if a job requirement is essential:

Fara is looking for work. She is an experienced salesperson and she has sight loss which prevents her from driving.

Fara sees a job advertisement for a sales associate position that will require frequent travel to different client locations. The job advertisement includes a requirement that “all applicants must have a driver’s licence”.

If most clients are located nearby, then Fara could take a taxi to meet clients. The cost of a local taxi will probably not cause undue hardship to the employer. In this case, the requirement that applicants must have a driver's licence is probably not essential to the job.

However, if most clients are located far away, the cost of travelling by taxi to remote locations might create an undue hardship for the employer. In this case, the requirement that applicants must have a driver's licence could be essential to the job.

Employers do not have a legal duty to accommodate you if you are unable to meet an “essential requirement” of a job because of your disability.

If possible, it may be beneficial to talk through potential accommodations with an employer.

### **Q: A job posting is not in an accessible format. What can I do?**

If you find a job posting in Nova Scotia that is not in an accessible format, you have the right to request the job posting in an accessible format from the employer as an accommodation for your disability. For example, if the print is very small.

The Nova Scotia [Human Rights Act](#) provides protection against employment discrimination whether or not you are hired yet. The employer has a responsibility to ensure that their job posting is accessible.

You can bring this issue to the attention of the employer to try to find a remedy. If you feel uncomfortable doing this, or you do not yet want to disclose your disability, you can ask a friend to make the request for you. You can also get help from a local organization, such as the [CNIB](#) or the [Halifax Workers' Action Centre](#).

### **Q: I got an interview! But I'm not sure when to disclose my sight loss to my prospective employer. What should I do?**

While you are not legally required to disclose your disability to your employer, it may be a good idea to do so, depending on the situation.

There's no single “right answer” about whether you should disclose your disability to an employer and when you should do so. You need to consider the pros and cons depending on what you know about the job, the employer, the industry, and your own feelings.

It's often a good idea to disclose your disability before an interview to make sure that appropriate accommodations will be provided to you during the interview. This is especially important where written tests or other types of evaluation could be part of the interview process.



Keep in mind that when requesting accommodations, it is the employee's responsibility to provide details that will help the employer assess any accommodation request.

Other reasons to disclose your disability in advance of an interview are:

- To give you the first opportunity to frame your disability in a positive way that highlights your achievements;
- To ensure the employer is not surprised; and,
- To demonstrate how you are proactive in finding solutions.

There are also potential risks to disclosing your disability before an interview. For example, you may be worried that the employer could form misconceptions about you based on false stereotypes before you can meet them in person. Some employers may discriminate based on disability but will use another reason to explain why they did not hire you. It can be very difficult to prove this type of discrimination.

**Q: I had qualifications and performed well during the interview, but I didn't get the job. I feel I have been discriminated against because of my sight loss. What can I do?**

Sometimes there are clear signs that you have been discriminated against during an interview process. For example:

- When an employer asks intrusive and inappropriate questions, for example, asking questions about your medical history that are unrelated to the job;
- When an employer makes statements that are offensive or based on false stereotypes; or,
- When an employer says that they cannot hire you because of your sight loss when it is not an essential requirement of the job.

Before deciding what to do, it's important to understand how the law applies to your specific situation. You should consider consulting with a human rights or employment lawyer about your legal options, including those outlined in the section of this handbook, titled, [What can I do to enforce my legal rights?](#)

## **Q: My sight loss is affecting my ability to do my job. What can I do?**

You may need to tell your employer about how your disability is affecting your ability to perform job-related tasks. When you choose to disclose your disability to your employer, you will trigger their legal duty to accommodate you up to the point of undue hardship. If you are aware of the accommodations that you will require, you should inform your employer of these, in writing.

It is important to keep in mind that the duty to accommodate is a collaborative process that requires co-operation from employees. Employees must, for example, provide all necessary information about their restrictions, and must consider accommodation solutions proposed by the employer.

CNIB or Vision Loss Rehabilitation may be able to assist with the accommodation process. There are resources to help. The CNIB has guidelines that can be provided to the employer, such as the Clear Print Guideline and the Creating an Accessible Workplace Guideline. Both can be found on CNIB's website.

It may also be helpful to apply for the [Nova Scotia Workplace Support Program](#) which provides funding for accommodation. The program provides two types of funding:

- **Workplace Attendant Support**
  - A workplace attendant is a paid assistant who provides task-related assistance to an individual's job requirements.
  - Nova Scotia stipulates that the applicant considers first if there are technical devices that could help make the job more accessible
- **Technical Aids and Assistive Devices**
  - Funding for technical aids and assistive devices is to be used to help with the purchase of technical aids or assistive devices that are required to perform a task.

If you disclose a disability and ask for accommodation, the employer is entitled to ask for medical information if there is an accommodation issue. The employer may ask for information regarding:

- The existence of a disability; and,
- The specific accommodation it requires.

If you do not cooperate with providing the required information, an employer may not need to accommodate the employee.

**Q: I had to leave my job because my sight loss prevented me from doing my duties. What now?**

If you lose your job (for example, you resign or are laid off) and you believe you lost your job because of your sight loss, you should get help from a lawyer to understand what your legal options are. A lawyer can help you determine whether your employer may have discriminated against you in a way that breaks the law.

If you leave your job voluntarily to receive Employment Insurance benefits, you may have to prove that you took every reasonable alternative available to you to avoid unemployment to receive benefits.