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Centre for Gender and Sexual Diversity

Know Your Rights – 2SLGBTQ+ People



This information sheet is designed to help you understand what your rights are as a 2SLGBTQ+ person in Alberta. The information provided does not, and is not intended to, constitute legal advice; it is for general informational purposes only. It may not contain the most up-to-date legal or other information. Readers are urged to contact a lawyer to obtain advice with respect to any particular legal matter. Resources for pro-bono legal advice are provided throughout this information sheet where applicable.

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How are my rights protected in Alberta?

The Alberta Human Rights Act (the Act) prohibits discrimination based on sexual orientation, gender identity and gender expression. The Act protects you from being treated badly or denied a benefit because you identify as gay, lesbian, transgender, non-binary or any other identification under the 2SLGBTQ+ umbrella.

How is sexual orientation, gender identity and gender expression defined?

- “Sexual orientation” refers to a person’s actual or presumed sexual orientation, ex. gay, lesbian, heterosexual, bisexual, asexual.
- “Gender identity” refers to a person’s internal, individual experience of gender, which may or may not coincide with the sex assigned to them at birth.
- “Gender expression” refers to the varied ways in which a person expresses their gender, which can include a combination of dress, demeanour, social behavior and other factors.

What exactly is discrimination based on sexual orientation, gender identity and gender expression?

Discrimination is being treated badly or denied a benefit. It can occur in a number of ways, for example, it may be discrimination if:

- a person makes statements, publications, notices, signs, symbols, emblems or other representations that are published, issued or displayed before the public that show hatred towards people based on their sexual orientation, gender identity or gender expression;
- a person denies goods, services, accommodation or facilities customarily available to the public on the basis of their sexual orientation, gender identity or gender expression;
- a person denies you the right to be a tenant because of your sexual orientation, gender identity or gender expression (both residential and commercial);
- an employer refuses to hire, promote or provide equal treatment to you because of your sexual orientation, gender identity or gender expression;
- an employer uses or circulates employment applications or advertisements that expresses (directly or indirectly) a preference or specification against people on the basis of their sexual orientation, gender identity or gender expression;
- a person verbally abuses or threatens you because of your sexual orientation, gender identity or gender expression; or

- a trade union, employers' organization or occupational association excludes or expels you because of your sexual orientation, gender identity or gender expression.

That's great, but are there any practical examples of what discrimination because of sexual orientation, gender identity and gender expression would look like?

Some examples of discrimination based on sexual orientation, gender identity and gender expression are:

- A gay man being questioned about his sexuality and getting rejected during a job interview because of his orientation;
- An employer refusing to call a non-binary employee by their correct pronouns at work;
- An employer refusing to allow a transgender individual to use the washroom that aligns with their identity or feel the most comfortable in;
- A school board banning books from the classroom that show families with same-sex parents; or
- A lesbian couple being denied a lease because the landlord prefers people with "traditional values".

What if I'm still in school, am I protected from discrimination there?

Yes. Teachers are responsible to teach all of their students in a manner that respects their dignity and rights no matter their sexual orientation and gender identity. A school board must ensure that each student enrolled is provided with a safe and caring environment that fosters and maintains respectful and responsible behavior.

What do I do if I believe I have been discriminated against because of my sexual orientation, gender expression or gender identity?

The Act allows you to file a complaint with the Alberta Human Rights Tribunal if you believe that you have been discriminated against. A complaint must be made to the tribunal within one year after the alleged incident of discrimination. This one-year period starts the day after the date on which the alleged incident occurred.

How do I make a complaint to the Alberta Human Rights Tribunal?

To make a complaint, an individual must complete Human Rights Complaint Form and email that form to ahrc.registrar@gov.ab.ca. The complaint form, a preliminary self-assessment, and instructions on submission can be found on the Alberta Human Rights Commission website at <https://albertahumanrights.ab.ca/complaints> or scan the QR code.



What if my employer or school finds out I filed a complaint, can I get in trouble?

No. It is illegal for anyone to retaliate against you for making or attempting to make a human rights complaint, or for giving evidence about a complaint.

What will happen if the tribunal finds that I was a victim of discrimination?

A remedy will be determined based on looking at the losses that you have experienced. The Tribunal may factor in the nature of the contravention, the frequency and intensity of the contravention, how vulnerable you are, or the impact of your experience. A remedy may include one or more of the following:

- A verbal or written apology;
- A job reference;
- Financial compensation for lost income and benefits as well as for general damages for injury to dignity and self-respect; or
- An order that the aggressor stop the behavior and take steps to ensure it will not happen again.

What if I just came out, what kind of rights do I have?

Your employer has the duty to accommodate you to the point of what is called “undue hardship”. Accommodation means making changes to certain rules, standards, policies, workplace cultures, and physical environment to ensure that they don’t have a negative effect on you because of your sexual orientation,

gender identity or gender expression. For example, if you have just come out as transgender, your employer would need to accommodate you by:

- Referring to you by your correct gender label and pronouns;
- Providing an inclusive dress code, or make reasonable efforts to accommodate requests for an exception to a dress code; and
- Allowing you to use the washroom(s) that align with your gender identity or create gender-neutral washrooms in the workplace.

What is “undue hardship”?

An employer will only need to accommodate someone up to the point of “undue hardship”. Undue hardship means that accommodating the employee would create significantly challenging conditions for the employer or service provider such as intolerable financial costs or a serious disruption to business. An hardship is not an easy thing to do and an employer must show that they have made a genuine effort to make reasonable accommodations in the circumstances.

Figuring out what undue hardship looks like will depend a lot on the individual and the circumstance. However, when considering transitioning, we know that someone transitioning must be accommodated just like any other employee going through medical treatment.

This means that if you are transitioning you may need to provide doctor’s notes for medical procedures to your employer for when you need to take time off. However, you would not need to provide your employer any private medical information that wouldn’t be relevant for your need for accommodation. For example, if the gender marker on some of your private documents do not match your presenting gender, this information should not be shared with the rest of the organization.

Are there any examples of people who have gone through this process?

Absolutely. Below are several real-life examples of people submitting a complaint in Alberta or other provinces that have a similar process. Please note that these examples contain incidents of transphobia and homophobia.

Example 1:

A transgender woman was subject to workplace harassment with regards to her gender identity and expression. During her transition period, her employer refused to allow her to use the women’s washroom, she was forced to change in the men’s locker room, and she was subject to name calling. Ultimately, her employment was terminated, and she filed a human rights complaint against the company for violating Ontario’s Human Rights Code – which is similar to Alberta’s Human Rights Code.

She was successful at court. The tribunal found that the company had failed to consider, explore, or implement any solutions that would have accommodated her with her transition, but rather contributed to the poisoned environment. The company was liable to pay her \$21,000, in addition to eight months’ lost wages. The company was also ordered to develop a formal anti-harassment policy and train its management on human rights law.

Example 2:

Nelson, a non-binary, gender fluid, transgender person, worked as a server. During their employment, the bar manager persistently referred to Nelson with gendered nicknames, and when asked to stop by Nelson, refused. Nelson asked management to intervene but was ultimately fired. The British Columbia tribunal held that Nelson had been discriminated against based on their gender identity and gender expression. Nelson was rewarded \$30,000 in damages, and the restaurant was ordered to implement mandatory training about human rights in the workplace and add a statement to its employee policies that affirms every employee’s right to be addressed with their own personal pronouns.

Example 3:

Landry, a gay man, interviewed for a job with a company. The interview took a strange turn when the interviewer asked Landry what he would do if a customer had an issue with his sexual orientation. The interviewer continued by stating that they did not believe in “political correctness”, that straight people were bullied to accept gay people, and that one day the “tide will turn” against gay people. The tribunal decided that Landry’s sexuality was a factor in the decision to not hire him. It was found that Landry was discriminated against and he was awarded \$20,000 as general damages for loss of dignity as well as \$36,000 for lost wages.

I experienced discrimination because of my sexual orientation, gender identity or expression on a First Nations reserve or Metis settlement. Is the process any different for me?

Individuals who experience discrimination on a First Nation reserve or Metis settlement need to submit a complaint with the Canadian Human Rights Tribunal rather than the Alberta tribunal. The process of submitting a complaint and the remedies available are similar to the Alberta process. To submit a complaint, you can go to the Canadian Human Rights Commission website at <https://www.chrc-ccdp.gc.ca/en/complaints/make-a-complaint> or scan the QR code.



I’m a federal worker, which Tribunal do I submit a claim to?

Federal workers also apply to the Canadian Human Rights Tribunal rather than the Alberta tribunal.



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